

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

ON WEDNESDAY THE 24TH DAY OF JANUARY, 2018 BEFORE HIS
LORDSHIP, THE HONOURABLE JUSTICE S. M. SHUAIBU
JUDGE

CHARGE NO: FHC/KD/64^c/2012

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

- **COMPLAINANT**

AND

BAMITEKO ADEMOLA

- **ACCUSED PERSON**

JUDGMENT

The accused person herein, **BAMITEKO ADEMOLA**, is standing trial before this Court on a 3 - Count Charge contrary to the relevant provisions of the Advance Fee Fraud and other Fraud related offences Act, Laws of the Federation of Nigeria 2006.

The particulars of the offences in each of the Counts are given as follows:-

Count I

Certified True Copy
(Office of the Registrar)
Federal High Court, Kad
Jan 25 2018
23/1/2018

That you **BAMITEKO ADEMOLA** and **OLADAPO DAVID AKINGBOGUN** (now at large) sometime in 2011 in Kaduna, within the jurisdiction of this Honourable Court conspired among yourselves to do an illegal act to wit: Obtaining money by false pretence and thereby committed an offence contrary to section 8 (a) of the Advance Fee Fraud and other Fraud related offences Act, 2006 and punishable under section 1 (3) of the same Act.

Count II

That you **BAMITEKO ADEMOLA** and **OLADAPO DAVID AKINGBOGUN** (now at large) on or about the 28th day of July 2011 at Kaduna, within the jurisdiction of this Honourable Court with intent to defraud, obtained the Sum of Five Hundred and Thirty Thousand Naira (N530,000.00) from one **SALISU IDRIS** Via Continental Bank account number **0154115000058174** for the purpose of buying him a Honda Accord Car 2008 Model

which you knew to be false and thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and other Fraud related offences Act, Laws of the Federation of Nigeria 2006 and punishable under section 1 (3) of the same Act.

Count III

*That you **BAMITEKO ADEMOLA** and **OLADAPO DAVID AKINGBOGUN** (now at large) on or about the 10th day of September, 2011 at Kaduna, within the Jurisdiction of this Honourable Court with intent to defraud, obtained the Sum of Two Hundred and Fifty Thousand Naira (N250, 000.00) from one **SALISU IDRIS** via CTBank account number **401488981560** for the purpose of buying him a Honda Accord Car 2008 Model which you knew to be false and thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and other Fraud related*

offences Act, Laws of the Federation of Nigeria 2006 and punishable under section 1 (3) of the same Act.

This case started *denovo* before this Court as presently constituted on the 23rd June 2016. On that day, the offences alleged against the accused person in each of the Counts were each and separately read in English Language and explained to the accused person by the Court Registrar to the satisfaction of the Court. The accused person denied each of the offence in each Count. The burden now shifted to the Learned Prosecution Counsel to prove the alleged offences against the accused person beyond all reasonable doubt as required by Law. See the provision of section 135 (1) of the Evidence Act, 2011 which says that:-

(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 reasonable doubt.

In the bid to discharge this burden, the Learned Prosecution Counsel called four (4) witnesses and tendered in evidence a total of ten (10) exhibits. The first Prosecution witness is **SALISU IDRIS**, the nominal complainant and the immediate victim of crime. He testified on the 6th day of October 2016, in support of the charge, was cross examined and discharged as a witness the same day.

The second prosecution witness is **AL-MUSTAPHA BELLO**, a Detective with the Economic and Financial Crimes Commission (EFCC), Kano Zonal Office, Kano State. He took part or conducted the investigation into this case leading to the charge against the accused person in the present proceeding. He testified on the 10th day of October and concluded giving evidence on the 3rd day of November, 2016 when he was cross examined and discharged as a witness.

The third prosecution witness **ASP YUSUF NAYAYA**, is a Police Officer and presently the Unit Commander MOPOL II, Keffi Street, Ikoyi Lagos. Before his current posting however and at the time relevant to this proceeding, **ASP YUSUF NAYAYA** was

working with the Economic and Financial Crimes Commission (EFCC), Kano Zonal Office, Kano State. He testified on 8th December, 2016, was cross examined and discharged as a witness the same day. He participated in the investigation of this case leading to this proceeding. He supervised the recording of the original and additional statements of the accused person dated the 30th August and 19th day of September 2012, now exhibits "I" and "J" respectively before the Court.

The fourth and last prosecution witness is **BALA BOBAI**. The witness works with the Guaranty Trust Bank Plc Murtala Muhammed Square, Kaduna. He is the Head of Operation of that branch and also the cluster compliance officer for Kaduna and Katsina Branches of the Bank. He testified in chief on the 6th day of April 2017, was cross examined and discharged the same day. The PW4 **BALA BOBAI** identified the Account opening package and the statement of account of the accused person, **BAMITEKO ADEMOLA** with the Guaranty Trust Bank. The Account opening package and statement of account are already before the Court and together marked exhibit "G". They were admitted in evidence through the PW2, **AL-MUSTAPHA BELLO**, who requested and

received them in the course of investigation. After the PW4, **BALA BOBAI**, the Learned Prosecution Counsel closed his case in support of the charge on the 6th day of April, 2017.

The Learned Defence Counsel opened defence to the charge against the accused person on the 25th day of May, 2017 when he called the accused person, **BAMITEKO ADEMOLA** and one **RAPHAEL OLAYINKA BAMITEKO** as witnesses. He concluded the Defence on the same day. The Court then ordered for the filing of final written addresses. In compliance with the order of Court, written addresses were duly filed and exchanged.

On the 14th day of November, 2017, the respective Learned Prosecution and Defence Counsel adopted their various legal submissions as contained in the written addresses. Judgment was fixed for 14th day of December, 2017. However because of ill-health the Court was unable to deliver Judgment last December as scheduled.

Now, the facts leading to this proceeding are as narrated by the PW 1, **SALISU IDRIS**, the nominal complainant and the

immediate victim of crime. He testified as follows on the 6th day of October, 2016.

*My name is **SALISU IDRIS**. I live at No. 12 11 Farouk Grillo Close, Angwan Dosa, Kaduna. I am a civil Servant. I work with the Federal Inland Revenue Service, Kaduna. I know the accused person. I travelled to Lagos and on my way back, I met a lady called **MIKKY BLESSING**. We boarded same flight from Lagos to Kaduna. On reaching Kaduna we parted but exchanged phone numbers. We were talking on phone. I was going to office when she called me. I could not answer the call as my phone was on silence. On that day I had problem with my Car. When I went through my call logs, I saw missed calls including that of **MIKKY BLESSING**. I called her back and apologised. I told her that I am having problems with my Car and I want to change the car. She told me she has a brother that he is into car sale business. I told her that when I am ready, I will*

call her so that she will introduce me to her brother. Before I knew it a strange Foreign Line came in. I picked up the call and the caller introduced himself to me as **MR. OLADAPO DAVID AKINGBOGUN**. He told me that his sister, **MIKKY BLESSING** gave him my number to call me. I asked him of his location and he told me that he is calling me from UK. He said he has cars for sale and I asked him the brand of cars that he has for sale. He told me he has Honda Accord 2008 model. I asked him the price and he told me One Million Naira. I told him that I don't have up to One Million Naira. He asked me of the amount I have and I told him that I will get in touch with him when I'm ready. He put me under pressure until I told him that I have Five Hundred and Thirty Thousand Naira. He asked me to send the money to him. I replied that how can I send the money to him when he is in UK. He then send me an account number with an Account name **MR. DAVID OLADAPO AKINGBOGUN**. I made the payment of

Five Hundred and Thirty Thousand Naira into that account. The account is a savings Account domiciled at intercontinental Bank now Access Bank Pic. I called him to confirm the payment and he did. I asked him of the way forward and he sent me a Bill of Lading (soft copy) containing number of cars he sent down to Nigeria.

After about two or three weeks, he called me and said that a clearing Agent will call me from Lagos. I received a call from the clearing Agent called **BAMITEKO ADEMOLA**. He told me that my car is ready in Lagos and that I need to send some money to clear the car. I asked him how much and he told me Two Hundred and Fifty Thousand Naira. I told him that I will come to Lagos so that we clear the car together. After series of calls from **BAMITEKO**, I asked him how I will make the payment to him. He sent me an account number with the Account name **BAMITEKO ADEMOLA GABRIEL**, a saving Account with Guaranty Trust

Bank Plc. I paid in the Sum of Two Hundred and Fifty Thousand Naira into that account. I called him to confirm the payment and he did. I asked him what next and he told me that he is going to clear the car for me. He then called me on a Monday and told me that the car has been cleared. I asked how do I get the car to Kaduna from Lagos. He asked me to send some money to him again. I quickly called the person that introduced me to him ie **OLADAPO DAVID AKINGBOGUN** but he told me not to send any amount to him again. That the clearing Agent **BAMITEKO ADEMOLA** will bring the car to me in Kaduna. That same Monday in the evening, **BAMITEKO ADEMOLA** called me on phone and told me that he is on his way to Kaduna from Lagos. The following day in the morning I called him to know his movement and he told me that he has been arrested in Ekiti. That the Nigeria Customs Service arrested him. I then went to the Customs Office in Kabala, Kaduna. The Customs

Officer that I met at Kabala asked me to call the clearing Agent, **BAMITEKO ADEMOLA** and I did. The Customs Officer asked the clearing Agent some questions on phone. He picked the phone but could not give answers to the questions and at a point he switched off the phone. The Customs Officer now advised me that this is a Fraud. He advised me further to go to Ekiti. The next day I proceeded to Ekiti. At the Ekiti Customs Office, I was told that no such arrest was made. I came back to Kaduna. I wrote a formal Letter to the Economic and Financial Crimes Commission and that led to the arrest of **BAMITEKO ADEMOLA**. The person that I referred to as **BAMITEKO ADEMOLA** is the accused person in the dock.

I was called to the EFCC office Kano. I was informed that the accused person has been arrested and that was the first day that I met the accused person at the EFCC office Kano. The accused person was detained. Some money was

paid to EFCC by the family of the accused person to the tune of two hundred thousand naira. The EFCC called me and handed over the money to me.

The other guy from UK called me and he apologised to me. He promised that he will pay me back my money. I insisted that he shall pay back the money with interest. We eventually agreed on the Sum of One Million Two Hundred Thousand Naira to be paid via Western Union. However, as at now I have received up to the Sum of Seven Hundred Thousand Naira in all including the Two Hundred Thousand Naira that I received from the EFCC office in Kano.

Through the PW1, the Learned Prosecution Counsel tendered the following documents in evidence. The written complaint by the nominal complainant to the Economic and Financial Crimes Commission, dated 27th day of January 2012, the nominal complainant's original statement to the Economic and Financial

Crimes Commission dated 27th day of March, 2012, the first additional statement of the complainant, dated 17th day of December 2012, the second additional statement of the nominal complainant dated 25th day of March 2013, the application by the nominal complainant to the Economic and Financial Crimes Commission for the release of the Sum of Two Hundred Thousand Naira to him and the acknowledgement receipt of the Sum. These documents were admitted in evidence and marked exhibits "A" - "F" respectively.

During the cross examination of the PW1, the Learned Defence Counsel applied to tender a letter written by the nominal complainant to the Economic and Financial Crimes Commission, intimating the Commission that he is no longer interested in the pursuit of the case. The Learned Prosecution Counsel objected to the application on the ground that the letter sought to be tendered is a public document within the meaning of the provision of section 102 of the Evidence Act, 2011 and is not duly certified as mandatorily required by section 104 of the same Act.

The ground of the objection was upheld and the letter accordingly marked *tendered but rejected*.

The evidence of the PWII, **AL-MUSTAPHA BELLO**, substantially corroborated the evidence of the PWI. The PWII said that he is the Leader of Team "B" in the counter - terrorism and general investigation Unit of the Economic and Financial Crimes Commission, Kano Zonal Office, Kano. That his team conducted the investigation of the case. The members of the team are **ASP YUSUF NAYAYA**, **B.I. ABDULLAHI MAITURARE** and **A.D.I. VICTORIA AMOS**. The PWII said the complainant, **SALISU IDRIS** was invited upon the commencement of investigation. That the nominal complainant adopted his petition and also made original and two additional statements subsequently.

That letters of investigation activities were sent to the Continental Bank Plc and the Guaranty Trust Bank Plc. The Letters requested for the account opening packages and statements of accounts belonging to **OLADAPO DAVID AKINGBOGUN** and **ADEMOLA BAMITEKO** respectively. The PWII in addition also requested the respective Banks to allow cash inflow into the accounts but disallow withdrawal.

Furthermore the Banks were mandated by the Economic and Financial Crimes Commission to monitor transaction on the accounts and to alert the Commission of the presence of the Account Holders, wherever they appear in the Banks.

The PWII said that on the 4th day of May 2012, response was received from Continental Bank Plc. The statement of account confirmed that the Sum of Five Hundred and Thirty Thousand Naira was paid into that account on the 28th day of July, 2011. That on the 1st day of June 2012, response was received by the Economic and Financial Crimes Commission from the Guaranty Trust Bank Plc. The statement of account of the accused person with the Bank shows that the Sum of Two Hundred and Fifty Thousand Naira was deposited into that account on the 10th day of November, 2011. The money was withdrawn the same day. The statement of account shows that the withdrawal was done by the accused person, **BAMITEKO ADEMOLA**.

The PWII **AL-MUSTAPHA BELLO** said that efforts were made to trace **OLADAPO DAVID AKINGBOGUN** at House No. 36 Campbell Street, Lagos, being the address given. However the

PWII said that the address does not exist. That on the 29th day of August 2012, a phone call from the officials of the Guaranty Trust Bank Plc, Ibadan was received by the Economic and Financial Crimes Commission. The Bank informed the Commission of the arrest of **BAMITEKO ADEMOLA** who went to the Bank to make inquiries on his account. **BAMITEKO ADEMOLA** was handed over to the police in Ibadan. The PWII, **AL-MUSTAPHA BELLO** said he instructed one of his team members, **ASP YUSUF NAYAYA** to proceed to Ibadan to fetch the accused person. On his return to Kano from Ibadan with the accused person **BAMITEKO ADEMOLA**, the PWII further instructed **ASP YUSUF NARAYA** to record the statement of the accused person. The accused person made his original and additional statements on the 30th August and 19th day of September, 2012 respectively.

In the course of the investigation, the PWII said that **OLADAPO DAVID AKINGBOGUN** (now at large) refunded to the nominal complainant the Sum of Two Hundred Thousand Naira through money transfer with the Diamond Bank. That the accused person, **BAMITEKO ADEMOLA** also refunded to the nominal

complainant the Sum of Two Hundred Thousand Naira through the Economic and Financial Crimes Commission. The money was released to the nominal complainant upon his application. That the nominal complainant in turn acknowledged receipt of the Sum from the Commission.

The PWII said that based on the content of the statement of the accused person a letter of investigation activities was written to the Ado - Ekiti State University requesting for confirmation whether the accused person is a Student in that Institution. A reply was received by the Commission from the Ado - Ekiti State University. In the reply, the University said that the accused person last registered as a Student of the University in the Academic Session 2008/2009. The University said that the accused person is no longer its Student.

Finally the PWII said that a letter was written to the MTN GSM service provider for the call logs of the accused person. However the witness said that no response was received from the MTN on that request.

Through the PWII, the Learned Prosecution Counsel tendered the Account opening package and the statement of account of the accused person, **BAMITEKO ADEMOLA** with the Guaranty Trust Bank Plc. It was admitted in evidence and together marked exhibit "G". The letter dated 8th day of October 2012 by the Registrar, Ado - Ekiti State University to the Head of Operations, EFCC Kano Zonal Office was also tendered through the PW2, **AL-MUSTAPHA BELLO**. It was admitted in evidence and marked exhibit "H" in this proceeding.

In answers to questions in cross examination, the PWII said that he is a Holder of B.SC Degree in Physics from the Dan Fodio University Sokoto. That he is an operative with the EFCC and has being with the Commission since 2006. The PWII said that he is the Leader of Team "B" in the Counter - Terrorism and general investigation Unit that investigated the case against the accused person.

The PWII in further answers to questions in cross examination said that he was present as the Leader of the team, when the accused person made his statements. That as Team leader he

was privileged to read over the statements and that he could not recall the accused person mentioned the name of one **GABRIEL OLUWA** in his statements.

The witness confirmed that the accused person made a refund of the Sum of Two Hundred Thousand Naira to the nominal complainant through the Commission. However, the witness said that he did not have record that the accused person had Two Hundred Thousand Naira on him at the time of his arrest.

The third prosecution witness is **ASP YUSUF NAYAYA**. He is presently a Unit commander MOPOL. II, Kofii Street, Ikoyi, Lagos. At the time relevant to the facts giving rise to this proceeding however, the witness was a member of team "B" Counter - Terrorism and general investigation Unit, Kano Zonal Office of the Economic and Financial Crimes Commission.

The witness said that upon the arrest of the accused person in Ibadan with the assistance of the officials of the Guaranty Trust Bank, he was instructed by the Team Leader to proceed to Ibadan and fetch the accused person. That he travelled to Ibadan and brought the accused person, **BAMITEKO ADEMOLA** to

Kano. That he confronted the accused person with the allegation against him as reported to the Commission by the nominal complainant, **SALISU IDRIS**.

That the accused person volunteered original and one additional statement on the 30th August and 19th September, 2012 respectively. Through the PWIII, the Learned Prosecution Counsel tendered the statements and were admitted in evidence and marked exhibits "I" and "J" respectively.

In answers to questions in cross examination the PWIII, **ASP YUSUF NAYAYA** said that the major role he played in the investigation is that he brought the accused person from the State CID, Ibadan, Oyo State where he was kept in custody after his arrest. That he also supervised the recording of the statement of the accused person, **BAMITEKO ADEMOLA**. That the original statement dated 30th day of August 2012 was made by the accused person in Ibadan. The additional statement made on the 19th day of September 2012, however was made in Kano while the accused person was on administrative Bail.

In answer to further questions in cross examination, the PWIII said that the statements by the accused person were free and voluntary. That the statements were not obtained through a question and answer session.

The fourth and last prosecution witness in support of the charge is **BALA BOBAI**. He works with the Guaranty Trust Bank Plc, Murtala Muhammed Square, Kaduna. He is the Head of operation of that Branch and also the cluster compliance officer for Kaduna and Katsina Branches of the Bank.

The witness identified the Account opening package and the statement of account of the accused person with the Guaranty Trust Bank. It is already before the Court and marked exhibit "G". The witness said that the exhibit emanated from their Bank. That exhibit "G" shows that on the 10th day of November, 2011, the Sum of Two Hundred Thousand Naira was paid by **SALISU IDRIS** into the account of the accused person, **BAMITEKO ADEMOLA**.

In answers to questions in cross examination, the PWIV confirmed that based on exhibit "G", there was a transfer from

the Account of **OLUWA GABRIEL** of the Sum of Five Thousand Naira to the account of the accused person. Withdrawal was made the same day. The witness further confirmed based on the transaction on exhibit "G" that on the 8th March 2011 and 19th day of November, 2010 the Sums of Two Thousand Naira and one Thousand Naira respectively were transferred into the account of the accused person by **OLUWA GABRIEL**.

At the end of the evidence of the PWIV, the Learned Prosecution Counsel closed the case for the complainant. On the 25th day of May 2017, the Learned Defence Counsel opened the defence to the charge against the accused person. The accused person, **BAMITEKO ADEMOLA** testified on that day. His defence is best shown by a verbatim reproduction of his testimony as follows:-

*My name is **BAMITEKO ADEMOLA**
GBADEGA. I live at No. 35 Ilogbe Street, Efa
- Ekiti, Ekiti State. I am a student in Ekiti
State University. I am a Psychology student
of the University. I run a part - time
programme.*

*Sometime in August 2011, I was on vocation. I went to Lagos to see my Cousin, **GABRIEL OLUWA**. He resides in Sienna School, Olounson Agobo, Lagos State. My cousin sometimes assists me with token in school. In that same August I followed the younger brother of my cousin to his place of work. The name of the younger brother to my cousin is **DANIEL OLUWA**.*

*I was with **DANIEL OLUWA** at his place of work when my cousin called me on phone and asked me whether I do receive alert on my GTB Bank account. I told him no. He then told me that he had already sent my account details to somebody who is going to send him Money because the person had requested for GTB Bank account number. My cousin already has my account details with him, because he does assist me with token while at school.*

When he told me that I said no problem. On getting home that same evening, my cousin **GABRIEL OLUWA** told me that he has spoken with the person and told him that he had sent the money i.e the Sum of Two Hundred and Fifty Thousand Naira into my account. The following morning, my Cousin followed me to GTB Branch at Egbeda in Lagos where I withdrew the Sum of Two Hundred and Fifty Thousand Naira and gave it to him.

Since then I have been to the Bank to make withdrawals personally on my account, until sometime in August 2012, I was on my way to Ekili from Lagos, when I stopped by in Ibadan to withdraw a token of two Thousand Naira sent to my account by **GABRIEL OLUWA's** younger brother, **DANIEL OLUWA**. On getting to the Bank, I went straight to the counter where they directed me to a room in

*the Banking Hall. I was offered a seat. They asked me if I am aware of the Sum of Two Hundred and Fifty Thousand Naira paid into my account at any time. I said yes and explained that the money belong to my Cousin, **GABRIEL OLUWA**. They told me EFCC has ordered for my arrest. I was taken to a nearby Police Station at Ibadan, Iyaganla Police Station where I spent about four (4) days before the EFCC came from Kono.*

On their arrival, they asked me to write a Statement at the Police Station, which I did. We left Ibadan for Lagos, the second day. On our way to Lagos, I told them that my Cousin that used my account resides in Lagos and in London. That we should go to his house in Lagos where he stays with his parents may be he might be around or we meet his parents but the EFCC refused. All they told

*During the period of my detention, I was persuaded to pay the Sum of N250,000 into my account. My Uncle that stood surety for me by name **BAMITEKO OLAYINKA RAPHAEL** got in touch with **GABRIEL OLUWA** family. The Sister to **GABRIEL OLUWA** then paid the Sum of N200,000 into the account of my Uncle **BAMITEKO OLAYINKA RAPHAEL** who in turn paid the money to the EFCC office in Kano.*

Now, the content of the first extra-judicial statement of the accused person, **BAMITEKO ADEMOLA** made on the 30th day of August, 2012 upon his arrest is the same as his testimony in Court, which I have just re-produced in full before now. The additional statement made on the 19th day of September 2012 is on the refund of the Sum of Two Hundred Thousand Naira (N200, 000.00) to the nominal complainant through the EFCC.

In answer to questions in cross examination, the accused person, **BAMITEKO ADEMOLA** said that his Uncle **GABRIEL OLUWA** did not give him any Sum from the money paid into his account.

The second Defence witness is **RAPHAEL OLAYINKA BAMITEKO**. He is an Uncle to the accused person. He lives and works in Kano. He testified on the 25th day of May, 2017. He said that the father of the accused person, called him on phone and informed him that **BAMITEKO ADEMOLA** is in custody of the EFCC, Kano Zonal office. He said he rushed to the EFCC office. He met the accused person who told him what transpired leading to his arrest and detention. The witness then applied for the release of the accused person to him on bail. The Head of Operations, EFCC then told him that the release of the accused person on bail is only feasible upon the refund of the Sum of N250,000.00 paid into the account of the accused person by the nominal complainant.

The DW2, **RAPHAEL OLAYINKA BAMITEKO** then narrated to the father of the accused person in Lagos of what he had learnt from the accused person and the officials of the EFCC. The DW2 then said that the father of the accused person applied pressure

on the family of **GABRIEL OLUWA** to refund the money so as to secure the release of his Son from custody. That the family of **GABRIEL OLUWA** then contacted **RAPHAEL OLAYINKA BAMITEKO** and eventually paid the Sum of N200,000 into the account of the DW2. The DW2, **RAPHAEL OLAYINKA BAMITEKO** said that he withdrew the money and paid same to the EFCC office in Kano for onward transmission to the nominal complainant before the accused person was released to him on bail. That subsequently, the bail of the accused person was revoked by the EFCC, shortly before his arraignment in Court.

In his final written address filed on the 15th day of June 2017, the Learned Defence Counsel formulated two (2) issues for determination as follows:-

(1) Whether there was any material evidence linking the accused person with counts 1 and 2 of the charge sheet to warrant the conviction of the accused person.

(2) Whether the Prosecution discharged the Legal and evidential burden of proof placed on it in respect of the 3rd count.

In his written address on the first issue as formulated, the Learned Counsel for the accused person, **M.B. YUSUF ESQ** argued that the elements or ingredients of the offence of *conspiracy* that must be established to ground a conviction for the offence are:

- (1) That the accused person has common intention or agreement with other persons or conspirators*
- (2) That he acted in concert with the other person or persons in pursuance of the common intention; and*
- (3) That he had a dishonest intention to defraud or to cause wrongful loss to the victim or wrongful gain to himself.*

The Learned Defence Counsel **M.B. YUSUF ESQ**, submitted that the evidence before the Court in support of the 1st and 2nd counts failed to establish the essential elements or ingredients of the

offences alleged against the accused person. The Learned Defence Counsel, referred the Court to the definition of the word *conspiracy* in the Black's Law Dictionary 8th Edition as well as the cases of **ODIAWA VS. F.R.N. (2008) ALL FWLR PART 439** at 436, **GBADAMOSI VS, THE STATE (1991) 6 NWLR PART 196 PAGE 182** and the Court of Appeal decision in the case of **HARB VS. F.R.N. (2008) ALL FWLR PART 430 PAGE 705 AT 724.**

Learned Defence Counsel argued that the accused person denied any connection with **DAVID AKINGBOGUN OLADAPO**. That the Prosecution also failed to establish any such connection or prove that the two persons know each other or whether they ever met or spoken. The Learned Defence Counsel argued that in the bid to establish communication between the two, the prosecution requested for the call logs of the accused person from the MTN GSM service provider. That there was no response to that request. That the result is that there is no evidence placed before the Court to establish that the accused person ever communicated nor spoken with **DAVID OLADAPO DAVID**.

The Learned Defence Counsel argued that though the existence of *conspiracy* as an offence could be inferred, Counsel submitted that given the facts and the circumstances of this case, there is absolutely no basis or evidence placed before the Court by the Prosecution to support or justify such inference.

The Learned Defence Counsel **M.D. YUSUF ESQ** therefore urged the Court to resolve the first issue he had formulated in favour of the accused person in relation to Counts I and II of the charge.

On the second issue formulated by the Learned Defence Counsel in relation to Count III ie *whether the Prosecution discharged the Legal and evidential burden of proof placed on it on the 3rd Count charge*, Learned Counsel, **M.D. YUSUF ESQ** submitted that the prosecution failed to establish all the elements constituting the offence in Count III of the charge.

Counsel argued that the elements constituting the offence of obtaining by false pretence are as listed or prescribed in the case of **ODIAWA VS. F.R.N. (SUPRA)**. That the standard of proof required by law, is proof beyond all reasonable doubt. He referred the Court to the provision of section 135 of the Evidence Act

2011 as well as the cases of **ALONGE VS. IGP (1959) N.S.C.C. PAGE 169, MUSTAPHA VS. THE STATE (2007) 12 NWLR PART 1049 PAGE 637, CHUKWU VS. THE STATE (2007) 13 NWLR PART 1052 PAGE 430, ETC.**

The Learned Defence Counsel argued that evidence adduced in support of the offence alleged in Count III of the charge, fell short of this mandatory requirement of the Law.

In conclusion, the Learned Defence Counsel urged the Court to discharge and acquit the accused person on each Count.

The final written address in reply by the Learned Prosecution Counsel, was filed with Leave of Court. Leave was granted on the 14th day of November 2017. The final written address earlier filed on the 19th day of October, 2017, therefore was by order of Court deemed properly filed as served.

In the written address the Learned Prosecution Counsel, **NASIRU SALELE ESQ** after a review of the facts of the case, formulated an issue for determination as follows:-

Whether the prosecution has proved each Count of the charge against the accused person beyond reasonable doubt.

In his argument on the issue as he had formulated, the Learned Prosecution Counsel analysed the nature and elements of the offence of *conspiracy*. He said that the offence of conspiracy is complete once it is shown that there was a formation of a scheme or agreement between the parties. That the agreement or meeting of the minds is almost always a matter of inference to be drawn from the conduct of the parties involved in furtherance of the agreement or common intention. Learned Counsel cited the cases of **OJO VS F.R.N. (2008) 11 NWLR PART 1099 PAGE 467 AT 515 PARAGRAPH G, TANKO VS. THE STATE (2008) 16 NWLR PART 1114 PAGE 597 AT 638 PARAGRAPHS B - D, ETC.**

Counsel argued that based on the evidence of the PW1, **SALISU IDRIS** in this proceeding, it is clear that the accused person before the Court and the other accused person now at large is **DAVID OLADAPO AKINGBOKUN** posed as clearing Agent and Car Dealer respectively, a pretence which they know to be false.

That in particular, the accused person at large introduced the accused person before the Court as a clearing Agent and it is on that basis that the nominal complainant, **SALISU IDRIS** spoke with **BAMITEKO ADEMOLA** the clearing Agent on phone. That the clearing Agent demanded the Sum of two hundred and fifty thousand naira as the cost of clearing the Car. That the Sum demanded by the accused person, **BAMITEKO ADEMOLA** was paid into his account as shown by exhibit 'G' before the Court ie the account opening package and statement of account of the accused person with the Guaranty Trust Bank.

The Learned prosecution Counsel therefore argued that based on the evidence of the PW1 and the PW2 in this proceeding, it is clear that the prosecution has established the elements constituting the offences of conspiracy and obtaining by false pretence. Counsel cited the case of **ALAKE VS THE STATE (1991) 7 NWLR PART 205 PAGE 567 AT 591 PARAGRAPHS G - H.**

The Learned Prosecution Counsel **NASIRU SALELE ESQ** summed up his submissions on the point as follows:-

We submit that from the foregoing and based on the totality of the evidence both oral and documentary before the Honourable Court, it is not in dispute that the accused person standing trial held himself out to PW1 as a clearing Agent, a pretence which he knew was false and which was done with the sole intention of defrauding PW1.

The word pretence is the act of pretending means to make a person believe in a situation which in reality is not true. My Lord, it is also in evidence that PW1 in honest belief of the said false pretence by the accused person standing trial paid the Sum of N250,000 to him for the purpose of clearing the Car that which does not exist.

The second arm of the argument in the written address by the Learned Prosecution Counsel is a reply to the issues raised by the Defence in the written address filed by the Learned Counsel for the accused person. In that regard the Learned Prosecution Counsel argued in reply, that prove of the offence of conspiracy is

generally a matter of inference deduced from certain criminal purpose. That it does not therefore require the prove of any positive form of communication between the conspirators as erroneously argued by the Learned Defence Counsel. Again the Learned Prosecution Counsel, **NASIRU SALELE ESQ** placed reliance on the case of **TANKO VS. THE STATE (SUPRA)**.

The Learned Prosecution Counsel **NASIRU SALELE ESQ** urged the Court not to believe and act on the evidence of the accused person that he does not know **OLADAPO DAVID AKINGBOGUN** and that he did not benefit from the Sum of N250,000.00 paid into his account. That by such testimony the accused person is simply covering his tracks by denying the obvious. That the Defence by the accused person in that regard, though must be considered by the Court, appear weak, foolish and unfounded.

The Learned Prosecution Counsel submitted in reply that the failure to investigate the involvement of **GABRIEL OLUWA** and the failure to counter the testimony of the DW2, **RAPHAEL OLAYINKA BAMITEKO** that the Sum of two hundred thousand naira was refunded by the family of **GABRIEL OLUWA**, does not

affect the credibility of the evidence adduced in support of the charge. Learned Counsel for the Prosecution added that the responsibility placed on the prosecution is to prove the offence beyond reasonable doubt. That the way and manner the prosecution chose to discharge that burden is a matter of discretion.

In further submissions in reply, the Learned Prosecution Counsel submitted that the evidence of the DW2, **RAPHAEL OLAYINKA BAMITEKO** is hearsay and consequently inadmissible in Law. Learned Counsel referred the Court to the case of **JALAYEMI VS. ALAOYE (2004) 12 NWLR PART 887 PAGE 322** and also the provision of section 126 of the Evidence Act, 2011.

Counsel argued that even if the Court is not disposed to treat the evidence of the DW2 as hearsay, Counsel submitted that the evidence is worth less as it does not relate to material facts relevant to the charge against the accused person before the Court.

Finally the Learned Prosecution Counsel argued that the Court should not attach any probative value to the evidence of the accused person on the ground that it is full of contradictions. Learned Prosecution Counsel cited the case of **EGWUMI VS. THE STATE (2003) 2 SCNJ PAGE 875** on the point. However Counsel did not point out to the Court those contradictions in the evidence of the accused person as the DWI.

In conclusion, the Learned Prosecution Counsel, **NASIRU SALELE ESQ** argued that contrary to the submissions of the Defence, the prosecution has established the offences against the accused person beyond all reasonable*^odoubt as required by Law. He urged the Court to convict the accused person on each of the Counts and sentence him accordingly.

Now, those are the various Legal submissions of the respective Learned Counsel as contained in the written addresses. The accused person **BAMITEKO ADEMOLA** and one other person now at large, are standing trial before this Court for the offences of conspiracy and obtaining by false pretence. The name of the other person that is not before the Court is given as **OLADAPO**

DAVID AKINGBOGUN. I have already reproduced the evidence of the four (4) witnesses led in support of the charge and the two (2) witnesses fielded in defence to the charge. I have also made copious references to the exhibits tendered in the course of the proceeding.

The respective Learned Counsel in this case identified similar issues for determination as shown in the written addresses. In my view, the two issues identified by the Defence and the single issue identified in support of the charge, subsume into the following one issue formulated by the Court as follows:-

*
Whether the Prosecution has established each of the offences against the accused person beyond all reasonable doubt as required by law.

Now, simply put, conspiracy consists of an agreement by two or more persons to do an unlawful act or to do a lawful act by an unlawful means. In certain jurisdictions, the offence of Conspiracy is consummated upon the agreement. In other jurisdictions however, there must be an overt act done by one, some or all of the conspirators in furtherance of the agreement.

Where agreement is established, the act of one conspirator in furtherance of the common intention is deemed to be the act of all the conspirators. By its very nature, it is difficult to prove common criminal intention by real or direct evidence. It is always deduced or inferred from established facts placed before the Court. See the case of **HARUNA VS. THE STATE (1972) ALL NLR PAGE 738.**

In the case of **PATRICK NJOVENS VS. THE STATE (1973) 5 SC PAGE 12**, the Supreme Court per **COKER, JSC** said:

The overt act or omission which evidences conspiracy is the actus reus and the actus reus of each and every conspirator must be referable and often is the only proof of the criminal agreement which is called conspiracy. It is not necessary to prove that the conspirators, like those who murdered Caesar, were seen together coming out of the same place at the same time. Indeed conspirators need not know each other. The gist of the offence of conspiracy is the meeting of the

minds of the conspirators. The is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission complained of.

On the other hand, the offence of obtaining by false pretence has the followings elements:-

- (1) That there was a pretence;*
- (2) That the pretence emanated from the accused person;*
- (3) That it was false;*
- (4) That the accused person knows of its falsity or does 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 to transfer his whole interest in the property.*

See the case of **ALAKE VS. THE STATE (SUPRA)** cited by the Learned Prosecution Counsel.

Now, who is the brain behind the scene in this proceeding? It is the evidence of the accused person as the DWI in this proceeding that he does not know **OLADAPO DAVID AKINGBOGUN** his alleged Co - Conspirator now at large. The accused person said that he had never met or spoke with **OLADAPO DAVID AKINGBOGUN**. However he said that he knows **GABRIEL OLUWA**. That **GABRIEL OLUWA** is his Uncle and he lives in Lagos. The accused person said that while on vacation in Lagos, his uncle **GABRIEL OLUWA** told him that he had sent his account details to someone who would pay in money. The accused person **BAMITEKO ADEMOLA**, said the Sum of two hundred and fifty thousand naira was indeed paid into his account. The following morning his Uncle accompanied him to the Bank where the accused person said he withdrew the money and gave it to his Uncle. That his Uncle did not explain to him the reason for the payment nor gave him some money from the Sum withdrawn.

The accused person said that his Uncle **GABRIEL OLUWA** already had his account details as the Uncle used to sent some token into the account when the accused person was in School.

The account opening package and the statement of account of the accused person with the Guaranty Trust Bank is before the Court as exhibit 'G'. From exhibit 'G', the fourth witness for the Prosecution confirmed that indeed on the 15th day of October, 2010, 8th day of March 2011 and 19th day of November 2010, **GABRIEL OLUWA** made token transfers into the account of the accused person in the Sums of Five Thousand Naira, Two Thousand Naira and One Thousand Naira respectively. This piece of evidence by the accused person as verified by the 4th prosecution witness **BALA BOBAI**, based on exhibit 'G' before the Court confirm its veracity. That means **GABRIEL OLUWA** already had the account details of the accused person before the occurrence of the event leading to this proceeding. Indeed not only **GABRIEL OLUWA**, the accused person also knows his younger brother. He gave his name as **DANIEL OLUWA**. That he was with the younger brother at his place of work when **GABRIEL OLUWA** told him that he sent his account details for payment of money into the account.

The father of the accused person also knows the family of **GABRIEL OLUWA**. The DW2 **RAPHAEL OLAYINKA BAMITEKO**,

said that the father of the accused person applied pressure on the family of **GABRIEL OLUWA** to return to the EFCC the Sum of Two Hundred Thousand Naira, which the family did before the release of the accused person on bail was secured.

Furthermore, the accused person said that he did not request the nominal complainant, **SALISU IDRIS** on phone to pay the Sum of Two Hundred and Fifty Thousand Naira into his account to clear a Car for him at the port. That he did not also promise to drive and deliver the Car to the nominal complainant at Kaduna.

The accused person, **BAMITEKO ADEMOLA** said that since then, the transaction was no longer on his mind until he was subsequently arrested when he went to the Bank to conduct enquiries on his account. That he had then explained the circumstance of the payment into his account in his first statement made at the State CID, Ibadan on the 30th day of August 2012.

Now, the statement made by the accused person, **BAMITEKO ADEMOLA** on the 30th day of August 2012 is now before the

Court as exhibit 'f'. The accused person testified in his defence on the 25th day of May 2017. His evidence in Court is the same as the content of the extra - Judicial statement he had made five (5) years ago, on the 30th day of August 2012.

The law is that the ascription of probative value to evidence and assessment of the credibility of witnesses are within the exclusive domain of a trial Court that saw and watched the demeanour of witnesses. See the case of **NWANKPU VS. EWULU (1995) 7 NWLR PART 407 PAGE 269.**

I therefore believe and accept the evidence of the accused person as the DW1 in this proceeding. He is a witness of truth. Having accepted the evidence of the accused person as the DW1, I find that **GABRIEL OLUWA** had given the name of the accused person to the nominal complainant as a clearing Agent. He subsequently posed and presented himself to the nominal complainant on phone as **BAMITEKO ADEMOLA**. He sent the account details of **BAMITEKO ADEMOLA** and demanded payment in the Sum of Two Hundred and Fifty Thousand Naira as cost of clearing the car and which the nominal complainant

paid. It is the money **GABRIEL OLUWA** followed the accused person to the Bank and he withdrew and gave him:

Based on this finding, the Court is entitled to draw the inference that in the same vein, **GABRIEL OLUWA** gave to the nominal complainant the account details of one **OLADAPO DAVID AKINGBOGUN** with the Continental Bank. He fraudulently told the nominal complainant that he is **OLADAPO DAVID AKINGBOGUN** on phone and requested the nominal complainant to pay the Sum of Five Hundred and Thirty Thousand Naira as the cost of the Car. Thus, based on the fraudulent misrepresentation of **GABRIEL OLUWA**, **OLADAPO DAVID AKINGBOGUN** is the Car Dealer and **BAMITEKO ADEMOLA**, the clearing Agent. **GABRIEL OLUWA** fraudulently concealed his name and identity and also refused to use his own Bank account in the transaction in order to avoid detection. **GABRIEL OLUWA** would appear, in my view, to be a trickish and dangerous criminal. No wonder he apologised to the nominal Complainant and refunded the loot.

Based on all these therefore, it is clear to me that the brain behind the scene in this proceeding, is **GABRIEL OLUWA**. Indeed the accused person **BAMITEKO ADEMOLA** upon his arrest and in the statement he made on 30th day of August 2012 pointed to the involvement of **GABRIEL OLUWA** in the perpetration of this plot. However as rightly argued by the Learned Defence Counsel, the operatives of the EFCC did not follow up this lead that would have led to the arrest of **GABRIEL OLUWA**, The kingpin.

It follows therefore and I so find that the accused person does not know **OLADAPO DAVID AKINGBOGUN**, his alleged Co - Conspirator. The issue of his having conspired with him to commit any offence is therefore untenable and without basis.

The Learned Prosecution Counsel had made heavy weather of the fact that **BAMITEKO ADEMOLA**, the accused person before the Court had spoken with the nominal complainant, **SALISU IDRIS** on phone. That he had introduced himself as a clearing Agent and demanded for the payment of Two Hundred and Fifty Thousand Naira from the nominal complainant and that the money was paid. The prosecution Counsel also argued that

BAMITEKO ADEMOLA, the accused person promised to deliver the Car to the nominal complainant at Kaduna. That he subsequently lied that he was arrested by the Nigerian Customs Service in Ado - Ekiti and subsequently switched off his phone.

It must be noted that the person who gave the telephone number of the nominal complainant to the supposed clearing Agent is **GABRIEL OLUWA** masquerading as **OLADAPO DAVID AKINGBOGUN**. That is the evidence of the nominal complainant as the PW1. It must also be noted that the nominal complainant did not know **BAMITEKO ADEMOLA**. He could not even recognise him by voice as they have never met or spoken to each other before then. It is therefore logical to conclude that the person that spoke with the nominal complainant on phone is either the accused person **BAMITEKO ADEMOLA** or some other person else. Indeed it could even be **GABRIEL OLUWA** by simply changing his voice. Doubt in the case of the Prosecution on a material and relevant point is therefore created.


The law is trite that if there is any doubt whatsoever in the case for the prosecution in support of the charge, the benefit of it

must be given to the accused person and he must be discharged and acquitted. See the case of **WOOLMINGTON VS. D.P.P. (1935) AC PAGE 426 AT 481**. See also the case of **UMANI VS. THE STATE (1988) 2 S.C. PAGE 88**.

As if to make matters worse, the EFCC wrote a letter on the 5th day of September 2012 to the MTN GSM Service provider to provide the call logs on the accused person's phone, but there was no response to the request. There is also no evidence before the Court to show that the number used to call the nominal complainant is phone No. **07030316483**, the phone number of the accused person as shown on his account opening package now exhibit 'G' before the Court. In the circumstance therefore there is no basis to find that the nominal complainant had spoken with the accused person in relation to the transaction leading to this proceeding.

In the final analysis, I resolve the issue formulated in favour of the accused person. The charge against the accused person has not been established beyond reasonable doubt as required by

law. The accused person **BAMITEKO ADEMOLA** is hereby discharged and acquitted of all counts.


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JUSTICE S.M. SHUAIBU
JUDGE
24/1/2018

APPEARANCES:

NASIRU SALELE ESQ with **DOUGLAS I. GIFT ESQ**

and **MUSA ISAH ESQ** for the Prosecution.

M.B. YUSUF ESQ with **CHIOMA WILLIAMS ESQ** for the accused person.

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

23/1/2018