

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA

ON MONDAY THE 28TH DAY MAY, 2018 BEFORE HIS LORDSHIP,
THE HONOURABLE JUSTICE S. M. SHUAIBU
JUDGE

CHARGE NO: FHC/KD/38^C/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - **COMPLAINANT**

AND

ISA ABDULLAHI INDE - **ACCUSED PERSON**

JUDGMENT

The Accused Person herein, **ISA ABDULLAHI INDE**, is standing trial before this Court, for an offence contrary to the provision of **Section 1(1) (b)** of the Advance Fee Fraud and Other Fraud Related Offences Act, LFN 2006. The offence is punishable under **Section 1(3)** of the same Act, 2006.

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

8/6/2018

The particulars of the offence as contained in a one (1) count amended charge dated 10th day of October, 2016 and filed on the same day are given as follows:-

*That you **ALHAJI ISA ABDULLAHI INDE** on or about 10th day of December, 2014 in Kaduna within the jurisdiction of this Honourable Court with intent to defraud, obtained the sum of Seven Million, Nine Hundred and Fifty Thousand Naira (**₦7,950,000**) from one **ALHAJI ABUBAKAR AHMED**, with the false pretence that the money was for clearance of sixteen (16) containers of rice at Lagos, and thereby committed an offence contrary to **Section 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, 2006.*

On the 17th day of October, 2016, the particulars of the offence as given before now, were read out and explained to the Accused Person by the Court Registrar in English language to the satisfaction of the Court. The Accused Person denied the charge.

In the bid to establish the offence against the Accused Person beyond all reasonable doubt as required by Law, the Learned Prosecution Counsel, **SHATA JAMILA ESQ**, called two (2) witnesses and tendered in evidence, a total of six (6) exhibits, marked **Exhibits EFCC 1 - 6** respectively. The first prosecution witness is **ABUBAKAR AHMED**. He testified on the 17th day of November, 2016. Perhaps it may be necessary to reproduce his evidence in full. He said:-

*My name is **ABUBAKAR AHMED**. I live in Zaria. I do supply. I am also an Exporter and Importer. I know the Accused Person in the dock. I know the Accused Person through two (2) of my friends i.e. **JIBRIN ALIYU** and **JIBRIN LIMAN**. Apart from these two (2) persons, I also know the Accused Person through Sarkin Nasarawa. They told me that they will link me up with the Accused Person so that he will clear our containers of rice. Sarkin Nasarawa requested for the sum of One Hundred and Twenty Five Thousand Naira (**₦125,000.00**) as fee for him to link me up with the Accused Person, that would do the clearance of the rice containers.*

We went to the House of the Accused Person here in Kaduna. We told him that we have some containers of rice in Ikorodu, Lagos. We told him that we want an NDLEA Certificate. The rice was imported from India. Our partners in India sent the Rice to us. The name of our partners is **SINATI IMPEX LIMITED** as registered here in Nigeria.

The Accused Person told us that the Comptroller, National Drug Law Enforcement Agency (NDLEA) is from Katsina and the Accused Person said he will put a call across to him. The Accused Person told us to give him two (2) hours, that he will call the Comptroller National Drug Law Enforcement Agency (NDLEA) and also the Comptroller, Nigeria Customs Service, Apapa Port, Lagos. That after two (2) hours we should meet at NAF Club, Kaduna. When we met, the Accused Person told us that he had made the contacts but that they requested Five Hundred Thousand Naira (**₦500,000.00**) for the seizure number.

The Accused Person gave us an account number with the Guarantee Trust Bank Plc. and we paid the sum of Five Hundred Thousand Naira (₦500,000.00) into that account. The Accused Person requested for the Bill of Lading so that he will scan it, to the Nigeria Customs Service. The Accused Person told us that the Customs Service demanded for the sum of Ten Million Naira (₦10,000,000.00) for the clearance of the sixteen (16) containers of rice. I then sent Two Million (₦2,000,000.00) to him. I told the Accused Person, that upon clearance, I shall pay the balance of Eight Million (₦8,000,000.00).

The Accused Person then requested that we meet in Lagos to see the Comptroller and that I should come with the original documents on the importation of the Rice Containers. In Lagos, the Accused Person asked me to meet him at the hotel that he had lodged. I met him at about 8:00pm. He told me that he had spoken with the National Drug Law Enforcement Agency (NDLEA) and the Customs Service and that they requested for the original documents on the

transaction. I then gave him the original documents. The Accused Person then asked me to come in the morning the next day and that he will see the officials of the National Drug Law Enforcement Agency (NDLEA) and the Nigeria Customs Service that evening.

When I came back in the morning, the Accused Person told me that he had spoken to the National Drug Law Enforcement Agency (NDLEA) and the Nigeria Customs Service officials, but that they told him that the money I had given, is not sufficient. The Accused Person requested for additional Three Million Naira (₦3,000,000.00). However, I gave him Two Million, Five Hundred Thousand Naira (₦2,500,000.00). I promised that I will pay the outstanding balance of Five Hundred Thousand Naira (₦500,000.00) when the rice containers are cleared. After the payment, the Accused Person told me that we should come back to Abuja, that he had finished with the officials of the National Drug Law Enforcement Agency (NDLEA). The Accused Person said that he will talk to MUSA

TAHIR, Deputy Comptroller-General, in charge of auction, Nigeria Customs Service.

When we returned to Abuja, the father of the Accused Person died. When we went to the village of the Accused Person at Musawa to condole him, the Accused Person told us that the containers have been cleared. That he will give us the phone number of the Personal Assistant to the Deputy Comptroller-General in charge of auction, Nigeria Customs Service. He gave the number to my colleague, **JIBRIN LIMAN**. I then went back to Lagos while my colleagues went to Abuja, to meet the Personal Assistant to the Deputy Comptroller-General. The name of the Personal Assistant is, **IBRAHIM**. While in Lagos, my colleagues told me that they have been waiting to see the Deputy Comptroller in his office from morning till evening but could not see him. That he was at a meeting. That they were told to come back the next day. The next day, my colleagues called and told me that the Comptroller-General told them, that the money given to the Accused Person was not paid to him. That the

Personal Assistant to the Comptroller-General also requested for Three Million Naira (**₦3,000,000.00**) from them. I told them that we shall not give anything until the containers are cleared.

After a week, **JIBRIN LIMAN** and **JIBRIN ALIYU** called me while I was in Lagos and told me that the clearance papers are ready and that I should come to Kaduna to collect the papers. When my colleagues went to Kaduna, the Accused Person gave them photocopies of fourteen (14) containers clearance papers. The Accused Person told them that we should pay up the balance so that we go to the Headquarters of the Nigeria Customs Service to collect the original clearance papers from **TAHIR**. I then sent Three Million Naira (**₦3,000,000.00**) to Accused Person. I transferred the money from my account to the account of the Accused Person. The Accused Person then said that we should go to Lagos. That somebody will call us and give us the original clearance papers so that we pay the Custom Duty and collect the containers.

I stayed in Lagos for one month. The Accused Person kept telling me that the original clearance documents will be given to me, but all in vain. When I got tired, I came back to Abuja. The Accused Person now said that the original clearance papers would be collected from **MUSA TAHIR**, the Deputy Comptroller-General in charge of auction, Nigeria Customs Service. Ultimately, the Personal Assistant to the Deputy Comptroller-General by name **IBRAHIM**, told us that the rice containers have been released to the Accused Person and that the Accused Person had sold the rice. I then called our Agent to confirm whether our rice containers are still at the warehouse at Ikorodu or not. Our Agent replied, that the containers are no longer at the warehouse. I called the Accused Person and told him that the containers were not at the warehouse, but the Accused Person said that the containers have been moved to another place.

Two weeks later, the Accused Person told me that **MUSA TAHIR**, had informed him, that our rice containers along with other containers have been

distributed by the PDP during campaign. The Accused Person then requested me to give him Five Hundred Thousand Naira (**₦500,000.00**) to send it to Lagos for allocation of some other containers to us in place of our sixteen (16) containers of rice. I told the Accused Person that I will not give him more money again. The Accused Person then told me that, he will sell his car to raise money and pay the Five Hundred Thousand Naira (**₦500,000.00**) for the allocation. Subsequently, the Accused Person told me that, he had paid the money and is waiting for the allocation of the containers. The Accused Person added that it will be mixed containers of assorted items.

However, when I inquired from the Personal Assistant to the Deputy Comptroller-General in charge of auction, Nigeria Customs Service, he told me that, the Accused Person made no payment for the allocation of containers. I met the Accused Person and narrated to him what the Personal Assistant told me. The Accused Person then told me that, the Personal Assistant, **MR. IBRAHIM** had sold our containers.

At this point, my Lawyer submitted a petition to the Comptroller-General of the Nigeria Customs Service. The Comptroller-General in turn forwarded the petition to the Economic and Financial Crimes Commission (EFCC).

The Economic and Financial Crimes Commission (EFCC) arrested and detained the Accused Person. The Economic and Financial Crimes Commission (EFCC) also sent for me. At the office, I made a statement. The Accused Person told the Economic and Financial Crimes Commission (EFCC) and the Economic and Financial Crimes Commission (EFCC) told me in turn, that the Emir of Katsina will pay back the money. The Economic and Financial Crimes Commission (EFCC) told me to go and come back after two (2) weeks. I have been coming for about three (3) months and no money was paid to me. The Economic and Financial Crimes Commission (EFCC) then told me that they will send the case to the Court. It is the money that we paid to the Accused Person that the

*Emir of Katsina will pay us back according to the
Accused person.*

Through the PW1, **ABUBAKAR AHMED**, the Learned Prosecution Counsel, **SHATA JAMILA ESQ.** tendered in evidence, the photocopies of Bill of Lading, the fourteen (14) photocopies clearance papers and the statement of the PW1, **ABUBAKAR AHMED** to the Economic and Financial Crimes Commission (EFCC).

The three (3) sets of documents were tendered and admitted in evidence without objection. They are marked **Exhibits EFCC 1, 2** and **EFCC 3** respectively.

In his answers to questions in cross-examination, the PW1, **ABUBAKAR AHMED** said:-

*My partners in India, is **SINATI IMPEX LIMITED**.
They are registered in that business name in Nigeria.
They are registered with the Corporate Affairs
Commission (CAC). It is an Indian company. The
money that I paid to the Accused Person for the*

purpose of clearing the containers of rice is my personal money. I do not know whether the Accused Person is a registered clearing Agent with the Nigeria Customs Service. But the Accused Person told us that he will do the clearance for us. The Nigeria Customs Service said that the rice will not be released to us until we get health certificate. The containers contained rice only. There were no drugs in the containers.

I know one **BABANGIDA MAHARAZU**. He is one of the staff of the Accused Person. The Accused Person gave me some money through **BABANGIDA MAHARAZU**, but the total sums given to me is not up to One Million, Seven Hundred Thousand Naira (**₦1,700,000.00**). I cannot remember the exact sum given to me in all but it is not more than Five Hundred Thousand Naira (**₦500,000.00**). The money was given to me at different times.

At a point, we run out of money and the Accused person agreed to assist us with money on credit and

*that we shall refund the money upon the clearance of the containers. The Accused Person also gave me some money personally. But the money given to me by the Accused Person and **BABANGIDA MAHARAZU** is not more than Five Hundred Thousand Naira (**₦500,000.00**).*

The PW1, **ABUBAKAR AHMED** is a material witness in the case. The second Prosecution Witness, **ISA MUHAMMED** is a formal witness. The second Prosecution Witness, **ISA MUHAMMED**, was part of the team that investigated the petition against the Accused Person. He is an operative with the Economic and Financial Crimes Commission (EFCC). In his evidence, the witness gave an account of the investigation conducted by his team leading to the arraignment of the Accused Person and the present proceeding. Through this witness, the Learned Prosecution Counsel, **SHATA JAMILA ESQ.** tendered in evidence, the petition submitted by the Nigeria Customs Service to the Economic and Financial Crimes Commission (EFCC) against the Accused Person, the statement of account of the Accused Person for the period 1st day of January, 2014 to 22nd day of September, 2015 with the Guaranty Trust Bank Plc. and

At the close of the case by the prosecution after the 2nd prosecution witness was discharged, the Defence made a no case to answer submissions. Issues were joined on the point. In a considered Ruling delivered on the 24th day of October, 2017, the no case to answer submissions was overruled. The Accused person was called upon to enter a Defence to the charge.

The first Defence witness is **ALHA-JI MUHAMMED AMINU SARKIN** Nasarawa Tudun Wada Zaria. He said that he lives at No. 20 Kongo Road, Tudun Wada Zaria and works with the Zazzau Emirate Council. That the Accused person, **ISA ABDULLAHI INDE** is his Confidant and that he also knows the Nominal complaint in this case, **ABUBAKAR AHMED**.

That about two and half years ago, another of his Confidant in Zaria, **LIMAN KARAMI** called him on phone to come to his house. That he came and met the nominal complainant and two other persons with **LIMAN KARAMI** in his sitting room. That **LIMAN KARAMI** told him that **ABUBAKAR AHMED** and his colleagues have a problem for which they seek assistance. That their sixteen (16) containers of Rice imported from India were seized at the Port in Lagos. That they seek assistance to have the

the extra-judicial statement of the Accused Person made on the 6th day of August, 2015. They were all admitted without objection and marked **Exhibits EFCC 4, 5, and EFCC 6** respectively.

In his answers to questions in cross examination, the PW II said that in the course of the investigation leading to the present proceeding against the Accused person, they arrested **NURA** and **ABUBAKAR GARBA**. That **NURA** was arrested because the Accused person said that he paid him one million naira to assist in the processing of Bill of Lading. That however **NURA** said that the Accused person actually gave him five hundred thousand and not one million naira and that he subsequently discovered that the Bill of Lading were fake.

That on the other hand **ABUBAKAR GARBA** was arrested because the Accused person paid the sum of two million naira into his account. The PW II however said that the payment was actually for **IBRAHIM GARO**. That **ABUBAKAR GARBA** withdrew the money from his account and gave it to **IBRAHIM GARO** as instructed by the Accused person. That investigation revealed that **ABUBAKAR GARBA** was a mere intermediary.

seized containers auctioned to them. The DW I said that **LIMAN KARAMI** requested him to place a call to the Accused person in Kaduna so that the Accused person will use the influence of his brother who at the time was the Comptroller - General of the Nigeria Customs Service for possible assistance. The DW I then said that he immediately placed a phone call to the Accused person and explained to him the problem for which his assistance was sought. That the Accused person initially declined to get involved, saying that it is not his work. That however on the pleas and insistence of **LIMAN KARAMI**, the nominal complainant and his colleagues the DW I said that the Accused person asked him to bring them to his house in Kaduna.

The DW I **ALHAJI MUHAMMED AMINU** Sarkin Nasarawa Tudun Wada Zaria said that he brought the nominal complainant and his Business colleagues to the House of the Accused person in Kaduna. That they explained to the Accused person the details of the transaction leading to the seizure of the sixteen (16) containers of Rice imported into the Country from India. That the nominal Complainant and his colleagues further informed the Accused person that they will arrange to bring the necessary

papers relevant to the transaction to the Accused person for his assistance.

The DW 1 then said that the nominal complainant, **ABUBAKAR AHMED** and his Business colleagues then took him back to Zaria. That he did not discuss any issue on money with them and that they did not give any Sum of money to him for his services. That indeed it was **LIMAN KARAMI** who gave him ten thousand naira, when upon his inquiry, he told him that he was not given anything for the trip to Kaduna from Zaria and back.

In his answers to questions in cross examination, the DW 1 said that the Accused person is not a clearing Agent. That the Accused person was approached for assistance because his brother at the time was the Comptroller General of the Nigeria Custom Service. He gave the name of the Brother of the Accused Person as **DIKKO INDE**.

The 2nd Defence Witness is the Accused Person himself. He said that he lives at Yahaya Hamza Idris Street, Marafa Estate, Kaduna. That he is a Businessman and that he owns a Company called Maliks Travels and Tours. That it is located on Plot 507.

Inbimba Street, Zone III, Wuse Abuja. He said that he knows **ABUBAKAR AHMED**, the nominal complainant in this case. That sometimes in the year 2014, **ALHAJI MUHAMMADU AMINU**, Sarkin Nasarawa Tudun Wada, Zaria brought **ABUBAKAR AHMED** and two of his business partners or colleagues to his house in Kaduna, that the Business partners of **ABUBAKAR AHMED** are Barrister **JIBRIN** and **AHMAD JIBRIN**. That **ABUBAKAR AHMED** and his colleagues firstly met **LIMAN KARAMI**. That **LIMAN KARAMI** in Zaria then called **ALHAJI MUHAMMED AMINU** Sarkin Nasarawa Tudn Wada Zaira. That they spoke on phone before they came from Zaria to meet him in Kaduna. The Accused Person said that based on the telephone conversation, he learnt that the nominal complainant, **ABUBAKAR AHMED** and his colleagues were seeking for assistance to have their seized sixteen (16) containers of the Rice Imported into the country from India auctioned to them. That at that point, the Accused Person said he declined to get involved stating that it is not his work. The Accused Person however said that the **ABUBAKAR AHMED** and his Business colleagues pleaded for his intervention. That with additional pleas for his assistance from **LIMAN KARAMI** and **ALHAJI MUHAMMED**

AMINU Sarkin Nasarawan Tudun Wada, Zaria, the Accused Person asked them to come and meet him in his house in Kaduna.

The Accused Person as the DW II said that when they arrived his house, **ABUBAKAR AHMED** and his colleagues presented four (4) issues for his assistance through his brother **DIKKO INDE**, who was the Comptroller-General of the Nigeria Customs Service at the time. Firstly that they want the sixteen (16) containers of Rice seized by the Nigeria Customs Service at Tin Can Island, Lagos auctioned to them. Secondly that their company has goods in a ship but that the Nigeria Customs Service officials blocked the company from taking delivery of the goods. Thirdly that their company wants licence to import fish into the country. Lastly that they have sixty (60) containers at the port at Port Harcourt that were also seized by the Nigeria Customs Service and want the containers released to them.

The Accused Person as the DW II said that he instantly placed a call across to one star official of the Nigeria Customs Service by name **IBRAHIM YUSUF BAGIWA**. He told him of the problems and the assistance sought. That **IBRAHIM BAGIWA** asked the

Accused Person to give the phone to **ABUBAKAR AHMED** for a detailed explanation leading to the importation and seizure of the sixteen (16) containers of Rice. The Accused Person as the DW II said he did and that **ABUBAKAR AHMED** and **IBRAHIM YUSUF BAGIWA** then spoke at length. At the end the Accused Person said that **IBRAHIM YUSUF BAGIWA** advised that **IBRAHIM GARO** be contacted. That he will handle the issue. **IBRAHIM GARO** according to the information given to the Accused Person by **IBRAHIM YUSUF BAGIWA**, is an errand boy to the special Assistant to the Deputy Comptroller-General Nigeria Customs Service in charge of auction. The Accused Person as the DW II said that **IBRAHIM YUSUF BAGIWA**, gave his phone number to **IBRAHIM GARO**, who called the Accused person barely an hour thereafter. The Accused Person said that he spoke with **IBRAHIM GARO** on the assistance required i.e. to have sixteen (16) containers of Rice seized to be auctioned to the owners i.e. **ABUBAKAR AHMED** and his company. That **IBRAHIM GARO** also got more information from **ABUBAKAR AHMED** on the transaction when the two spoke on phone.

The Accused Person as the DW II said that **IBRAHIM GARO** then requested **ABUBAKAR AHMED** to submit to him the Bill of

Lading for the containers. The Accused Person said that he then gave **ABUBAKAR AHMED** the phone number of **IBRAHIM GARO**, the errand boy to the Special Assistant to the Deputy Comptroller-General of the Nigeria Customs Service in charge of auction.

That two days later, **IBRAHIM GARO** called the Accused Person and told him that the containers are available. That **IBRAHIM GARO** then informed the Accused Person that the sum of thirteen (13) million naira is required to get the seizure number, examination Report, to Gazette and then apply for condemnation order.

The Accused Person as the DW II said that he informed **ABUBAKAR AHMED** and his Business Associates of the information he received from **IBRAHIM GARO**. That **ABUBAKAR AHMED** brought the original Bill of Lading to him and the Accused Person said that together with **ABUBAKAR AHMED** and two of his Business colleagues went to Abuja to meet **IBRAHIM GARO**. That they met **IBRAHIM GARO** at the Customs Headquarters. That **ABUBAKAR AHMED** brought out the original Bill of Lading and the sum of three million naira which he gave

the Accused Person. The Accused Person as the DW II said that he in turn gave the money and the documents to **IBRAHIM GARO**. The Accused Person said that he told **IBRAHIM GARO** that the balance of ten million naira will be paid as soon as he starts working on the issue.

The Accused Person as the DW II said that from there they went to see one Comptroller **U.K. BELLO**. The Accused Person told **U.K. BELLO** that the company of the nominal complainant is blocked from receiving delivery of its goods aboard a ship. That the blockage was placed by the Customs Service at Lagos. Comptroller **U.K. BELLO** again had detailed information from **ABUBAKAR AHMED** on the circumstance leading to the blockage. Comptroller **U.K. BELLO** immediately got in touch with the Nigeria Customs office in Lagos. The Accused Person said that Comptroller **U.K. BELLO** assured the nominal complainant that the blockage will be lifted. That the nominal complainant, **ABUBAKR AHMED** in turn promised to pay the sum of ten million naira once the blockage is lifted.

The Accused Person as the DW II however said that the nominal complainant, **ABUBAKAR AHMED** failed to fulfil his promise to

Comptroller **U.K. BELLO** after the blockage was lifted. The Accused Person also said that the nominal complainant did not even tell him that the blockage was removed.

The Accused Person as the DW II said that from there, he took the nominal complainant, **ABUBAKAR AHMED** to the protocol office in the presidency. That his relation, **NURA ABBA** is a protocol officer to the President that he told **NURA ABBA** that the company of the nominal complainant wants to apply for licence to import fish. The Accused Person said that **NURA ABBA** directed his younger brother, **ISA ABBA** to take them to Federal Ministry of Agriculture. That they went to the office of the Minister of State, where a proposal for the licence was made. Thereafter and before they left the office, **ISA ABBA** suggested that some money be given to the staff in appreciation of their efforts. The Accused Person said that **ABUBAKAR AHMED** said that he had no money with him. That **ABUBAKAR AHMED** requested him to borrow him some money. The Accused Person said that he gave **ABUBAKAR AHMED** the sum of one million five hundred thousand naira which they gave to the staff of the Federal Ministry of Agriculture in appreciation of their effort. The Accused Person, the DW II said that the Licence was

subsequently issued and that **ABUBAKAR AHMED** collected the Import Licence without reference to him.

The Accused Person as the DW II said that after they left the Federal Ministry of Agriculture, **ABUBAKAR AHMED** briefed his Business Associates in Lagos on what transpired in the Nigeria Customs Service Headquarters and also at the Federal Ministry of Agriculture. That after the briefing, the Business Associates of the nominal complainant requested him to come to Lagos personally. That **ABUBAKAR AHMED** had no money. The Accused Person said that **ABUBAKAR AHMED** requested from him the sum of three hundred thousand naira. The Accused Person said that he directed his boy **BABANGIDA MAHARAZU** to make a transfer of the sum of three hundred thousand naira into the Account of **ABUBAKAR AHMED** with Eco Bank Plc. The DW II said that the nominal complainant proceeded to Lagos while he returned to Kaduna from Abuja.

The Accused Person said that two days thereafter, **ABUBAKAR AHMED** paid the sum of two million naira into his account with the First City Monument Bank Plc. That the money was to be paid to **IBRAHIM GARO** as part payment of the outstanding sum

of ten million naira as agreed. The Accused Person said that he immediately called **IBRAHIM GARO** who sent his account details with the First Bank Nigeria Plc. and the money accordingly paid into that account.

The Accused Person said that a week thereafter, the nominal complainant, **ABUBAKAR AHMED** directed his Business Associate, **JIBRIN AHMED** to pay the sum of two million naira into his account with the Guaranty Trust Bank Plc. for onward transmission to **IBRAHIM GARO**. The Accused Person said that he sent the money to the account of **IBRAHIM GARO** but that the transaction could not go through. That he then paid the money into the account of **ABDULLAHI GARBA SINI** with GTB Plc who in turn withdrew the money and gave it to **IBRAHIM GARO**. The Accused Person as the DW II said that it was **IBRAHIM GARO** that gave him the account details of his friend **ABDULLAHI GARBA SINI** and that the money eventually got to **IBRAHIM GARO**.

The Accused Person as the DW II said that a week after **ABUBAKAR AHMED** returned from Lagos, they went to Abuja to meet **IBRAHIM GARO**. That **IBRAHIM GARO** informed them that

the seizure number has not yet been recovered. That he told them that his Boss had already sent an officer to Lagos on the issue. That **IBRAHIM GARO** again requested for one million naira. That **ABUBAKAR AHMED** had only five hundred thousand naira. That **ABUBAKAR AHMED** borrowed from him the sum of five hundred thousand naira and then gave **IBRAHIM GARO** one million naira as he requested. The Accused Person as the DW II said that on that same day, **ABUBAKAR AHMED** borrowed from him the sum of two hundred thousand naira to defray Hotel expenses. The Accused Person as the DW II said that **ABUBAKAR AHMED** assured him that his money will be paid back as soon as the auction papers are out and the transaction concluded. The Accused person said that the sum of two hundred thousand naira requested by **ABUBAKAR AHMED** to defray Hotel expenses was paid by his boy **BABANGIDA MAHARAZU** into the account of **ABUBAKAR AHMED** with Eco Bank Plc.

The Accused Person said that one day Comptroller **U.K. BELLO** called him and gave him the phone number of one **BAMBALLE** in Lagos. That **U.K. BELLO** asked him to give the phone number to **ABUBAKAR AHMED** to proceed to Lagos to see the officer in relation to the blockage placed on their goods aboard a ship. That

he gave the phone number to **ABUBAKAR AHMED** and asked him to proceed to Lagos as instructed by Comptroller **U.K. BELLO**. Again **ABUBAKAR AHMED** had no money to foot the trip. The Accused Person as the DW II said that he again lent the sum of one hundred thousand naira to **ABUBAKAR AHMED**. That the money was paid by his boy **BABANGIDA MUHARAZU** into the account of **ABUBAKAR AHMED** with Eco Bank Plc.

The Accused Person said that **ABUBAKAR AHMED** went to Lagos to meet **BAMBALLE**. That the blockage was removed but neither **ABUBAKAR AHMED** nor Comptroller **U.K. BELLO** informed him that the blockage was lifted.

The Accused Person as the DW II said that they went to Abuja to check with **IBRAHIM GARO** on the progress made so far on the matter. That **IBRAHIM GARO** was again given excuses. That he then got in touch with **IBRAHIM YUSUF BAGIWA** that linked him up with **IBRAHIM GARO**. That he told **IBRAHIM YUSUF BAGIWA** that **IBRAHIM GARO** had so far collected the sum of seven million naira on the transaction with little or no appreciable result. The Accused Person as the DW II said that

IBRAHIM YUSUF BAGIWA assured him that the matter would be successfully sorted out.

That about a month thereafter, the accused person said that he went to see **IBRAHIM YUSUF BAGIWA** and he met **ABUBAKAR AHMED** and **AHMED JIBRIN** with him. That **IBRAHIM YUSUF BAGIWA** then called one boy, **NURA** to assist with the matter. That **NURA** is also an errand boy to the Special Assistant to the Deputy Comptroller-General of the Nigeria Customs Service in charge of auction. That **NURA** told them that the containers have problem. That the Bill of lading is reading rice but that the content is drugs. That the containers are not with the Nigeria Customs Service. That they are with the National Drugs Law Enforcement Agency. The accused person as the DW II said that **NURA** also advised him to steer clear of the transaction because of the serious problem associated with it. That he told him that the Indian that imported the containers into the country has been arrested and his passport seized and impounded.

That in the alternative, the accused person said that **NURA** advised pursuit of alternative allocation of other containers of assorted items in place of the sixteen (16) containers. That

however, **NURA** said that the alternative allocation will require the payment of the sum of four million seven hundred and fifty thousand naira. The accused person said that he made the payment. The accused person said that he made the payment on the understanding that **ABUBAKAR AHMED** and his company will pay him back when the containers are eventually released.

Since, then the accused person said that **ABUBAKAR AHMED** stopped coming to see him. That he was also not picking his calls. That four (4) months thereafter, he met **ABUBAKAR AHMED**. That **ABUBAKAR AHMED** pleaded with him to be patient. That his Boss had problem with the police and the National Drugs Law Enforcement Agency but that the matter is being sorted out.

The accused person as the DW II said that he went to Abuja together with **ABUBAKAR AHMED** and collected auction papers for Fourteen (14) containers. However, that the auction papers were not in the name of **ABUBAKAR AHMED**. That **ABUBAKAR AHMED** said that he prefers his money to the auction papers. The accused person said that he replied him that it is the best he could do in the circumstance. That the nominal complainant

collected the auction papers only to filed a petition against him with the Economic and Financial Crimes Commission (EFCC) through the Nigeria Customs Service. The accused person as the DW II said that the operatives of the Economic and Financial Crimes Commission (EFCC) invited him to their office which led to the present proceeding against him.

The accused person said that he made Five (5) different statements while in the custody of the Economic and Financial Crimes Commission (EFCC) and in the course of investigation into the case. That the operatives of the Economic and Financial Crimes Commission (EFCC) directed him in his subsequent statements to exclude the issue of money that he lent to **ABUBAKAR AHMED**. That it is not the subject-matter of the petition under investigation. That the operatives of the Economic and Financial Crimes Commission (EFCC) told him that his brother **DIKKO INDE**, the then Comptroller-General of the Nigeria Customs Service directed them to arrest him. That he was in the Economic and Financial Crimes Commission (EFCC) custody for three (3) days before he was released on bail to his Elder brother **LAWAL ABDULLAHI INDE**, Commissioner, Revenue Mobilisation, Allocation and Fiscal Commission.

In his answers to questions in cross examination, the Accused Person as the DW II said that he is not a clearing Agent. That he made his first statement to the Economic and Financial Crimes Commission (EFCC) on the 6th day of August, 2015. That at the time he made the statement, the facts leading to the present proceeding against him was fresh in his mind. That his evidence before the Court is the truth of what transpired and not an afterthought.

In answers to further questions in cross examination, the Accused person as the DW II said that he collected the original Bill of Lading and handed over to **IBRAHIM GARO** but that the Rice was not eventually released to **ABUBAKAR AHMED** and his Business Associates. That the fourteen (14) auction papers he gave to **ABUBAKAR AHMED** were not fake. Finally in cross examination the Accused Person said that his company Maliks Travels and Tours is not a clearing Agency and that he did not present himself personally to the complainant as a clearing Agent.

After the Accused Person as the DW II was discharged as a witness. The Defence closed its case. The Court then ordered for

the filing of final written addresses. In compliance with the order of Court, final written addresses were duly filed and exchanged by the respective Learned Counsel. On the 11th day of April, 2018, the respective Learned Counsel adopted their various legal submissions as contained in the written addresses.

The final written address by the Learned Defence Counsel is dated 13th day of February, 2018 and filed on the same day. Learned Counsel formulated two (2) issues for determination as follows:-

1. *Can the Honourable Court convict the Accused Person in the light of the evidence of the PW 2 that investigation with respect to this case is still ongoing, hence, inconclusive?*
2. *Is the totality of the evidence adduced by the Prosecution capable of sustaining the charge against the Accused Person?*

In his argument on the first issue as formulated, the Learned Defence Counsel, **MUHAMMED ETUBI ESQ.** argued that from the evidence of the PW 2, **ISA MUHAMMED**, an operative of the

Economic and Financial Crimes Commission (EFCC), that investigated the case leading to the proceeding, it is clear that investigation into the matter is inconclusive.

That based on his evidence, the Economic and Financial Crimes Commission (EFCC) submitted fourteen (14) auction papers to the Nigeria Customs Service for authentication but that up to the time the charge against the Accused Person, was filed, only six (6) responses were received in respect of the fourteen (14) auction papers that were submitted. Worse still, Learned Counsel submitted that the Prosecution failed to put in evidence the six (6) auction papers it claimed have been authenticated by the Nigeria Customs Service.

The Learned Defence Counsel, **MUHAMMED ETUBI ESQ.** argued that these created doubt in the case of the Prosecution in support of the charge. That the doubt so created must be resolved in favour of the Accused Person. Learned Counsel cited the case of **SHANDE VS. THE STATE (2005) 12 MJSC 152 PAGES 173 - 174 PARAGRAPHS G - B.**

On the second issue formulated by the Learned Defence Counsel, the Learned Counsel enumerated the elements that the Prosecution must establish to secure a conviction for an offence under the provision of Section 1 (1) (b) and punishable under sub-Section (3) of the Advance Fee Fraud and Other Fraud Related offences Act, 2006. That the evidence led in support of the charge against the Accused Person failed to establish all these elements. That consequently the offence has not been made out beyond all reasonable doubt as mandatorily required by the provision of Section 135(1) of the Evidence Act, 2011. Learned Counsel for the Accused Person argued that failure by the Prosecution to prove even one out of several elements of an offence, means it has failed to prove the guilt of the Accused Person beyond all reasonable doubt. The Learned Defence Counsel, **MUHAMMED ETUBI ESQ.** urged the Court to resolve the two (2) issues he formulated in favour of the Accused Person and to proceed to discharge and acquit him of the offence for which he is standing trial.

The written address by the Learned Prosecution Counsel in reply was filed on the 2nd day of March, 2018. In the written address,

the Learned Prosecution Counsel, **SHATA JAMILA ESQ.** formulated an issue for determination as follows:-

Whether the Prosecution has proved its case beyond all reasonable doubt against the Accused Person as required by Section 138 of the Evidence Act?

Let me correct an error here. Section 138 of the Evidence Act, 2011 does not make provision on proof beyond all reasonable doubt as erroneously stated in the issue formulated by the Learned Prosecution Counsel. It is Section 135(1) of the Evidence Act, 2011 that makes such provision. It provides:

135(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond all reasonable doubt.

Now, in the argument in support of the issue as formulated, the Learned Prosecution Counsel, **SHATA JAMILA ESQ.** referred the Court to the case of **ONWUDIKE VS. FRN**, without giving the citation, and submitted that the elements constituting the offence for which the Accused Person is standing trial are:-

1. *That there was false pretence made by the Accused Person.*
2. *That the Accused Person obtained property as a result of the false pretence from the complainant.*
3. *That the Accused Person did same with intent to defraud.*

The Learned Prosecution Counsel reviewed the evidence of Prosecution Witnesses in support of the charge and submitted that all the elements of the offence for which the Accused Person is standing trial have been proved beyond all reasonable doubt as required by Law. Furthermore Learned Prosecution Counsel, **SHATA JAMILA ESQ.** argued that this is in addition to the confessional statement of the Accused Person that is now exhibit EFCC 6 before the Court. Learned Counsel referred the Court to the provision of Section 28, Evidence Act, 2011, which defines **confession** and submitted that the confessional statement alone without more, is sufficient to ground conviction for the offence charged. Counsel cited the cases of **NSOFOR VS. THE STATE (2004) 18 NWLR PART 905 PAGE 311 PARAGRAPHS A-D; DIBIE VS. THE STATE (2004) 14 NWLR PART 893 PAGE 257**

AT PAGES 286 - 287 PARAGRAPHS H - F, HASSAN VS. THE STATE (2001) 7 SCNQR AT PAGE 120, ETC.

Learned Prosecution Counsel in conclusion urged the Court to convict the Accused Person for the offence charged and sentence him accordingly.

On the 19th March, 2018, the Learned Defence Counsel, **MUHAMMED ETUBI ESQ.** filed a written address in reply on points of law. He submitted that contrary to the arguments of the Learned Prosecution Counsel, the extra-judicial statement of the Accused Person, Exhibit EFCC 6 before the Court, does not qualify as a confessional statement. The Learned Counsel referred the Court to the case of **UBIERHO VS THE STATE (2005) ALL FWLR PART 254 PAGE 804 AT 812** as well as the case of **GBADAMOSI VS THE SATE (1992) 9 NWLR PART 266 PAGE 465.**

Learned Defence Counsel urged the Court to reject the argument by the Learned Prosecution Counsel that the extra-judicial statement of the Accused Person i.e. Exhibit EFCC 6 is a confessional statement.

Now, those are the various Legal Submissions of the respective Learned Counsel as contained in the written addresses adopted on the 11th April, 2018.

The Accused Person **ALHAJI ISA ABDULLAHI INDE** is standing trial for an offence contrary to the provision of section 1(1) (b) and punishable under Sub-Section (3) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006. The Prosecution alleged that the Accused Person collected the sum of seven million nine hundred and fifty thousand naira from the nominal complainant **ABUBAKAR AHMED** under false pretence that he will clear sixteen (16) containers of Rice imported from India at the Lagos Port.

I have already given in full the evidence of the two material witnesses in this case i.e. **ABUBAKAR AHMED**, the nominal complainant who testified as the PW 1 on the 17th day of November, 2016 and the evidence of the Accused Person, who testified as the second Defence Witness on the 22nd day of January, 2018. I have carefully considered the evidence of these two witnesses and watched their demeanour and I am more

disposed to believe the evidence of the Accused Person as second Defence Witness in the proceeding

The Evidence of the Accused Person as a Defence witness is a detailed and coherent narration of the events leading to the charge against him. His evidence is credible. On the other hand I find the evidence of the PW1, **ABUBAKAR AHMED** rather Bumpy and Skippy. For instance, the issue involved is not one for the clearance of the 16 containers in the port as stated by the PW1 and as contained in the charge before the Court. The issue is one seeking for the sixteen (16) containers already seized to be auctioned to the PW1, **ABUBAKAR AHMED** and his company.

The Learned Prosecution Counsel, **JAMILA SHATA ESQ.** has made the point that all the elements constituting the offence for which the Accused Person is standing trial have been established. The Learned Defence Counsel, **MUHAMMED ETUBI ESQ.** on the other hand thought otherwise.

There are seven (7) elements constituting the offence for which the Accused Person is standing trial. For the Prosecution to

succeed in proof of the charge, all the elements must be established beyond all reasonable doubt. These elements are:-

1. *That there is a pretence.*
2. *That the pretence emanated from the Accused Person.*
3. *That it was false.*
4. *That the Accused Person knew of its falsify or did not believe in its truth.*
5. *That there was an intention to defraud.*
6. *That the thing is capable of being stolen and*
7. *That the Accused Person induced the owner.*

See the case of **ONWUDIKE VS. FRN (2006) ALL FWLR PART 319 PAGE 774 AT 812 PARAGRAPH E** and **PAGE 813 PARAGRAPHS G - F** and the case of **ALAKE VS. THE STATE (1991) 7 NWLR PART 205 PAGE 567.**

From the evidence of the first Defence Witness, **ALHAJI MUHAMMED AMINU** Sarkin Nasarawa, Tudun Wada Zaria, the nominal complainant and the first Prosecution Witness, **ABUBAKAR AHMED** together with two (2) of his Business

Associates went to **LIMAN KARAMI** in Zaria soliciting for assistance to have their sixteen (16) containers of Rice imported from India that was seized at the port auctioned to them. **LIMAN KARAMI** then contacted the first Defence Witness, to link them up with the Accused Person who resides in Kaduna. A phone call was placed across to the Accused Person by the first Defence Witness, **ALHAJI MUHAMMED AMINU** Sarkin Nasarawa, Tudun Wada Zaria and the issue explained to him. That the Accused Person declined to get involved stating that it is not his work. On the pleas and insistence of the first Defence Witness and **ABUBAKAR AHMED**, the Accused Person then allowed the first Defence Witness to bring **ABUBAKAR AHMED**, the nominal complainant and his two other Business Associates to come to his house in Kaduna.

After a lengthy discussion on the transaction leading to the seizure of the sixteen (16) containers, the Accused Person placed a phone call instantly to a Nigeria Customs Service officer by name **IBRAHIM YUSUFU BAGIWA**. **IBRAHIM YUSUFU BAGIWA** then linked up the Accused Person with **IBRAHIM GARO**. Whilst in the house of the Accused Person, the nominal complainant,

ABUBAKAR AHMED also spoke on phone with both **IBRAHIM YUSUFU BAGIWA** and **IBRAHIM GARO**.

Eventually the Accused person and **ABUBAKAR AHMED** met **IBRAHIM GARO** at the Customs Headquarters in Abuja. **IBRAHIM GARO** requested for the sum of thirteen million naira to identify the sixteen (16) containers and work out the auction of the containers seized to the nominal complainant, **ABUBAKAR AHMED**. The agreed sum of thirteen million naira were been paid to **IBRAHIM GARO** in instalment through the Accused Person which resulted in the total payment made in the sum of seven million nine hundred and fifty thousand naira the subject-matter of the charge against the Accused Person.

Given the facts as summarised and which I believe, could it be conceivably argued that there was a pretence that emanated from the Accused Person to the nominal complainant, ABUBAKAR AHMED and which pretence the Accused Person knew to be false or does not believe in its truth? Could it be argued that the Accused Person intended to defraud the nominal complainant, ABUBAKAR AHMED or that the Accused Person fraudulently induced the nominal

complainant to part with his money? I do not think so. A pretence or representation emanating from an Accused Person to a complainant and which the Accused Person knew to be false or does not believe in its truth are foundation elements in a charge of obtaining by false pretence. I find that there is no evidence led whatsoever to prove or establish these elements in the instant proceeding.


Indeed, the whole transaction is fraught with illegalities. The facts failed to support the charge and probably for good reason. The sum of seven million nine hundred and fifty thousand naira, the subject-matter of the charge was not paid to clear the sixteen (16) containers of Rice from the port No. Rather the money was given to influence the auction of the seized containers back to the owners which is an illegal thing to do. Furthermore, the payments made were illegal. They were not payments made to either the Nigeria Customs Service nor to the National Drug Law Enforcement Agency (NDLEA), the two Federal Government Agencies involved in the transaction. The money paid were not meant for Government coffers. They were made to circumvent due process and cause loss of revenue to Government as the payment were neither acknowledged nor receipted.

The Learned Prosecution Counsel appear to build her case on the fact that the Accused Person is not a clearing Agent. I agree that the Accused Person is not a clearing Agent. The nominal Complainant, **ABUBAKAR AHMED** knows that he is not a clearing Agent. There is no evidence before the Court that the nominal complainant, **ABUBAKAR AHMED** approached the Accused Person because he is a clearing Agent or that the Accused Person made representation claiming to be one. Rather what the evidence before the Court disclosed is that the nominal complainant, **ABUBAKAR AHMED** chose the Accused Person so as to apply the influence of his senior brother who was at that time the Comptroller-General to bear and circumvent due process.

In the final analysis, I find that the elements constituting the offence against the Accused Person have not been established. I accept the argument of the Learned Defence Counsel that if one of several elements constituting an offence remained unestablished, the Accused Person is entitled to be discharged and acquitted of the charge.

I have looked at the extra-judicial statement of the Accused Person which is Exhibit EFCC 6 before the Court. I also accept the argument of the Learned Defence Counsel, **MUHAMMED ETUBI ESQ.** that the extra-judicial statement does not qualify as a confessional statement. The law is trite on the point that a confession must be clear, unambiguous and unqualified. It must be wholesome admission of guilt without qualification.

Consequently, for the reason of all that I have said before now, the Accused Person is hereby discharged and acquitted of the offence charged.


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JUSTICE S.M SHUAIBU
JUDGE
28/5/2018

APPEARANCES:

Shata Jamila Esq. for the Prosecution.

Muhammed Etubi Esq. with **A. Abdulsalam Esq.** for the Accused person.

Certified True Copy
Office of the Registrar
Federal High Court
Immedat A. Seun

28/5/2018

