

IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE JUSTICE O.M. OLAGUNJU – JUDGE
THIS FRIDAY THE 18TH DAY OF MAY, 2018

SUIT NO. I/3EFCC/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

MUTIAT OMOBOLA ADIO

DEFENDANT

Defendant present
Dr. B. Ubi for the Prosecution
C.O Alli with Alhaji L. A. Quadri for the defendant

J U D G E M E N T

The defendant stands charged with the following offences:

STATEMENT OF OFFENCE – COUNT ONE

Obtaining money under false preference contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and Punishable under section 1 (3) of the same Act.

PARTICULARS OF OFFENCE

That you, Ms. Mutiat Omobola Adio on or about the 19th of December, 2016, at Ibadan within the Ibadan Judicial division of this Honourable Court with intent to defraud, obtained the sum of Nine Million and Two Hundred thousand Naira (₦9,200,000.00) only from one Abiodun Rasheed Olonade through Kunle Abimbola by falsely pretending that it was part payment of the cost price of a building and land situate, lying and being at Plot 10, Block XXIV, Bashorun Estate, Lagelu

Local Government Area, Ibadan which you purported to have sold to him.

STATEMENT OF OFFENCE-COUNT TWO

Stealing contrary to section 390 of the Criminal Code Law, Cap 38, Laws of Oyo State.

The defendant pleaded not guilty to the 2 counts. To prove its case the prosecution called 4 witnesses while the defendant gave evidence in her defence.

PWI: Akintunde Olurotimi Yinka gave evidence as follows:-He lives behind Lailatu shopping Complex, Alegongo Ibadan. He is an estate agent. He lets out houses, seek property for sale and also manage properties for his clients. He knows the defendant. Sometimes in November 2016, a property was introduced to him by Barrister Kunle Abimbola to the effect that it was for sale. The property is located at Basorun estate, Akobo. It is an uncompleted building on a land measuring 1800sq metres. The property is fenced with a gate.

He introduced the property to one of his clients, based in the United Kingdom. His client came home around November, 2016. He took him to inspect the property. The name of his client is Rasheed Abiodun Olonade. They inspected the property and he was interested. He instructed him to conduct a search on the property before he travelled back. He conducted a search at the Housing Corporation and found the property to be genuine.

There was an outstanding yearly rent of ₦1,280,000 to be paid by the owner. After that, he went to Barrister Kunle Abimbola and asked about the owner. Barrister Abimbola told

him the defendant gave him the property to sell. He told him he would take him to the defendant at the High Court. His client called his father to join him in meeting the defendant. The name of the father is Alhaji Yekini Olonade.

They went together to meet the defendant in her office at Ring-Road, High Court. Barrister Abimbola introduced her as the one in charge of the property. The defendant confirmed being in-charge of the property. She told them her brother who is based in Dublin owns the property and his name is Mr. Junaid. They asked for the price of the property and she confirmed that it is N15m.

They asked for her power of Attorney and she said she has authority to sell the property because the owner is her brother. They asked for the original documents, and she said copies have been given to Barrister Abimbola. They sought to speak to the owner on phone but she only showed them the picture of the man on her phone. Because they were told she is a judge they had no reason to doubt her, so they continued the transaction.

They asked for mode of payment and she directed them to Barrister Abimbola. He informed his client who indicated intention to buy the property. He asked Barrister Abimbola how the rent arrears owed by the owner would be defrayed. He called him back to say that the defendant said the rent arrears can be deducted from the price.

They asked for the account number into which the money would be paid. Barrister Abimbola said the defendant asked them to pay into his account. The defendant had earlier told them to deal with Barrister Abimbola in respect of the property.

His client paid ₦10m into Barrister Abimbola's account. He does not know the account number off hand.

After that, his client instructed him to do a memorandum of understanding to the effect that the money would be paid twice. After the initial payment of ₦10m, he forwarded the memorandum of understanding to Barrister Abimbola. Barrister Abimbola said the document had been given to the defendant. After 2 weeks he asked for the fate of the memorandum of understanding. Barrister Abimbola then told him that the document was not returned to him by the defendant.

When he told his client about the development, he told him he would pay the balance so that a proper Deed of Assignment could be prepared. His client forwarded the sum of ₦3,720,000 into Barrister Abimbola's account. After that a Deed of Assignment was prepared by Barrister Ikeh. They forwarded the Deed to Barrister Abimbola for onward delivery to the defendant. The Deed was not forwarded to the owner of the property.

His client offered to send the Deed to the owner but the defendant refused. She said the owner would come home around March 2017. They disagreed with that.

Barrister Abimbola decided not to transfer the remaining balance to the defendant because of her refusal to have the Deed sent to the owner. He requested for the defendant's phone no. from Barrister Abimbola to confirm the development. He called the number twice without any response. He informed his client about the development. Barrister Abimbola also told him the

defendant was not picking his calls. Since that time they started looking for the defendant without success.

Barrister Abimbola said he would petition both the Commissioner of Police and the N.B.A. He wrote the petition and showed him before submission to the Police. After that his client called his Lawyer Ikeh to go and report the matter to E.F.C.C. He also showed him the petition and they went together to the E.F.C.C. They asked them to look for the defendant and inform them if seen.

Cross-examined he said he has said the truth. He denied meeting the owner of the property. He took ₦100,000 as his agency fees from Barrister Abimbola and it was from the ₦10m. He conducted a search and found the name Junaid on the document and that he owns the property. When his client paid, he said he would pay the balance in March, 2017. Barrister Abimbola gave him all the documents used to conduct the search. He denied that the defendant told him the owner would come home in March 2017. He put a call to the defendant sometimes in January, 2017 and he met her in December, 2016 at the High Court. She told him she had a slight malaria. He was in touch with the father of his client always. He would not do anything without the father of his client.

They met the defendant together with his client's father after she dodged them. They met the owner in the presence of the defendant after the matter had been reported to E.F.C.C. They were more interested in seeing the owner of the property because she told them he is in Dublin.

His client paid before March because of the attitude of the defendant concerning the memorandum of understanding. His client paid earlier to avoid further delay. They would sign M.O.U. for part payment. Barrister K. Abimbola issued him a receipt. They paid the ground rent before paying the balance because the defendant instructed them to do so.

Himself, Barrister Ikeh, Abimbola, Alhaji Y. Olonade and the owner went to the property together with his brother and the defendant.

At the site, the defendant introduced the owner to them and they confirmed from him. They also asked if he instructed the defendant to sell the property and he said Yes. They told him payment had been made but not seen the documents prepared. He asked them how much they paid and they said ₦15m as instructed by the defendant.

The man was surprised and said he did not instruct the defendant to sell for ₦15m but ₦25m. He also said the defendant did not tell him anything about the transaction. At that point his client's father said he could not pay ₦25m for the property because the defendant told them ₦15m.

They then requested for their money from the defendant. The defendant wrote an undertaking to refund ₦9,200,000 the following Thursday because they went on a Saturday. The lawyer to the buyer is Ikeh. He is not aware lawyer Ikeh said they were prepared to pay any amount for the property because they like it. They went to E.F.C.C. before they met the owner. He was not re examined.

PW2 Kunle Abimbola gave evidence as follows. He lives at road 11A Omolayo Layout, Akobo, Ibadan. He is a legal practitioner. He knows the defendant. She instructed him sometimes in 2016 to sell a property on behalf of somebody based in Dublin. The name of the person is Babatunde Junaid.

After several efforts, he got an interested buyer in the person of Rasheed Abiodun Olonade based in the U.K. He got the indication from his agent named Olurotimi Akintunde who said his client was willing to buy the property.

Sometimes in November 2016 he took PW1 with the father of the prospective buyer to the defendant in her office at the High Court premises, Ring Road, Ibadan. He introduced them to one another. He told them that the defendant had instruction to sell the property. The agent and the buyer's father told him and the defendant that the money would be paid twice. The defendant offered the property for N20m but the buyer's father said his son was willing to pay N15m. It was agreed that the sum of N15m be paid for the property.

The defendant instructed them to pay into his account for onward transmission to the seller. The seller was at the material time owing Housing Corporation the sum of N1,280,000. They all agreed that the said money be deducted from the agreed sum of N15m. The total sum payable was N13,720 000.

A few days later, the sum of N5m was paid into his account in November, 2016. About 5 days later another N5m was paid into his account. The money was paid into his Zenith bank account. When he received the sum of N10m as part payment he informed the defendant. The arrangement was that he should

take ₦700,000 for himself and ₦100,000 for the agent who brought the buyer. The ₦700,000 was part of his agency fees which was N1.5m .

He paid ₦100,000 to PW1 as instructed and took ₦700,000 for himself as instructed by the defendant. He then transferred the sum of ₦9.2m to the defendant through her Zenith Bank account which the defendant sent through SMS. The money was transferred piece-meal to the defendant account between November and December 2016.

After the payment, the agent sent a memorandum of understanding and requested him to send it to the seller through the defendant to acknowledge the part-payment of N10m. He instructed one of his Lawyers to take the M.O.U to the defendant at her office. The M.O.U has not been returned to him for delivery to the buyer.

A few weeks later, he was contacted by the buyer's solicitor Ikeh Sunday who brought a Deed of Assignment prepared by him. The Deed was to be forwarded to the seller through the defendant.

The Deed of Assignment has not been returned to him by the defendant till date. When he asked her she said he should oblige her 3 months to execute and return the Deed to him.

At their first meeting, the buyer's father wanted to see the original title deeds. The defendant said she had the documents but that they would be released after complete payment. The buyer's father said having seen that the defendant is a senior judicial officer nothing could go wrong.

Later in January 2017 the buyer paid the balance of the purchase price to his First Bank and GT Bank account. The total was ₦3,720,000. Having made spirited efforts to recover the M.O.U. from the defendant without success, he began to suspect a fowl play by the defendant.

He told her she did not need 3 months to get the M.O.U. and the Deed executed by the seller of the property with technology advancement. The defendant insisted on 3 months from January 2017 which he felt was wrong. When the pressure on him became unbearable he forwarded a petition to the Commissioner of Police, when the defendant was not forthcoming with the return of the M.O.U. and the Deed of Assignment.

He returned the balance of ₦3,720,000 to the buyer's solicitor Ikeh Sunday. He also refunded the ₦800,000 taken as commission for himself and the agent of the buyer through Lawyer Ikeh Sunday.

He became suspicious because the defendant was not available in her office. He was told she was not around and that went on for 5 weeks. Each time he placed a call to the defendant she said she was ill. He continued to bear enormous pressure from the buyer who was willing to take possession.

The defendant blamed him for releasing the key to the buyer's agent. Up till now they could not lay their hands on the title documents because the transaction was frustrated by the defendant.

Sometimes in March 2017, the seller came and along with the agent, the buyer's father and himself had a meeting with

him. The defendant was also around. At that meeting, the seller said his instruction was to sell for ₦25m and that no money was paid into his account by the defendant. The father of the buyer insisted on how the defendant would refund the payment made to her.

The receipt of the balance was to the knowledge of the defendant but he told her it would not be transferred to her account until all the documents were executed together with the original documents. The defendant insisted that they should wait till March 2017 when some people would be going to Dublin. That was not acceptable to him. He requested that the documents be scanned to the seller. He told her his own integrity was on the line. His petition was copied to the Chief Judge and the Judicial Service commission.

He conducted a search on the property with the copy of the document given him by the defendant. He discovered the property was unencumbered. The defendant did not fulfil her promise to refund the ₦9.2m to the buyer till date.

He was invited by the EFCC concerning the transaction, based on a petition of the buyer through his solicitor. He gave EFCC a copy of the petition he wrote against the defendant to the Commissioner of Police of Oyo State. He also informed them that he had returned the balance to the buyer through his Counsel. He also informed them that he had refunded the commission taken. He made a statement to the operatives of E.F.C.C explaining the role he played in the transaction.

They met with the owner on a Saturday in March, 2017. It was between 3.30p.m. and 5p.m.

Cross-examined, he denied being arrested by the EFCC but invited. Himself and the defendant have confidence in each other. He reported because of the pressure and his own integrity. His integrity as a Lawyer who could not explain what happened to the money paid through him. If he knew where the money was, the case will not be in Court. He took his fees out of the money. He looked for a buyer between February 2016 and November 2016.

He did not issue a receipt to the buyer after receiving the N10m. He does receive money without issuing receipts depending on the circumstance. He discussed with the defendant over a couple of months. The defendant told him she was sick. At a point, she told him she was admitted. The defendant is owing the buyer ₦9.2m. He is not owing any money. He returned his share of professional fees. The transaction was meant to be professional but for the conduct of the defendant.

The transaction in this case was not concluded to enable him issue a receipt. The balance was with him but he refused to release it to the defendant because she did not do the needful. He kept the money in his account for obvious reasons. He is the principal actor except the execution of the documents. He met the seller who said his property was for ₦25m. The property is not fake. The defendant had instruction to sell but not at the price the seller wanted. He was not re-examined.

PW3, ASP Sarumi Idris Adeyemi testified as follows: He works with EFCC at No. 16, Reverend Oyebode Crescent, Iyaganku, Ibadan. He is attached to the intelligence and special

operations section. He was posted to the section in June 2017. Before then he was attached to Land and Property Fraud section. At the material time he was attached to Land and Property Fraud section of EFCC.

His schedule of duty is generally investigation of petitions assigned to him. As part of investigation, it involves arrest, search and other activities requiring investigation.

He knows the defendant via a petition written by a law firm and submitted to the EFCC on 7/3/2017. The petition was approved and assigned to Land and property Fraud Section. It was then assigned to him for investigation. He contacted the petitioner through the phone numbers on their letter head. He asked them to bring the victim in order to adopt his petition. The following day 8/3/17, a Lawyer from Vine House Solicitors Ikechukwu Sunday came with one Rotimi whom he presented as the agent of the victim. He told him the victim is out of the country. He said the agent represented him in the transaction. He said the agent has the authority of the victim to adopt the petition. He then adopted the petition, buttressing the same facts stated in the petition.

He invited other witnesses which included Yekini Olonade, the father of the victim, Barrister Kunle Abimbola who took the agent to the defendant was also invited among other witnesses. A letter was written to the Chief Registrar, Oyo State High court for the release of the defendant for an interview in their office. The letter was replied on 21/3/2017 stating that the defendant had absconded from office. She has not reported for work for several weeks. Her case was pending before the judiciary

disciplinary committee. The Chief Registrar was therefore unable to accede to their request at that time.

A letter was written to Zenith Bank for the CTC of the defendant's statement of account to authenticate the claims of the victims. The letter was replied on 29/3/2017. The claims of the victims that they paid into the defendant's account was validated. On 15/3/2017, a letter of undertaking written by the defendant was submitted to the Commission by Barrister Ikechukwu Sunday of Vine House Solicitors. The undertaking showed that the defendant promised to pay back to the Solicitors the sum of N9.2m on 14/3/2017. The letter was presented after the expiration upon the inability of the defendant to pay back. The agreement to pay was made outside the location of the EFCC. He was not present when the agreement was reached.

Further investigation later revealed that the defendant frequently visit one Alfa, an Islamic Spiritual scholar at Oke Olodo Area. A team of investigators led by PDS Igeleke Bright which included himself and other operatives in the EFCC visited the Alfa's place on 3/4/2017 and was fortunate to meet the defendant. The Alfa house is in Oke Olodo Area of Ibadan. The defendant was then arrested and taken to their office in Ibadan.

The defendant was offered a seat and asked if she needed refreshments. She said she needed water which was provided. He gave her one and took one himself. He gave her the petition to read through. He asked for her response. He told her she was not obliged to say anything. She said she was aware. She responded verbally to the petition. He asked if she would like to

write her response and she said yes. He wrote the words of caution in the statement form. He gave her to read. After reading through, she appended her signature. She then made her statement voluntarily. Due to time, they were unable to complete her statement on 3/4/2017.

On 6/4/2017 another member of the team took the defendant before a senior member of the Commission to attest her voluntary statement. At the material time 4 of them namely, PDS Igeleke Bright, SDS Odogwu Juliet, AS.P Sarumi Idris and Sgt. Idris Musa were in the Land and property Fraud unit then. PDS Igeleke Bright is the team leader. A letter headed Re: Obtaining money under false pretence by Omobola M. Adio dated 6/3/2017 written by Vine House Solicitors was admitted through him as exhibit 2. A letter dated 29/3/2017 with its appendix addressed to the Zonal Head of EFCC by Zenith Bank was admitted through him as exhibit 3. Certified True Copy of promise letter dated 11/3/2017 was admitted as exhibit 4. Statement made by the defendant dated 3/4/2017 was admitted as exhibit 5. Statement made by the defendant dated 4/4/2017 was admitted as exhibit 6.

On 6/4/2017 SDS Odogwu Juliet took the defendant before DSP Omede Abubakar. Document headed confessional statement of an accused made to EFCC dated 6/4/2017 was admitted as exhibit 7.

Their investigation revealed that the defendant engaged the services of Barrister Kunle Abimbola to help her manage the said property at Akobo. Kunle Abimbola then informed her of the willingness of Mr. Abiodun Rasheed Olonade to buy the

property for ₦15m. Mr. Abiodun was to deposit ₦10m and pay the balance of ₦5m in 3 months time. Defendant authorized her Lawyer to collect the ₦10m on her behalf after which the sum of ₦9.2m was transferred to the defendant's account.

The remaining ₦800,000 was the agent fees of the Lawyer. After the payment of the ₦10m and the defendant was unable to produce the original title documents the victim through his own Lawyer prepared a Deed of Assignment. He gave it to the defendant for onward delivery to the owner of the property in Dublin. They offered to pay for DHL Services but the defendant was not forthcoming. After demanding for a refund and the letter of undertaking written by the defendant, the defendant was still unable to refund their money.

A thorough analysis of the statement of account of the defendant revealed that the ₦9.2m was transferred to her account in December 2016, Even though the defendant claimed she kept the money safe with one Alhaji Omoniyi Abiola and 2 others, her statement of account revealed that the money was withdrawn from her account between 19/12/2016 and 13/1/2017 through P.O.S purchases, ATM withdrawals and cheques presented by herself and third parties.

At at April, 2017 when she was writing a letter of undertaking promising to pay the money on or before 14/4/2017, the total balance in her account was about ₦3,000.

Cross-examined, he said when a lawyer acts as an agent, he collects agency fees. He thoroughly investigated the case. They did not meet the owner because he was not in the country when the case was reported.

They invited Alhaji Omoniyi who the defendant claimed she kept ₦1.5m with. He told them that he is the defendant boyfriend and in a relationship. He claimed that before the transaction money had changed hands between him and the defendant. He claimed that his ₦500,000 *was* with the defendant when she transferred the money. In real sense only ₦1m was transferred to him. It is true the defendant paid money to Alhaji Omoniyi. He visited the property in question but did not visit Ministry of hands.

What he found out from the owner through a phone conversation is that he was willing to sell but he did not give the defendant instruction to sell for ₦15m but ₦25m. He did not instruct the defendant but his Lawyer to sell. He could not volunteer a statement because he was already in Lagos enroute Dublin. He obtained a statement from Alhaji Omoniyi. They did not contact the other 2 because the amount the defendant claimed to have with them was less and immaterial. The owner refused to mention his Lawyer's name. They brought the defendant to court when she failed to pay. The promise was made before she was/arrested.

As at April 2017, the balance in the defendant account was about N3,000. His investigation revealed that N9.2m which belonged to Rasheed Olonade entered the account of the defendant in December 2016. By the end of January 2017, the N9.2m was no longer in the account. The case was properly investigated. He did not lie about what Alhaji Omoniyi told him. He knows PW1 and PW2 and that they gave evidence.

The ownership of the property was not in dispute. He was not re-examined.

PW4, Alhaji Yekini Olonade testified as follows: He lives at No. 4, Unity Road, Alegongo Ibadan. He is a Businessman. He is also into estate business. He knows the defendant.

His son Abdul Rasheed Olonade called him on phone that Akintunde had taken him to a property at Alegongo. He asked him to go and see if it was worth buying. He called Akintunde and they went to inspect. After the inspection, he asked him to take him to the owner of the property. He took him to Barrister Abimbola who took him to the defendant at her office at the State High Court, Ring-Road Ibadan.

Three of them, Akintunde, Abimbola and himself went to see the defendant. Abimbola introduced the defendant as the seller of the property. He asked if she was the owner and she said No. She said the property belonged to her brother. He asked for the whereabouts of the brother and she said he was Overseas.

He asked for the original title document from the defendant who said he would see the title documents after payment. The defendant asked me how much Abimbola said was the price of the property. He told her Abimbola put the price at ₦15m. She confirmed the price.

He later called his son that he had been brought before the seller of the property. He asked him if the property was good for purchase and he told him it was right for ₦15m. By December 2016, his son told him he had paid ₦10m to Barrister Abimbola as part payment. The defendant asked him to rely on

whatever Barrister Abimbola told him. His son called him in January 2017 that he had paid the balance.

Both Barrister Abimbola and Akintunde confirmed the payment. He then requested for original title documents. Both Barrister Abimbola and Akintunde told him the defendant refused to give them the title documents. He asked Abimbola and Akintunde if he could go and lock up the property. They answered in the affirmative. Himself and Akintunde went to lock up the property. He asked Lawyer Ikeh to prepare documents for onward delivery to the defendant. The Lawyer told him the defendant refused to sign the documents.

By March 2017, he heard that the owner of the property had arrived Nigeria. He suggested a meeting with him at the location of the property. That suggestion was carried out. At the meeting, the owner, his brother, the defendant, himself and the Lawyers were present. He discovered that the padlock he put had been broken. They asked the owner if he knew about broken padlock and he said No. The owner sought to know their interest and he told him they are the purchasers of the property. He asked him if he knows the defendant and he said yes, that she is his sister. He told him the defendant advertised the property for sale and asked if he instructed her and he said Yes.

They told him they had paid ₦15m the purchase price. He said nobody told him of any payment and that he did not instruct anybody to offer his property for ₦15m. He said his own price is ₦25m. He said if they were prepared to pay ₦25m he was ready to sell. He told him they could not pay more than ₦15m.

He then instructed them to retrieve their money from the person they paid to.

Barrister Abimbola then said he deposited ₦10m into the account of the defendant and that the balance was with him. He sought to know which account he was to credit the money in his possession. He instructed him to pay into Barrister Ikeh's account.

He asked the defendant how she was going to refund the money with her and she promised the following Thursday. He asked her to put it in writing and she did. While she was signing he requested that the exercise be photographed. He called Barrister Ikeh at the appointed date to find out if the refund had been made and he said No.

He then instructed Lawyer Ikeh to involve law enforcement agency. He carried out the instruction. The matter was referred to E.F.C.C. The report led to this case. He was not allowed to read the petition since he instructed their Lawyer to take necessary steps. He confirmed exhibit 4.

Cross-examined, he said he does not know his age. He agreed the issue is about buying and selling and he is an estate agent. He has been buying and selling houses for long. He was told the owner was abroad. He is not aware the owner spoke with his Lawyer. The Lawyer said he deposited N10m. The defendant is owing them N10m. He is not aware his son agreed to pay ₦22m. He terminated the contract because his son said he was no longer interested. He terminated the contract when the transaction failed. He met the defendant at the ring road high court. He does not know if she was sick then.

His Lawyer prepared agreement. The owner said he wanted to sell for ₦25m while the defendant offered the property for ₦15m. The transaction was concluded before the owner came because they had finished paying. He denied that the agreement was not signed because N5m was outstanding. Abimbola kept the ₦5m for a reason. The owner told them he asked the defendant to sell. He asked the EFCC to recover their money.

Abimbola told him the owner would come in March 2017 and he met him. They had not informed the EFCC when the owner came. He relied on Abimbola and Akintunde in this transaction and they have not disappointed him till date. He met the owner in the compound and he told them to collect their money from the person they paid to.

He denied being the cause of the problem. If the defendant had paid them, they would not have gone to the EFCC and they went to EFCC to help them collect the money from the defendant. He denied not allowing his son to pay N22m. He was not re-examined and with his testimony, case for the prosecution was closed.

The defendant in her defence gave evidence as follows; She is a retired civil servant and lives at NO. 2. Erric-Manuel, Surulere Lagos. She knows why she is in Court. It is not true that she obtained under false presence or stole any money. She was in Court when witnesses for the prosecution gave evidence.

In 2015, her sister's cousin, Mr. Babatunde Junaid who lives outside Nigeria called to tell her he wanted her to dispose his uncompleted building located at Akobo Ibadan. He took her

to the property. He instructed her to sell and also look for another one to buy, so that the money would not be wasted. He told her his younger brother would give her keys to the building.

He said his Lawyer had been unable to sell the house for a long time. Not long thereafter the brother handed over the keys to her. She told Kunle Abimbola that she had a house to sell at Akobo. The owner gave her photocopies of his title documents. She gave Kunle Abimbola the keys and told him to tell her anytime the compound was over grown with weeds so that she could arrange the weeding. She gave the keys and copies of title documents to Kunle Abimbola in 2016. While he was with the keys they cut the grass 3 times.

Kunle Abimbola was taking people to see the property. Kunle Abimbola told her he had clients that were willing to buy the property. Before then, he told Kunle Abimbola that the owner wanted to sell for ₦25m. Kunle Abimbola told her it would be impossible to get a buyer for that amount. He brought 2 people who came with low prices and she rejected them.

On December 3rd 2016, She was carried out of the office very ill. While on admission, Mr. Kunle Abimbola called her that he had a buyer who was very serious. She told him she was on admission and that he should give him some time. He started mounting pressure on her that the buyers were willing to see her. She took permission from the hospital. One of the nurses was to follow her.

Herself, Alhaji Olonade, his agent and Kunle Abimbola met in her office. They asked her questions about the property and she told them it belonged to Mr. Babatunde Junaid. She told

them to go and conduct a search and they told her that has been done and that they found the property to be genuine.

AlhajiOlonade asked if he could see the original title documents and she told him she did not have the original. When price was being discussed, Alhaji Olonade insisted that he cannot pay more than ₦15m. She told him she would discuss the price with the owner. She instructed him not to pay the complete sum to Mr. Abimbola because the owner would be coming in March 2017. She asked them to pay the balance when the owner comes in March 2017. Alhaji Olonade agreed.

She asked them to do everything concerning the transaction through Kunle Abimbola because she was very sick. She told them she had to go back to the hospital. She was discharged on 13/12/2016. She told Jericho Nursing Hospital that she was still not well.

Her family asked her to come to Lagos for further treatment. While she was in Lagos, Mr. Abimbola called her that Alhaji Olonade had paid him N10m. He told him to hold on. He said he was going to prepare M.O.U and she asked him to drop it in her office. He confirmed visiting her office and being informed of her absence.

He said he wanted to transfer the money to her after deducting this own fee. She told him she would give him the go ahead very soon. Kunle Abimbola called her again on 18/12/2016 that he had deducted his own fee of ₦800,000. He transferred to her the sum of ₦9.2m piece meal because the account is a savings account which cannot transfer such a huge amount at once. Her own account is a salary current account.

While in Lagos, tests showed that she had impaired kidney function. Because of her state of health, she contemplated keeping the money with Kunle Abimbola or her people in case anything happened to her. She had to come back to Ibadan. She transferred part of the money to 3 people, namely Rasaki Omoniyi Abiola the sum of N2.5m, Alhaji Tajudeen Alabi about N3m and Abdullahi Yusuff about N3m. She paid cash into the accounts of Tajudeen Alabi and Abdullahi Yusuff. She informed the EFCC and phoned Mr. Omoniyi Abiola in the presence of the I.P.O Idris Sarumi. Alhaji Rasaki Omoniyi Abiola was invited and he made a statement. The amount she transferred to Abdullahi Yusuff and Tajudeen Alabi was significant. She does not know the whereabouts of the 2 people. Abdullahi Yusuff is out of the Country now. She has not been able to recover the money from them.

In January 2017, when she came back to resume work, the sickness relapsed. The driver took her out immediately. People suggested herbal treatment to her. That was how she started attending the herbalist at Olodo. She was attending every 3 days. While she was there, Kunle Abimbola called her on the phone that he had collected the balance of N5m from the Olonades. She said that was not their agreement that the balance has to be paid in March 2017 on arrival of the owner. She asked why he did not get in touch with her before collecting the balance. She told him to return the money immediately. He said he was asked to prepare Deed of Assignment and she said it was not possible to sign the Deed when the owner was supposed to come in March 2017. He said they were prepared to pay for

D.H.L services. She told him she would not accept that because he had deviated from their agreement. Alhaji Olonade also phoned her. She told him she was not well. He did not mention anything about repayment. Alhaji Olonade was dealing with her through Kunle Abimbola.

Before then Mr. Sunday Ikeh who claimed to be a Lawyer to the buyer has been calling her on phone in respect of the M.O.U and the Deed of Assignment. He requested for the owner's phone number. The owner refused to give his number because he was coming. One Sunday he met Ikeh at Boduja and she called the owner in his presence. The phone was put on speaker and he spoke to the owner. He asked if it was true the owner gave me the property to sell and he said Yes. The owner said because Naira had crashed he would not take anything less than ₦22m. The owner and Ikeh negotiated. Ikeh agreed to that price because he liked the property.

The owner eventually came. The buyer's agent the 2 Lawyers and herself met the owner. He said he would like to meet the buyers first before she transfers any money to him. At their meeting with the owner he confirmed that he gave her the property to sell. Alhaji Olonade asked if she had given the money paid to the buyer who said NO because he was no longer selling at ₦15m. At that point, Alhaji Olonade got angry and said they were not buying again. He asked for a refund of ₦9.2m. She agreed to refund the ₦9.2m and that was why she wrote exhibit 4. She has not paid back the money till today but she is making efforts. She was arrested the second day she left the EFCC again.

Cross-examined, she agreed Mojeed Yekini is an Islamic scholar who was preparing medication for her. She agreed she was taken to him by Alhaji Omoniyi Abiola. She was arrested at the house of Alhaji Mojeed Yekini. She does not know he was interrogated. She denied being treated for gonorrhoea by Alhaji Mojeed Yekini. The issue of price review was not stated in her extra judicial statement but denies that it is an afterthought. She authorized Kunle Abimbola to collect N10m from the Olonades. She consented to all the steps taken by Kunle Abimbola. She consented to Kunle Abimbola transferring N9.2m to her Zenith Bank account. She also consented to Abimbola taking N800,000 as his fees. At the outset, she undertook to enter into a memorandum of understanding when the deposit was paid. She did not renege but she was in the hospital. She told Abimbola the property was N25m but subject to negotiation.

The amount of N25m is not contained in exhibits 5 and 6 but herself and Abimbola discussed the figure of N25m as the asking price. None of the 3 people she transferred money to are members of Olonade family. She did not discuss the transfers with the Olonade family. They were purely private to her. Alhaji Abiola is related to her aunt who is in Ibadan. She gave Abiola N2.5m not N500,000. She gave him as a custodian not as lovers. She sent messages to the transferees why she was sending money to them. The money was paid between December 2016 and January 2017. Her principal arrived in March 2017. She told the owner the second day the payment was made but the owner asked her to hold on until after meeting

with the buyers. She told the owner in January. Abdullahi Yusuff and Tajudeen Alabi are her direct distant relations. A dealing in property is not all the time in writing. She was not re-examined and with her testimony, she closed her defence.

At the conclusion of trial, written addresses were filed and exchanged by both Counsel. At the adoption stage, Counsel for the defendant adopted his address dated 5/1/2018. He submitted that the genesis of this case is a commercial transaction which failed through the prosecution. He submitted that the appropriate thing to do is to file a civil action. He also submitted further that failure to bring one of those who took money from the defendant to court is fatal to the prosecution. That failure to Counsel is withholding evidence. He argued that the defendant did not spend the money on her children or ailment. He urged me to discharge the defendant because the prosecution has failed to prove its case beyond reasonable doubt.

Counsel for the prosecution adopted his address dated 5/2/2018 in support of the case. He urged me to hold that the prosecution proved its case beyond reasonable doubt and apply the law in the interest of justice.

In his address, Counsel for the defence identified the following issues for determination:

- (1) Whether from the evidence led and exhibits tendered the prosecution has proved its case beyond reasonable doubt.
- (2) Whether the facts of this case does not disclose Civil Case rather than Criminal case.

Arguing issue No. I, Counsel for the defendant submitted that to secure conviction on the 1st count, the prosecution must prove the following:

- (a) That defendant falsely made a representation
- (b) And the representation was as to future event

On the second count, he submitted that the prosecution must establish the following:

- (a) The defendant took the money
- (b) With intention of permanently depriving the owner of the money.

He submitted that the prosecution failed to prove the ingredients of the offences beyond reasonable doubt relying on section 135 (1 and 2) of the Evidence Act 2011 as amended. He equally relied on *Aigbadon vs. State* (2000) 4 S.C (pt. I) pg.1.

Going further, he submitted that the prosecution failed to prove the guilty intent of the defendant. He argued that actus reus without mens rea can never amount to a criminal action relying on *Omobowale vs. Ajasin* (1986) 3 s.C 178 at 255, *Ayo vs. State* (2008) 6 (ACLR) 220 AT 238 AND *Barah vs. Board of Custom Excise* (1981) 2 NCR 278 at 285.

Counsel analyzed the evidence led by the prosecution and posited that it does not reveal any crime. Counsel opined that what happened was a failed civil transaction. He argued further that there is variation between the false pretence charged and the evidence led. He posited that this is fatal to the case of the prosecution relying on *G.B Adeyemi vs. C.O.P* (1961) ALL NLR (pt. 1) 387.

On the stealing count, he submitted that no evidence was led in proof, therefore the count must fail. He referred to *Raymond Nwokedi vs. the State (1977) 3 S.C. 3*. He repeated that this case fails within breach of contract for which the owner has gone to court. He also submitted that a breach of contract cannot form criminal prosecution and that EFCC like the police is not a debt collector. He concluded by submitting that proof in a criminal trial is beyond reasonable doubt and that any lingering doubt must be resolved in favour of the accused person. For this submission, Counsel relied on the following cases:

- (1) Kalu vs. The State (1988) 4 NWLR (pt. 90) 503
- (2) Saidu vs. The State (1982) 4 SC 167
- (3) Ozaki vs. The State (1970) 4 SC 41 & 69 (F.G)
- (4) Ukorah vs. the State (1990) 1 NWLR (pt. 124) 92 at 115D.

He urged me to hold that the prosecution failed to prove the 2 counts charge and that this case falls within the realm of civil action for which the victim has gone to court for his money.

Counsel for the prosecution adopted the 2 issues formulated by the defence Counsel. He submitted that a case is said to have been proved beyond reasonable doubt when the prosecution has succeeded in proving all the essential elements of the offences charged.

For the definition of essential elements of a case, reference was made to *Onagoruwa vs. The State (1993) 7 NWLR (pt. 303) 49 at 85*.

On count one, he submitted that the prosecution must establish the following elements:

- (a) That there is pretence
- (b) That the pretence emanated from the accused person
- (c) That it was false
- (d) That the accused person knew of its falsity or did not believe in its truth
- (e) That there was an intention to defraud
- (f) That the thing is capable of being stolen
- (g) That the accused person induced the owner to transfer his whole interest in the property.

For these elements, Counsel referred to the following cases:

- (1) *Alake vs. State* (1991) 7 NWLR (pt. 205) page 567 @ 592
- (2) *Nwankwo vs. F.R.N* (2003) 4 NWLR (pt. 809) pg. 1 @ 37-38
- (3) *Nwudiwe vs. F.R.N* (2006) 10 NWLR (pt. 988) S.C.

Counsel submitted that the offence of obtaining under false can be committed by oral communication, in writing or even by conduct. He submitted that the essential ingredients enumerated above in proof of the offence of obtaining under false pretence are present in the instant case as shown by the evidence adduced by the prosecution. Counsel analyzed the evidence of the prosecution and submitted that elements a, b and c were proved by the prosecution witnesses in that the defendant misrepresented to the victims the actual price of the property in question. Counsel also referred to the promise of the defendant to enter into a memorandum of understanding

upon payment of the ₦10m deposit. The defendant reneged which is another evidence of misrepresentation.

Going further, Counsel reviewed the evidence of PW3 and submitted that it is clear that the defendant fraudulently obtained the sum of ₦9.2m by false pretence. He submitted further that the false pretence on the part of the defendant is very clear because at all material time, she knew the property was for ₦25m yet offered it for ₦15m. He therefore opined that by the actions and conduct of the defendant, the intention to induce the owner of the money Rasheed Olonade to part with his money was made manifest.

On how to prove the commission of crime, Counsel enumerated the following 3 ways namely:

- (a) Confessional statement or
- (b) Circumstantial evidence; or
- (c) Evidence of eye witnesses

In the instant case what they have is the confessional statement of the defendant. The defendant also in her oral testimony confessed to have received the sums paid by the victim through her agent PW2. Counsel is therefore of the opinion that the defendant can be convicted on her confessional statement without more. To counsel, the confession is direct, positive and unequivocal. Reliance was placed on *Omogu vs. FRN 2 MSJC 173 and Ebogbome vs. the State (1993) 7 NWLR (pt. 306) 38* for these submissions.

Counsel submitted further that by the confession, it showed that the defendant was not only dishonest but also had the intention to permanently deprive the owner of his money.

Counsel also referred to the failure of the defendant to inform the owner of the property of the money she collected on his property. He submitted that the law is that fraudulent conversion of money to the use of the taker or to the use of any other person is also obtaining. Reliance was placed on *Ajiboye vs. the State (2003) 8 NWLR (pt. 364) 587 at 599* for this submission.

Counsel referred to the confessional statement which the defendant sought to resile from in her oral testimony. Counsel listed the criteria the court should use in evaluating a confessional statement from which a defendant later resiled. The factors are the following:

- (a) Is there anything outside the confession which shows that it is true?
- (b) Is it corroborated in any way?
- (c) Are the relevant statements of fact made in it most likely to be true as they can be tested?
- (d) Did the accused have the opportunity of committing the offences?
- (e) Is the confession possible?
- (f) Is the alleged confession consistent with other facts which has been ascertained and established?

For these submissions, Counsel relied on the following cases:

- (1) *Akinmoju vs. State (2000) 6 NWLR (pt. 662) pg. 608 @ 628 paras B-D*
- (2) *Kareem vs. FRN (no. 2) (2002) 8 NWLR (pt. 770) 664 @ 683 paras. B-D*

Counsel then submitted that the evidence adduced by the prosecution has satisfied the requirements listed above since there is no dispute about the voluntariness of exhibits 5 and 6. Counsel urged me to give it full evidential value. He also opined that facts admitted need no further proof relying on sections 29 (1-3), 5 and 31 of the Evidence Act 2011. He also relied on *Ikpasa vs. A.G Bendel State (1981) 9 S.C 7*, *Asimiyu Alarape & Ors vs. The State (2001) 3 S.C.M I* and *Agbakoba vs. S.S.S (1994) 68 NWLR (pt. 351) 475*.

He posited that by section 137 of the Evidence Act, what is required is proof beyond reasonable doubt and not proof beyond any shadow of doubt. He submitted that the prosecution has proved all the essential elements of the offence of obtaining under false pretence contrary to section 1(3) of the Advanced Fee Fraud and other related offences Act as amended. For these submissions he placed reliance on the following cases:

- (1) *Ede vs. FRN (2001) 1 NWLR (pt. 695) page 502 515*
- (2) *Ayub Khanu vs. State (1991) 1 NWLR (pt. 172) page 127*
- (3) *Adigun Vs. A.G. Oyo State (1987) 1 NWLR (pt. 53) 678.*

He concluded by submitting that the defendant failed to show that there was no false pretence emanating from her.

On count 2, Counsel submitted that the essential elements are the following:

- (a) *That the thing stolen is capable of being stolen and of a value of more than N1000,00 (One Thousand Naira) only*

- (b) *That the defendant had the intention of permanently depriving the owner of the thing stolen*
- (c) *That the defendant was dishonest*
- (d) *That the defendant has unlawfully appropriated the thing stolen to her own use.*

Counsel analyzed the evidence led by the prosecution particularly exhibits 4-6. Counsel urged me to deduce from the evidence led the fact that the defendant converted the money paid to her to her own use without the knowledge of the owner of the property. PW1 and PW4, Counsel submitted entrusted the defendant with the money in question and she converted it to her own use. He relied on *Francis Akilapa vs. C.O.P (1981) O.Y.S.H.C 558 at 562 – 563 and Sagoe vs. Queen (1963) 1 ALL NLR 290*.

Counsel submitted further that the offence of stealing is completed the moment it is shown that the defendant took the money with intent to use it at her will even if she intended to pay it back afterwards to the owner. Reliance was placed on section 382 (2) of the Criminal Code, *Queen vs. Nwafor Orizu & Anor 14 W.A.C.A 455 and Ebeinwe vs. State (2011) ALL FWLR (pt. 566) 413 at 427*.

Counsel equally submitted that the evidence led by the prosecution showed that the defendant acted dishonestly. The dishonesty to Counsel is in not informing the owner about the payment and offering the property for sale at a lower price contrary to the instruction of the owner. The last element according to Counsel is the unlawful appropriation of the sum of ₦9.2m by the defendant. Exhibit 6 and the evidence of

PW1 and PW4 was relied upon to sustain this element.

Reliance was also placed on *Oyebanji vs. State (2015) LPELR 24 751 (S.C.)*.

Counsel urged me to reject the version given in court by the defendant and consider it an afterthought. *Sanni Idrisu Karmaliya vs. Sokoto State (1981) LPELR 1670 S.C* was relied upon for these submissions.

On the price of the property being ₦25m raised by the defendant in her oral testimony, Counsel urged me to disregard it since the prosecution never had the opportunity to cross-examine on it. It was an issue raised after the prosecution had closed its case. For these submissions, Counsel relied on *Oforlete vs. State (2000) 12 NWLR (pt. 681) 415 and Gaji vs. Paye (2003) 8 NWLR (pt. 823) pg. 583*. Since the issue of ₦25m was never raised in exhibits 5 and 6. Counsel urged me to regard it as an afterthought and discountenance it. On the ownership of the property stolen, Counsel referred to sections 385 and 387 of the Criminal code. Ownership could be from whom it is received or the person for whom it is received. A proof of either by the prosecution would discharge that onus. Counsel concluded that the prosecution has proved the charge against the defendant beyond reasonable doubt having proved each and every essential ingredient of the offence as charged.

Above is the comprehensive arguments of both Counsel: Let me quickly deal with the second issue formulated by the defence Counsel. Issue of suit NO. I/555/2017 between Kunle Abimbola vs. M. O. Adio was never before me.

Address of Counsel no matter how eloquent is not a substitute for evidence

The mere fact that a complainant in a case of obtaining by false pretence parted with his money through a contract with the person charged does not make the act of the person cease to be obtaining by false pretences. If the contract was induced by fraud the offence would be made out. I therefore disregard any submission touching on Suit No. I/555/2017.

My next port of call is the count of obtaining under false pretence. By virtue of the provision of section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act, any person who by false pretence and with intent to defraud—

- (a) Obtain from any other person in Nigeria or in any other country, for himself or any other person;
- (b) Induces any other person in Nigeria or in any other country to deliver to any persons; or
- (c) Obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, is guilty of an offence under the Act.

See *Amadi vs. FRN (2008) 18 NWLR (pt. 1119) 259 at 281 – 282.*

On the false pretence the defendant offered for sale the property for N15m when according to her, the owner wanted N25m. The word pretence, that is the act of pretending means to make a person believe in a situation, which in reality is not true. It also means an appearance or show to hide a reality a false show, or a sham. No wonder the defendant

prevented the property buyers from having direct access to the owner of the property. See *Michael Alake & Anor vs. The State (1991) 7 NWLR (pt. 205) 567 at 591.*

As rightly submitted by the prosecution Counsel the offence could be committed by oral communication or even by the conduct of the defendant. The defendant knew from the outset that she did not have the owner's mandate to offer the property for sale for ₦15m. Right in her presence, the owner denied knowledge of any payment to the defendant, though she claimed to have informed him in January 2017. The defendant deceived the buyers to believe that she had authority to sell the property for N15m. The deceit induced the buyers to part with ₦10m. From the evidence led, the defendant knew she was deceiving the buyers. The intent to defraud was apparent from the conduct of the defendant, for example, she refused to forward the M.O.U to the owner even when the buyers offered to foot the bill of sending same. There was indeed a mis-statement on the part of the defendant as to the actual price of the property in question. The fact of its falsity was very well known to the defendant.

The defence of the defendant is that she gave the money to 3 people for God knows what. Counsel for the defendant submitted that the prosecution failed to call the 3 as witnesses. That failure to Counsel is fatal to the prosecution's case. The number of witnesses the prosecution needs to prove its case against a defendant is entirely its responsibility and not that of the defence. The defence is not to decide for the prosecution who to call as witness. See *Ijiofor vs. The State (2006) 6*

NSCQR (pt.1) 209 and Okanlawon vs. State (2016) 12 NCC 469 at 526. The duty to call the 3 people mentioned by the defendant rests on her not the prosecution. The defence put forward by the defendant is therefore rejected because it stands logic on its head. The conclusion I have therefore reached is that the defendant is guilty of count I as charged and she is convicted accordingly.

Now to count 2 which is stealing: To convict the defendant for stealing on a charge including false pretence, the following must be established:

- (a) The charge against the accused must be in respect of obtaining anything by false pretences with intent to defraud
- (b) The subject-matter of the charge must be a thing capable of being stolen
- (c) The accused must have been proved to have stolen the thing
- (d) The evidence must have failed to prove the offence of obtaining by false pretences.

Count 2 is an alternative to count I. The graver of the 2 offences is obtaining under false pretence while the lesser one is stealing. To convict and sentence on both of two counts whereof the graver includes the lesser is tantamount to convicting and punishing the defendant twice for the same act. The proper course is if the defendant is found guilty of the graver charge, to abstain from finding any verdict on the lesser charge. See *O. S. Wilson vs. The Queen (1959) 4 FSC 175 at 177 and Saraki vs. Queen (1964) 1 NMLR 29*. Having found the defendant guilty

of count I, Count 2 will be dismissed since it is wrong to convict her on both counts as the count of stealing is an alternative to that of obtaining under false pretences. See *Olufemi Babalola & Ors vs. The State (1989) 4 NWLR (pt. 115) 204 at 268.*

I therefore dismiss count 2 of the charge.

ALLOCUTUS: Counsel for the defendant submitted that the quality of mercy is in droplets. He urged the Court to allow justice flow like water. The defendant is a first offender having meritoriously served this Country. There is an undertaking in line with section 356 of the A.C.J.L. on the part of the defendant to pay back. He also urge the Court to consider the present health condition of the defendant.

Dr. Ubi: No previous conviction is known about the defendant.

SENTENCE: By section 1(3) of the Advance Fee Fraud and other related Offences Act 2006 the minimum sentence on conviction is 7 years while the maximum is 20 years. The Sentence is without option of a fine. I have carefully considered the allocutus on behalf of the defendant and would therefore impose the minimum punishment. The defendant is therefore sentenced to 7 years imprisonment without the option of a fine.

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HON. JUSTICE O.M. OLAGUNJU

JUDGE

18/05/2018