

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA

IN THE KADUNA JUDICIAL DIVISION

HOLDEN AT KADUNA

BEFORE: THE HON. JUSTICE M.T.M. ALIYU .....JUDGE

SUIT NO. KDH/KAD/8/EFCC/2013

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

AMINU IBRAHIM YARO .....ACCUSED PERSON

13 - 04 - 2018

Defendant in court (Speak English)

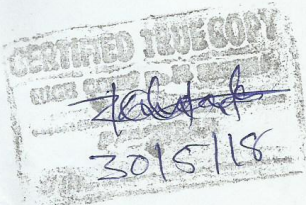
B.M. Buhari for Prosecution.

Z. Oche Esq for Defendant.

J U D G M E N T

The charge against the defendant reads:-

“The You Aminu Ibrahim Yaro sometimes in march 2012 within the jurisdiction of the High Court of Kaduna State with intent to defraud did obtained the sum of Eight Million Naira only (N8,000,000.00) from Ibrahim Umar under the false pretence that you were leasing a filling station along SF8 Nnamdi Azikiwe Way..... Kaduna which pretence you knew to be



Zulfair K. Chafe.

**false and thereby committed an offence contrary to Section 1 (1) (a) and (b) of the Advance Fee Fraud And Other Fraud Related Offences Act, 2006 and punishable under Section 1 (3) of the same Act.”**

The Defendant pleaded not guilty to the charge. The prosecution called 4 witnesses to prove their case. PW1, PW2 and PW3 investigated the alleged crime. PW4 is Alhaji Abdulfatah A. Murtala. He gave evidence on the status of the property used to induce the delivery of the sum alleged to the Defendant.

The Defendant testified in his defence but called no witness. Eight documents were tendered by the prosecution the PW1, PW2 and PW3. These documents include the extra judicial statements of the Defendant (Exhibits 4 and 5). The statement of the PW4 (Exhibit 6). The statements of Ibrahim Umar (Exhibits 2 and 3), the petition (Exhibit 1) and a copy of a lease agreement between A.Y.T. Petroleum Nigeria Ltd and first Oil Investment Nigeria Ltd (Exhibit 7).

The Defendant filed his final written address on 29<sup>th</sup> December, 2017. The prosecution filed their final written address on 10<sup>th</sup> January, 2018.



The case put forward by the prosecution in this case is that sometimes in March, 2012 the Defendant who is a Director of a Limited Liability Company known as A.Y.T. Petroleum Ltd offered to lease out a filling station, No. SF8 Nnamdi Azikiwe Way, Kaduna belonging to his company at the rate of ₦8,000,000.00 for a period of 8 years. A lease agreement was signed by the parties. Soon after that was done, the nominal complainants discovered that the property had already been leased out to another company and the agreement has not been determined. The nominal complainants therefore demanded for the refund of their money and also filed the petition on exhibit 1. It is important to understand that nobody testified for the nominal complainants. Two statements made use of the complainants at the investigation stage were admitted in evidence and given the marks exhibits 2 and 3.

The Defendant is the managing Director of A.Y.T. Petroleum Ltd the filling station the subject of the lease agreement in this case belongs to A.Y.T. Petroleum Ltd. In his testimony he admitted signing the agreement attached to Exhibit 1 leasing the filling station to Alhaji Umar Saleh. He stated that parties to the agreement agreed that the date for the commencement of the agreement will only be given after the lease agreement with First Oil Investment Nigeria Ltd has been determined and

the tenant ejected. First Oil Investment Nigeria Ltd was paid back its money and ejected.

Under cross examination, the Defendant admitted that he was aware of the earlier lease agreement between his company and First Oil Investment Nigeria Ltd. He admitted also that he leased out the filling station to the nominal complainants during the subsistence of the earlier lease agreement. He also admitted that he collected the sum of ₦8 million from Alhaji Ibrahim Umar which amount he refunded.

The ingredients of the offence defined under Section 1 (1) (a) of the Advance Fee Fraud And Other Fraud Related Offences Act are as follows:-

- i. That the representation made by the accused is false. – See *OKORO V. A.G. OF WESTERN NIGERIA* (1966)NMLR 13.
- ii. That the representation operated in the mind of the person from whom the money was obtained. – See *OSHUN V. DPR* (1965)NMLR 357.
- iii. That the representation was made with intent to defraud. See *STATE V. EDET & ANOR*



(1964) 8 ENLR 41, *AWOBOTU VS THE STATE* (1976)5 S C 49 at 80 – 81. See also the case of *EDE & ANOR V. FRN* (2000) LPELR – 5549 (C A) 12 and 13.

It was submitted in the Defendant's final written address that the prosecution has failed to prove false pretence and intention to defraud on the part of the Defendant. That the lease agreement between the Defendants' company and the nominal complainants has no commencement date which fact supports the evidence of the Defendant that parties to the agreement agreed also that the lease will only commence after the earlier lease agreement (Exhibit 7) has been determined.

The prosecution on the other hand submitted that all the 3 ingredients of the offence have been established. That the Defendant has admitted committing the offence when he stated that he collected the sum of ₦8 million from the nominal complainants before the expiration of the lease agreement in exhibit 7.

The false pretence alleged against the Defendant in this case is that he led the nominal complainants to believe that the filling station at No. SF 8

nothing in the agreement to inform the nominal complainant of the existence of the lease agreement between the defendants' company and first oil investment Nigeria Ltd the lease agreement between the nominal complainant and the defendants' company has no commencement date. The nominal complainants did not testify in this case to explain why the date of the commencement of the lease agreement was not specified in the agreement. Such explanation was not also provided in the extra judicial statements of Ibrahim Umar and Alhaji Ibrahim Yaro (Exhibits 2 and 3). I must hasten to point out that the statements of these two persons who were not called as witnesses by the prosecution are inadmissible in evidence. It is only the evidence on oath of such witnesses that is admissible in evidence. See *OKEKE V. THE STATE* (20-16) LPELR – 40024 (C A) where at pp. 18 – 19 it was held:-

**“The extra judicial statement of a witness in a nominal trial is inadmissible as evidence for either side. The admissible evidence is the evidence on oath in open court b the witness which is subject to cross examination by the adverse party. The only time when an extra judicial statement of a witness is admissible is**



Nnamdi Azikiwe Way, Kaduna is available for leasing when the property is subject of another lease transaction that has not expired.

It is not in dispute in this case, that the Defendant made representation to the nominal complainants via the lease agreements attached to exhibit 1 that the filing station at No. SF 8 Nnamdi Azikiwe Way, belongs to his company A.Y.T. Limited. The Defendant also admitted that he obtained from the nominal complainants. The sum of ₦8,000,000.00 as consideration for the leased filing station. The Defendant also admitted that he leased out the filing station to the nominal complainants during the subsistence of an earlier lease to First Oil Investment Nigeria Ltd.

The lease agreement attached to exhibit 1 and exhibit 7 supports this evidence.

I think that where the Defendant as in this case, admits leasing the property before the expiration of or determination of an existing lease over the same property, there would be evidence of false pretence and intention to defraud when it is established that the Defendant failed to that information to the notice of the nominal complainant.

I have carefully studied the lease agreement between the nominal complainant and the defendant's company in this case. Although there is

where a party seeks to use it to contradict the evidence of a witness already given on oath. The defence witness will ask for the statement and give reasons to the court for doing so. On production by the prosecution, the defence counsel must seek to tender it and refer to specific passage which contradict the evidence of the witness. After it has been admitted in evidence the specific portions of the statement of the witness made to the police must be shown to the witness to read out or counsel may read it out to the witness. The witness must be given an opportunity to explain the contradiction. Failure by the witness to explain the contradiction in the evidence on oath of the witness and the contents of the extra judicial statement can then be used to make an issue during defence counsels' address. See sections 232 and 233 of the Evidence Act 2011.....”



Unfortunately in this case, the witnesses who made the extra judicial statements in exhibits 2 and were never called by the prosecution to testify under oath. I hold that the two statements are inadmissible in evidence and will be discountenanced.

Now, I have stated that the lease agreement in this case did not provide for the date the lease was to commence. The defence seems to believe that the commencement date is important to determine whether the defendant made false representation or not to the nominal complainants. It is important to reproduce the content of clause 1 of the lease agreement which dealt with the issue of consideration and the tenor of the agreement. It should be noted that the commencement dated in this clause 1 of the agreement was not specified. Clause 1 reads:-

“in consideration of the lease fee of N8,000,000.00 (Eight Million Naira) only the lessor hereby leased and the lessee hereby takes the premises (more particularly described in the schedule hereto) locates at filing station located at SF 8 Nnamdi Azikiwe Way, Kaduna for

a term of Eight (8) years commencing: FROM  
.....20 .....TO .....20.....”

The Defendant in his evidence under oath in this case stated:-

“I wrote a lease agreement with Alhaji Umar Sale. I signed it. This is the agreement shown to me (Exhibit 1). There was no date for the commencement of the agreement. There was no date because we agreed that until First Oil is ejected, the agreement will not come into effect.

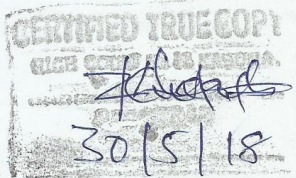
I made a statement at EFCC. The transaction based on which I was arraigned is between A.Y.T. Petroleum and Royal Arms. We refunded First Oil’s money and ejected First Oil. We also refunded ₦8 million to Ibrahim Umar for Royal Arms.” (Emphasis mine).

In his extra judicial statement dated 13/05/13 (exhibit 5) the Defendant also claimed that until the existing lease agreement between First Oil and his company is terminated by management of his company, the agreement between his company and the nominal complainants will not commence. It



is also important to point out that even under cross examination the Defendant maintained that Alhaji Ibrahim Umar, one of the nominal complainants in this case, was aware of the earlier lease transaction. (Exhibits 7). The prosecution did not call Alhaji Ibrahim Umar and led no evidence to controvert the evidence of the Defendant that the lease agreement signed with the nominal complainants was subject to the determination of the earlier existing lease agreement (Exhibit 7). The implication of this unchallenged piece of evidence is that the representation of the defendant depicted by the lease agreement attached to exhibit 1) is not false and no intention to defraud could be found against the defendant when the agreement between his company and the nominal complainant is premised on the determination of the lease agreement.

From his evidence, the PW4 was not privy to the agreement between the nominal complainants and the Defendants' company. He is therefore not in a position to deny the testimony of the defendant in respect of arraignment between the nominal complainant and the Defendant's company. On the whole, I find that the prosecution has failed to prove the charge against the defendant and I hereby discharge and acquit him.



SIGNED

HON. JUSTICE M.T.M. ALIYU – JUDGE

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