

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

BEFORE THE HONOURABLE JUSTICE MASHUD A. A. ABASS - JUDGE  
THIS THURSDAY, THE 1<sup>ST</sup> DAY OF MARCH, 2018

BETWEEN:

SUIT NO: 1/6EFCC/2016

FEDERAL REPUBLIC OF NIGERIA .... COMPLAINANT/RESPONDENT

AND

CLAJIDE DILE OYEGBAMI .... ACCUSED/APPLICANT

Defendant is present.

O. A. Owotunji for Prosecution.

Sahced Oyebisi for the Defendant.

*M. C. M. M. Oyebisi 4/5/18*

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*M. C. M. M. Oyebisi*  
**ASST. CHIEF REGISTRAR**

JUDGMENT

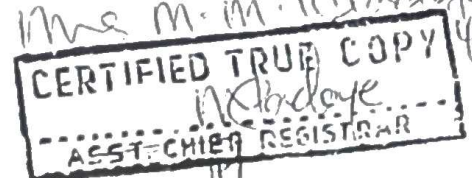


A seeming, (and to all intent and purpose) civil transaction for the purchase of land was initiated by the complainant (i.e. PW1) in October, 2015. The PW1 who got to know about the plots of land for sale by the defendant through a land agent, contacted the defendant through a telephone call and requested to purchase two plots of land from him. When the two of them later met, an oral agreement was reached for the purchase of two plots of land by the Complainant from the defendant. The PW1 paid a sum of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) as initial

deposit to the defendant, leaving a balance of the sum of ₦1,100,000.00. The payment of the initial sum was made by the PW1 after the defendant took him to his house and showed him his (defendant's) title documents and the layout of about 17 plots of land belonging to him that are for sale at Ile Tuntun, Ibadan. Each plot of land was offered for sale to the Complainant at the rate of One Million Eight Hundred Thousand Naira (₦1,800,000.00). The Defendant took the Complainant to the land in question at Ile Tuntun and the Complainant opted for plots 14 and 15. Despite the payment of the advanced sum of ₦2.5M, the defendant insisted that the PW1 must pay the balance of ₦1,100,000.00 before any agreement in respect of the sale could be entered into. In January, 2016, the PW1 transferred a sum of ₦1,100,000.00 into the defendant's account being the balance of the ₦3.6M earlier agreed upon. From the totality of the evidence led in this case, there appears to be no dispute between the prosecution and the defence on the above stated facts.

However, the Complainant and the Defendant started having problems after the full payment of the contractual sum. According to the prosecution, the defendant failed/refused to enter into the requisite agreement with the PW1 for the sale of the land nor could he deliver the land to the PW1. The Complainant reported this matter to the operatives of the EFCC when the defendant failed to pay back to him a balance of ₦2,500,000.00 after refunding a sum of ₦1,100,000.00 out of the ₦3,600,000.00 collected from him.

On the 7<sup>th</sup> of December, 2016, the Economic and Financial



Crime Commission filed a Criminal Information against the Defendant. The charge reads:-

"STATEMENT OF OFFENCE

Obtaining money under false pretence 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, Olajide Dele Oyegbami on or about the 10<sup>th</sup> of November, 2016 at Ibadan within the Ibadan Judicial Division of the Honourable Court, with intent to defraud, obtained the sum of Two Million and Five Hundred Thousand Naira (N2,500,000.00) only from one Igbeyemi Akinropo Enitan by falsely pretending, that it was the cost or price of two plots of land situate, lying and being at Ile-Tuntun, behind DSS Estate, Off Eleusonso Road, Ido Local Government Area, which you purported to have sold to him."

At the trial of this case, the prosecution called three witnesses. They are the Complainant as PW1 and two other witnesses who are officials of the Economic and Crimes Commission. I will make references to the evidence of these witnesses when necessary in the course of his Judgment. The Prosecution case is aptly stated in the third to the last page of the Final Written Address of the Learned Counsel for the Prosecution. (He neither paged nor number the

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paragraphs of his address). He said:

"The crux of the Prosecution case is that the Defendant is not only that he sold the land to another person, he also had no land to sell at the time he accepted to sell the plots of land (i.e.) Plots 14 and 15 situate and being at Abocasa Village, Ile-Tuntun Area, Ido Local Government Off Ekanusonso Road, Ibadan, Oyo State to PW1. Both PW2 and PW3 maintained that at the end of investigation they discovered that the Defendant has no land to sell when he transacted with PW1."

There is no doubt that the above quoted paragraph of the Final Written Address of the Learned Counsel for the Prosecution represents not only the crux of the Prosecution case against the defendant but also the foundation upon which the entire evidence led by the Prosecution was built and basically the facts being relied upon to secure the conviction of the defendant. The Learned Counsel for the prosecution graciously cited the case of: **ONWUJDIKE VS. F.R.N. (2006) 10 NWLR (PT. 988) 382** in his Final Written Address. In that case, the Supreme Court identified the essential elements of the offence of obtaining money by false pretence to be:-

- "(a) that there is a pretence
- (b) that the pretence emanated from the accused person;
- (c) that it was false;
- (d) that the accused knew of its falsity or did not believe in its truth;

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- (e) It is that there was an intention to defraud;
- (f) It is that the thing is capable of being stolen
- (g) It is that the accused person induced the owner  
in interest in the property."

The position of the law however is that in all criminal cases, the onus of establishing all the ingredients of an alleged offence or offences lie on the prosecution. It must be stated also that no onus is placed by law on the accused person to prove his innocence. The implication of the above is that, the onus of proof rest squarely on the prosecution and will not shift to the accused person. In addition, the Evidence Act 2011; by its provision in Section 135(1) requires that the prosecution must establish the guilt of the accused beyond reasonable doubt.

See:

**AKHIMEN VS. THE STATE (1987) NWLR (PT. 52) 598**

The Learned Counsel for the prosecution, Dr. B. Ubi has identified the lone issue for the determination of this case to be:-

"Whether the Prosecution has proved the essential elements/ingredients of these offences".

It must however be noted from the onset, that the defendant in this case is facing a one chance of obtaining money by false pretence and not offences. On the other hand, the Learned Counsel for the Defendant postulated for the determination of this case the lone issue of:-

"Whether from a consideration of the evidence adduced before the Honourable Court, the

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Defendant committed the offence of obtaining under false pretence with which he has been charged by the prosecution."

The issues as formulated by the Counsel on both sides are identical in all material particulars. Both are concerned with the determination of whether or not the prosecution has discharged the onus of proving the alleged offence against the defendant beyond reasonable doubt. It is on this premise that I will proceed to consider and determine this case.

The evidence given by the PW1 can be summarized this way. He approached the defendant for the purchase of two plots of land. He was shown a layout of 17 plots belonging to the defendant at Ilorin, Ibadan and he opted to buy plots 14 and 15. He told the Court that when he discovered that Plots 14 and 15 has been sold to somebody else, he was shown another land by the defendant and when he attempted to exercise rights of possession on the land by depositing blocks on the land, the block were broken by someone else who claimed that he had earlier bought the land. He then approached the defendant for a refund of his money (i.e.) a sum of ₦3,600,000.00 which he had paid to the defendant for the two plots of land. The PW1 said that after the intervention of a Retired Judge, the Defendant refunded a sum of ₦1,100,000.00 to him and that it was as a result of the failure of the Defendant to pay him the balance of the sum of ₦2,500,000.00 that he made a report to the Economic and Financial Crime Commission, which led to the arrest of the Defendant. The PW1, however admitted that in the course of

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the investigation by the EFCC, the defendant refunded to him the remaining balance of ₦2,500,000.00 through the officials of the EFCC. He also admitted that it was after the full refund of his total sum of ₦3,000,000.00 to him by the defendant, that the defendant was charged to this Court by the EFCC. The PW2 and PW3 are officials of EFCC who took part in the investigation of this case. These two witnesses stated that their investigations revealed that the defendant committed the offence for which he is facing trial before this Court. In the evidence in chief of PW3 (i.e. Ayo Anjonrin) he stated inter alia that:

"We discovered that construction was already going on, on the land and we saw some broken blocks. We also discovered that one Afonja Family had already paid a sum of ₦3.4M to the defendant in Mid October, 2015 before the defendant collected money in respect of the same land from the Complainant in November, 2015. We discovered that from the analysis of the Statement of Account of the defendant (i.e. First Bank Plc Statement of Account)".

"We made efforts to invite the said earlier buyer (i.e.) the Afonja Family, but the defendant refused to give us their contact address. Our investigation further revealed that as at the time the defendant collected money from the PW1, the defendant had no land which he was capable of selling in that area"

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I have quoted the above extract from the PW3 evidence before this Court, because it represents the main basis of the charge being pressed against the defendant by the prosecution. That is, the case of the Prosecution is primarily anchored on the fact that the defendant knew that Plots 14 and 15 were no longer available for sale when he collected money from the PW1 with the pretence of selling the same land which he had earlier sold to the Afonja Family to the PW1.

The PW3 however further told the Court that the defendant had refunded a sum of ₦1,100,000.00 out of the ₦3,600,000.00 to the PW1 before the PW1 reported the case to the EFCC and that during the investigation of the EFCC and before this case was brought to this Court, the defendant has paid the balance of ₦2,500,000.00 to the PW1.

The defence of the defendant is that after he was approached by the PW1, who told him that, he wanted to buy two Plots out of his parcel of land in Ile-Tuntun, Ibadan, he took the PW1 to the land and that the PW1 opted to buy Plots 14 and 15 out of his remaining land for sale at Ile-Tuntun. He said further that after the PW1 paid to him an advance of ₦2,500,000.00, he (the PW1) later paid the balance of ₦1,100,000.00 in January 2016. The defendant stated in his evidence that it was when the PW1 came to the land with his wife on the 5<sup>th</sup> of March, 2016 that the wife complained that she did not like the location of the land and the PW1 asked him whether he had other plots elsewhere which he could offer to him. He said that he then took both the PW1 and his wife to Ologun-eru where he

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showed them another two Plots of land belonging to him which the PW1 accepted, but that his wife started complaining about the road leading to Ologun-eru Area. That was (according to the defendant) on the 5<sup>th</sup> of April, 2016. The defendant as DW1 told this Court further that he left the Plots of land at Ologun-eru on that day together with the PW1 and his wife and that the PW1 promised to get back to him later and that on the 15<sup>th</sup> of April, 2016, the PW1 sent a text message to him and stated that because of the road at Ologun-eru and the fact that he has got another land through an agent, his money paid to him should be refunded. He then refunded a sum of ₦1,100,000.00 to the PW1 on the 26<sup>th</sup> May, 2016. He promised to pay the balance of ₦2,500,000.00 on or before the end of August, 2016 because he then had a medical problem. The defendant said that the PW1 agreed with him but that on the 29<sup>th</sup> of July, 2016, he was at a place where he was receiving treatment when the officers of the EFCC called him on phone and informed him that there is a petition against him. He later went to the Office of the EFCC with his friend where he made statements and later paid the remaining balance of ₦2,500,000.00. The defendant said that the investigators from EFCC visited the scene at Ile-Tuntun with him where they interviewed people who confirmed that the land belonged to him. He further said that plots 14 and 15 which he offered to the PW1 has not been sold to anybody and that the Sign Post which he placed on the said Plots 14 and 15 that they are not for sale is still on the land and that the land is still in its bushy state, as nothing has been done on the land. He stated further that the plots

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of land he sold to Afonja Family at Ile-Tuntun are plots 7 and 8.

When cross-examined by Dr. Ubi, the Learned Counsel for the prosecution the defendant said that he took the PW1 to Ologun-eru because the PW1 requested for an alternative land and that he had the legal authority to sell the land as at the time he sold it to the PW1 and that he has pending cases on the land.

Above is the summary of the evidence led on both sides of the divide in this case. By virtue of Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria, every person who is charged with a criminal offence is presumed innocent until he is proved guilty.

See:-

**ONYIFIOHA VS. I.G.P. (2009) 3 NWLR (PT. 1128)**

The prosecution must prove an offence beyond reasonable doubt. Although proof beyond reasonable doubt is not proof beyond any iota of doubt, but it is incumbent on the prosecution to prove all the essential elements or ingredients of the offence. See:-

**NASIRI VS. STATE (1999) 2 NWR (PT. 589) 87, and**

**ALABI VS. STATE (1993) 7 NWLR (PT. 307) 511**

The essential elements of the charge against the defendant in this case have been stated earlier in this case. One of these ingredients and no doubt the most paramount is the fact that the accused person must be shown to have made the false representation to the Victim/Complainant, knowing that the representation was false. That is, the defendant must have induced the Complainant to part with his money knowing fully well that the representation he was making to the complainant was false.

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See:-

**NWOKEDI VS. THE STATE (1977) 3 SC. 20**

In this case, the defendant is alleged to have offered to sell the two plots of land situate at Ile-Tuntun and particularly identified and described as plots 14 and 15 to the Complainant. It is not the case of the Prosecution that the land in question never belonged to the defendant. In fact all the prosecution's witnesses including the PW1 made it clear that the defendant owns certain plots of land at Ile-Tuntun, which included the plots 14 and 15 which are now the subject-matter of this case. But the Prosecution's case is that as at the time the Defendant offered the said two plots for sale to the PW1, he had already or earlier sold them to one Mr. Afonja and that by the purported sale to the PW1 after the Defendant has divested himself of the ownership of Plots 14 and 15 by the sale to Mr. Afonja, he has committed an offence of obtaining money by false pretence under Section 1(2) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 and is punishable under Section 1(3) of the same Act.

To establish the offence under Section 1(2) of the relevant law, the prosecution must establish that there was pretence of the Defendant which he made to the PW1 and that as at the time he made the pretence, he knew that it was false. The false representation made by the Defendant to the PW1 must also be shown to be intended to defraud the PW1.

In the instant case, the evidence led by the prosecution shows that it was the PW1 who approached the defendant on phone and

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kick-started the negotiation for the purchase of the land. It is also in evidence that after the initial discussion on phone, the Defendant met the PW1 at an agreed place before the defendant took the PW1 to his house (i.e. defendant's house) where he showed the PW1 the Layout of the Plots of land at Ile-Tuntun out of which the PW1 opted for Plots 14 and 15. This initial event took place in November, 2015. The PW1 then paid a sum of ₦2,500,000.00 to the defendant in the same November, 2015. The Defendant and the PW1 visited the land at Ile-Tuntun and the portion, i.e. Plots 14 and 15 were shown to the PW1. Between November 2015 and January, 2016 when the PW1 paid the balance of ₦1,100,000.00 to the defendant, there appears to be no problem between them. This is so because the PW1 would not have paid the balance of ₦1,100,000.00 to the defendant if he had any complaint over the Plots 14 and 15 which he contracted to buy from the defendant.

According to the prosecution, trouble started when the PW1 went to the land and discovered that some other people are laying claim to same and that the person laying such claim earlier bought the land from the defendant. The PW3 specifically named one Mr. Afonja as the person who claimed to have purchased the land earlier from the Defendant. The defendant on the other hand gave evidence to the effect that it was only in March, 2016 when the PW1 brought his wife to show the land to her that the wife complained that she did not like the location of the land and that, that was what prompted him to show the PW1 and his wife another land which belonged to him at Ologun-eru, Ibadan. It is the stories of the PW1

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and the Defendant on the issue of how the negotiations for the purchase of Plots 14 and 15 at Ile-Tuntun, Ibadan collapsed that the Court will examine to determine the culpability or otherwise of the defendant or the offence for which he is charged.

I must repeat again that the onus of proof of the offence alleged against the defendant rest squarely on the prosecution. The effect of this is that material evidence to the determination of the guilt of an accused person must be called by the prosecution. All the ingredients of an offence charged must be proved. Any person accused of a crime can only be convicted if evidence is adduced to prove the crime. All the items of evidence adduced must be scrupulously examined, analyzed and weighed to assess the substantiality of the testimonies and statements proffered and made.

See:-

- STATE VS. ONYEUKWU (2004) 14 NWLR (PT. 873) 340
- OGUNYE VS. STATE (1999) 5 NWLR (PT. 604) 548

I will emphasize here that the character of evidence required to be adduced in criminal trials are those of credibility and cogency which will make it safe for the Court to rely on it in coming to a just decision.

See:

- HASSIN VS. STATE (2001) 6 NWLR (PT. 709) 286
- ALONGE VS. STATE (1959) SCNLR 516

In the extra judicial statement of the defendant which he made to the Police on the 15<sup>th</sup> August, 2016, he did not only make it clear that the land which is the subject-matter of the present case

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together with some others belonged to him, he also stated that he contracted to sell Plots 14 and 15 to the PW1. The defendant stated further:-

"And Enitan said he would come and see me after when his wife had seen the Land. And he and his wife got to the land, he told me that his wife does not like the land due to the size and the location of the land. And we both agreed to go and inspect another land at Ologun-eru which also belong to me with proper registration. When we got there both of them like it and they said they will get back to me. And when Enitan will call me after some months, he said they are no longer interested on the land but instead would want a refund of the money because he want to take his wife abroad for delivery. I told him Mr. Egbeyemi Enitan to allow me re-sell the land to another person, so that I can refund his money back and since then we have been communicating on phone telling him the situation of things. When I got another buyer around May this year 2016".

From the contents of the above quoted paragraphs of the defendant's statement to the EFCC, it is clear that right from the time when he was arrested, he has consistently told the EFCC officials that he wanted to and had the necessary capacity to sell Plots 14 and 15 to the PW1, but that it was the wife of the PW1 who rejected the plots.

The investigators in this case only took the statement of the Complainant (i.e.) PW1 and called him as the only witness with the

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personal knowledge of what transpired between the PW1 and the defendant. The contents of the statement of the Defendant quoted above seem to have had no effect on the minds of the investigators. The wife of the PW1 was not called upon to either confirm or deny the fact that she was the one who rejected the land earlier inspected and paid for by her husband. She was not also called as a witness in this case. The investigators were confronted with the words of the complainant on one hand and that of the Defendant. They simply went for that of the PW1. The actions of the Defendant by making a refund of ₦1,100,000.00 to the Complainant even before the case was reported to the EFCC made no impression in the mind of the investigators. The fact that the PW1 and his wife were shown another land at Ologun-eru which they later rejected also have no effect on the mind of the investigators as to whether such a person like defendant really went out to cheat the PW1 or had a mere contractual relationship with him which for one reason or the other could not come into fruition.

It will be noted that the defendant stated in his statement (i.e. Exhibit 2) that it was after he sold the plot at Ologun-eru and he collected the deposit that he refunded a sum of ₦1,100,000.00 to the PW1.

From the circumstance of this case, the only way through which the Prosecution can establish fraudulent intent against the defendant is to show by credible and admissible evidence that Plots 14 and 15 were not available for sale as at the time the Defendant

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supported to offer them for sale to the PW1. Specifically, the prosecution through PW3 said that the land had earlier been sold by the Defendant to Mr. Afonja. No document of such sale or evidence of anybody who witnessed the sale was called by the prosecution. All that the PW2 and PW3 who were the investigators told the Court was that their investigations revealed that the Defendant had earlier sold the same land to Mr. Afonja and as a result of that, they believe that the Defendant has committed an offence for which he is being tried. I ask myself here, which investigation? I quickly answer that from the totality of the evidence led in this case by the prosecution; the investigation is no other than what the PW1 told the PW2 and PW3. In short, the PW2 and PW3 preferred everything the PW1 told them to that of the Defendant.

But I must say, that with due respect, the requirement of the law in relation to proof of an alleged offence bothering on criminality requires far more than that as the Evidence Act and all other relevant laws made provisions for proof of criminal liability to be beyond reasonable doubt. The prosecution in its desire to secure a conviction of a person accused of a criminal offence needs to do more than what the investigators did in this case. Conviction of a person for a crime can only be a product of discrete investigation and not an orchestration of the complainant's report or allegation; without clear efforts made to establish the truth of the matter.

In a criminal trial, the acts of the accused must be proved to

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be within the confines of the particulars of the offence. When the prosecution fails to prove the particulars stated in the counts, the accused person should not be convicted.

See:

**EMEKA VS. STTE (2001) 14 NWLR (PT. 734) 666**

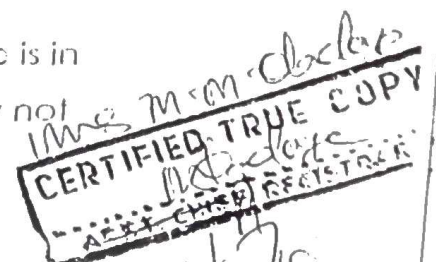
I hasten to add that the character of evidence required to be adduced in a criminal trial must be the type that will leave no reasonable person in doubt that the accused intended the commission of the alleged offence and indeed committed it. The role of an investigator or investigators is therefore very important. Investigation of a case is not fishing for every conceivable evidence in favour of the complainant to nail the defendant. Investigation is the ability to listen to both sides and find out the truth about the allegations and counter-allegations in order to ascertain whether the report made by the complainant have some elements of criminality which may warrant the prosecution of the person accused or complained against. It is not everybody reported to the Police that must be charged with a criminal offence. It is only those that are found to have committed a criminal offence after a thorough and discrete investigation carried out by a well trained officer that should be charged to Court.

In the case of:-

**FAWEHINMI VS. I.G.P. (2002) 7 NWLR (PT. 767) 606**

The Supreme Court said:-

"Investigation of Criminal complaint by the Police is in my view a preliminary course which may or may not



result in a criminal prosecution."

I therefore venture to say that the essence of investigation is not to at all cost slam a charge on a person accused of committing an offence. It is basically an invitation of the Investigating body to carry out an exercise of hearing from both the complainant and the accused in order to come out with an impartial and unbiased view as to whether or not there is any material evidence upon which the accused may be made to face the rigors of criminal prosecution.

In the 6<sup>th</sup> Edition of the Black's Law Dictionary, investigation is defined on page 825 as:

"To follow up step by step by patient enquiry or observation. To trace or track, to search into; to examine and inquire into with care and accuracy legal inquiry."

In the instant case, the Investigators, that is the PW2 and PW3 based their decision to charge the defendant to Court on their believe that the defendant intentionally obtained the sum of ₦2,500,000.00 from the PW1 by false pretence due to the fact that the defendant had earlier sold the same land (i.e. Plots 14 and 15) to one Mr. Afonja before offering the same plots to the PW1.

However, at the trial, the prosecution did not produce any evidence pointing to such earlier sale of Plots 14 and 15 to Mr. Afonja apart from the mere assertion made by PW3.

But the accused person in his defence called DW1, i.e. Mr. Afonja, who gave evidence to the effect that he bought plots 7 and

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8 from the defendant and not plots 14 and 15. He also tendered the document evidencing the purchase of Plots 7 and 8 by him.

The position of the law in such a situation as stated above has been succinctly stated by the Court in the case of:-

**RASANI VS. STATE (2011) 16 NWLR (PT. 1273) 251 at 254**

the Court said:-

"Accordingly, where the evidence led by the prosecution fails to establish a single element of the offence or the evidence led is not sufficient enough to rebut any defense raised by the accused, the prosecution would have failed in its duty to prove the offence charged and the accused would be entitled to an acquittal".

In the instant case, the prosecution has not only failed to prove the essential element of this offence, but has also failed to rebut the defence of the accused person to the effect that the said Plots 14 and 15 were never sold to Mr. Afonja. On this score, the defendant is entitled to an acquittal.

The PW2 and PW3 in their evidence and the Learned Counsel for the Prosecution in his Written Address copiously asserted that the defendant failed to co-operate with the prosecution by producing Mr. Afonja whom the prosecution alleged that the defendant had earlier sold Plots 14 and 15 to and that, that is suggestive of the defendant's culpability for the alleged offence. It is not the duty of an accused person to produce evidence and witnesses to prove

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that he did not commit the offence he is alleged to have committed. The duty is on the prosecution to whom he made statement to investigate and interview the witnesses named and bring them forward to prove that the accused did what he was alleged to have done. This is more so when it was the prosecution that is alleging that the defendant had earlier sold the land to Mr. Afonja.

See:-

**ONYIRIMBA VS. STATE (2002) 11 NWLR (PT. 777) 83**

There is no doubt that the evidence of Mr. Afonja or any document pointing to the sale of Plots 14 and 15 to him is very material to the case of the prosecution in this case. In this case, the prosecution did not call Mr. Afonja nor tender any document pointing to the sale of Plots 14 and 15 to him.

Where a material witness who ought to have been called by the Prosecution to testify on its allegation and who would have been subjected to cross-examination was not called, the allegation is left to speculation by the Court. In the instant case, the absence of the evidence of Mr. Afonja for the prosecution or any document pointing to the sale of Plots 14 and 15 to him is fatal to the case of the prosecution as the allegation that the defendant sold Plots 14 and 15 to the PW1 at a time when he had no capacity to sell or title to the land will remain a bare allegation not backed up by credible and admissible evidence. This is more so when the evidence of the PW1, PW2 and PW3 on this issue are purely hearsay evidence which

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is not admissible in law.

See:

ISAH VS. STATE (2010) 16 NWLR (PT. 1218) 132

In a charge of obtaining money by false pretence, it is not enough to show that the act of the accused person could have been intended to defraud the victim or to induce the owner to transfer his interest in the property but that he actually defrauded the victim and induced him to transfer his interest in the property. In this instant case, it is not enough that the prosecution called the PW1, PW2 and PW3 to show that the defendant was unable to deliver the land in question to the PW1, but it must be established by evidence that the collection of the money by the defendant from the PW1 was fraudulently induced and that the inducement led the PW1 to transfer the money to the defendant. The defendant gave detailed evidence of how the PW1 contacted him on phone and paid a sum of ₦2,500,000.00 to him even before he inspected the land. This evidence before the Court which has not been contradicted is that even after the payment of the full contractual sum of ₦600,000.00 in January, 2016, there was no problem between the PW1 and the defendant until March, 2016. It was only when the wife of the PW1 was shown the land that she rejected same on the ground that she did not like the location. Although the PW1 said that he left the land at Ile-Tuntun because he discovered that it has been sold to another person, however no evidence of such sale to another person was led by the prosecution except for

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*M. O. Olatokun*  
 4/5/18



the mere assertion by the witnesses for the prosecution.

The defendant however called Mr. Afonja as DW1. He is the person alleged by the prosecution to have bought Plots 14 and 15 from the defendant prior to the sale of same to the PW1. The DW1 denied ever purchasing Plots 14 and 15 from the Defendant. He said that he only bought Plots 7 and 8 on behalf of his client as an Estate Surveyor and Valuer. He tendered Exhibit 14 as the document evidencing the purchase made by his Client from the defendant. The DW1 said that he transferred the purchase price to the defendant's account on the 16<sup>th</sup> of October, 2015.

This is exactly where the problem lies in this case. This is so as the PW3 as one of the officers of the EFCC that investigated this case had told the Court that it is as a result of the fact that the Defendant's Account with the First Bank was credited with a sum of N3,400,000.00 by one "Afonja in Mid October, 2015" and that the money was paid for the same Plots 14 and 15, that the defendant is believed to have obtained money from the PW1 under false pretence. The Prosecution did not present any credible evidence in proof of the said sale of the land to Afonja by the Defendant. But when the defence called Mr. Afonja, he denied ever purchasing Plots 14 and 15 from the defendant. He further stated that the payment he made to the defendant through the transfer of a sum of N3,400,000.00 into the defendant's account on 16<sup>th</sup> October, 2015 was for Plots 7 and 8. He tendered Exhibit 14. On the face of Exhibit 14, it is clearly stated:-

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"AGREEMENT FOR THE SALE of land containing an area of 92 square meters situate, lying on Plots 7 and 8 on Olajide Oyegbami Layout at Ile-Tuntun Village. Off Eleruonso Road, Ibadan, Ido Local Government Area, Oyo State of Nigeria"

Exhibit 14 has totally knocked off the entire legs upon which the prosecution's case stands. This is so as the defence has not only established that Plots 14 and 15 were not sold to Mr. Afonja as alleged by the Prosecution, but also created doubt in the mind of the Court that the defendant knew that he had no title in Plots 14 and 15 that he could pass to the PW1 as at the time he contracted to sell same to the PW1. The above stated facts coupled with the evidence on record to the effect that the defendant has refunded a sum of ₦ 100,000.00 to the PW1 ever before the PW1 wrote the Petition against the defendant and the fact that when this matter was being investigated by the EFCC, the Defendant paid up the balance of ₦2,500,000.00 has created doubt in the mind of the Court as to whether the defendant had any intention to induce the PW1 to part with his money under false pretence.

Investigations of crimes by any governmental body saddled with such responsibilities, particularly in cases that are to be prosecuted in law Courts is expected to be professional, thorough and diligent and not sentimental. It should not be centered on developing or building up whatever report made, however frivolous, but must be an impartial process of discrete examination of both the complainant case and that of the defence. Investigation entails a

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 ASSISTANT REGISTRAR  
*4/5/15*

consideration of the story of both sides to a dispute and not fishing about for any flimsy or minute fact to nail one side in favour of the other.

See:-

**AIGBADIION VS. STATE (2000) 7 NWLR (PT. 666) 686**

**JAMMAL VS. STATE (1999) 12 NWLR (PT. 632) 582**

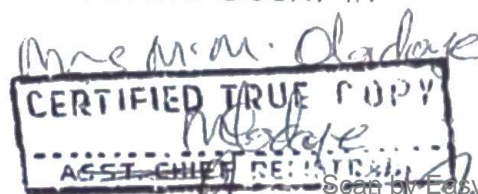
In the instant case, there is nothing to indicate that proper and full investigation of the incident which led to the real dispute between the PW1 and the defendant over the purchase of Plots 14 and 15 was conducted by the Investigators. The Courts are always enjoined to ensure that all the evidence adduced by both the prosecution and defence and all applicable laws are carefully scrutinized and intensely and microscopically examined before any pronouncement on guilt or otherwise of an accused person. The onus is on the prosecution to prove that the person charged with the commission of an offence indeed committed the said offence. Where in any criminal prosecution, there exist doubt in the mind of the Court (having regard to the evidence led by the prosecution) that the accused person committed the alleged offence, such doubt must be resolved in favour of the accused person.

See:

**BABUGA VS. STATE (1996) 7 NWLR (PT. 460) 219**

**UZOKA VS. FRN (2010) 2 NWLR (PT. 1177) 118**

Although it is not essential to prove a case with absolute certainty the ingredients of the offence charged, however, must be proved as required by law and to the satisfaction of the Court. In





In the instant case, the criminal charge and the ingredients of the offence of obtaining money by false pretence preferred against the Defendant has not been proved beyond reasonable doubt.

I hold that the prosecution has failed to prove the case against the defendant as charged. The defendant is accordingly discharged and acquitted.

*[Handwritten signature]*  
HON. JUSTICE MASHUD A. A. ABASS  
JUDGE  
01/03/2018

*M.A.A. Abass*  
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*[Signature]*  
ASST. CLERK REGISTRAR

*[Handwritten signature]*  
HIGH COURT REGISTRAR  
04 MAY 2018  
IBADAN.