

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP:
COURT CLERKS:
COURT NUMBER:
CASE NUMBER:
DATE:**

**HON. JUSTICE S.E. ALADETOYINBO
M.S. USMAN & OTHERS
HIGH COURT FOUR (4)
FCT/HC/CR/34/2008
31ST MARCH, 2015**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

1. DOGO WILLIAMS) - ACCUSED PERSONS

J U D G M E N T

Two Accused persons namely Dogo Williams and Isah Abdullahi were arraigned before this court on the 24th Day of June 2009 for six count charge of obtaining money under false pretence contrary to Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under Section 1(3) of the same Act.

The name of the 2nd accused Isah Abdullahi only appeared in the 1st and sixth count charge. The amount collected by the 2nd accused from the nominal complainants was fully paid back to the nominal complainants before the arraignment of the two accused persons before this court; since the money was fully paid

before the arraignment, it can well be argued that no offence had been committed by the 2nd accused who paid the money, notwithstanding the accused pleaded guilty to Count one, he was given an option of fine to pay N20,000.00 (Twenty Thousand Naira) or go to two years imprisonment. The 2nd accused paid the money and he was released remaining only one accused which is the 1st accused person, Dogo Williams.

The six counts charge with which the accused was arraigned on the 24th Day of June 2009 are as follows:

COUNT ONE:

That you Dogo Williams and Isah Abdullahi sometimes in April 2007 at the Wuse General Market within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud conspired amongst yourselves to commit an offence to wit:

Obtaining money by false pretences and thereby committed an offence contrary to Section 8(9) of the Advance Fees Fraud and Other Fraud Related Offences Act No.14 of 2006 and punishable under Section 1(3) of the same Act.

COUNT TWO:

That you Dogo Williams and Isah Abdullahi sometimes in April 2007 at Wuse General Market within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud obtained by false pretence the sum of N290,000.00 (Two Hundred and Ninety Thousand Naira) only from one Nicholas

Maduka on the pretext of securing and letting out a shop space to him at the Market when you knew you had no such shop space for letting and thereby committed an offence contrary to Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under Section 1(3) of the same Act.

COURT THREE:

That you Dogo Williams sometimes in August 2007 at Wuse General Market within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud obtained by false pretence the sum of N350,000.00 (Three Hundred and Fifty Thousand Naira) only from one Tony Uche on the pretext of securing and letting out a shop space to him at the market when you knew you had no such shop space for letting and thereby committed an offence contrary to Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under Section 1(3) of the same Act.

COUNT FOUR:

That you Dogo Williams on or about the 13th September 2007 at Wuse General Market within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud, obtained by false pretence the sum of N740,000.00 (Seven Hundred and Forty Thousand Naira) only from one Stanley Nwosu on the pretext of securing and letting out a shop space to him at the market when you knew you had no such shop space for

letting and thereby committed an offence contrary to Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under Section 1(3) of the same Act.

COURT FIVE:

That you Dogo Williams on or about the 18th July 2007 at Wuse General Market within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud, obtained by false pretence the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) only from one Chiddy Cam and his son Chimizie Nwachukwu on the pretext of securing and letting out a shop space to him at the market when you knew you had no such shop space for letting and thereby committed an offence contrary to Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under Section 1(3) of the same Act.

COUNT SIX:

That you Dogo Williams on or about 22nd August 2007 at Wuse General Market within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud obtained by false pretence the sum of N400,000.00 (Four Hundred Thousand Naira) only from one Ede Ifeanyi Chukwu on the pretext of securing and letting out a shop space to them at the market when you knew you had no such shop space for letting and thereby committed an offence contrary to Section 1(1) of the

Advance Fee Fraud and Other Fraud Related Offences Act No.14 of 2006 and punishable under Section 1(3) of the same Act.

The 1st accused, Dogo Williams pleaded not guilty to the six count charge.

The prosecutor called five witnesses to establish the case against the accused person, while the accused person gave evidence for his own defence. Various documents were tendered by the prosecution witnesses; the 1st person to give evidence is Edeh lfeanyi PW1. He told the court that the accused approached him that No. B31 Shop 4 Wuse Market was vacant and that the landlord of the said shop is one Odegba, on the basis of the presentation by the accused, he paid the sum of N740,000.00 (Seven Hundred and Fourty Thousand Naira) only to the accused which represent two years rent. The N700,000.00 is for the two years rent while N40,000.00 represented agency fee for the accused person; the receipt of N740,000.00 was given to the witness by the accused person, same was admitted in evidence as Exhibit A. PW1 came to realize later that the accused person faked Odegba as the landlord; the said Odegba does not exist. The accused did not refund the money paid by PW1 neither was the witness given a shop, the accused was reported to the Police where the made an undertaking dated 4/10/2007 to pay back the N740,000.00 to the witness; the written undertaking was admitted in evidence as Exhibit B.

PW2 one Nwachukwu, a trader in Wuse Market Abuja, was looking for Half Shop. The accused approached PW2 and told him that

half shop existed at No. B15 Shop No. 12 Wuse Market, Abuja. The accused took PW2 to the said shop and asked him to pay N600,000.00 (Six Hundred Thousand Naira) only. PW2 made a deposit of N400,000.00 and promised to pay the balance later. PW2 was given receipt by the accused person which was admitted as Exhibit C. Subsequently, the accused continued to ask for the balance of N200,000.00 from PW2 which he refused to pay because the accused had been exposed as dubious character at the Wuse Market. The witness demanded for the refund of N400,000.00 from the accused which he refused to pay, the accused was reported to the Police. The owner of the shop which the accused promised to let out to PW2 was not aware that his shop was to be let out by the accused person. When the landlord became aware of the deal, the landlord made the accused to sign Exhibit D including PW2 and himself. Exhibit D is an agreement to the effect that accused would refund the sum of N400,000.00 to PW2.

PW3 is one Nicolas Maduka, a businessman doing business at Wuse Market Abuja. Around June 2007, accused approached him and told him that a vacant shop exist for rent, PW2 indicated his interest to rent the shop. PW3 paid the sum of N370,000.00 to the accused at two installments, the accused gave two written notes to PW3 as receipts where he stated the amount collected from PW3. The two notes were admitted as Exhibits E1 and E2 respectively. The witness demanded for the shop he paid for, but the accused refused to give him any shop. It was at this point that PW3 realized that the accused had no shop to let out. He

therefore requested for the money he paid, the accused refunded the sum of N100,000.00 to PW3 remaining the balance of N270,000.00, PW3 thereafter reported the accused to the Police, accused was arrested, at the Police Station the accused made an undertaking to pay back the money but the balance was never paid.

PW5 Tony Uche a businessman at Utako Market. He knew the accused as agent who used to get shop for people.

In July 2007, PW5 approached the accused person for shop and subsequently paid the accused the sum of N250,000.00 upon request by the accused person. The said sum represent one year rent; it was paid to the accused at two installments by PW5, the accused gave PW5 a receipt and later made a written agreement with PW5. The receipt was admitted in evidence as Exhibit H1 while the agreement was admitted in evidence as Exhibit H2. The accused did not refund the money collected from PW5 nor give any shop to PW5.

The right of the accused to cross-examine PW4 and PW5 were foreclosed because he refused to cross-examine them after several adjournments. The accused cross-examined PW1, PW2 and PW3 but refused to cross-examine PW4 and PW5 after he had been given the opportunity to do so; he insisted on getting a lawyer of his own choice. The accused even rejected a lawyer from Legal Aid Council insisting on a lawyer of his own choice.

PW4 Ibrahim Shugaba was the I.P.O. who obtained the statements of the accused person. Exhibits G1, G2 and G3 respectively, the statements were written by the accused person in his own handwriting but he insisted that he was tortured before he wrote those statements. The statements of the accused person were admitted in evidence after a well-conducted trial-within-trial.

The accused person gave evidence for his own defence as DW1. He claimed to have office at Wuse Market where he helps landlord to rent out their shops to prospective tenants and that he had been doing that for three years before he was arrested by EFCC; he normally collect agency fees from the tenants. The accused further stated that two of the nominal complainants made part-payments and demanded their money back but the landlord who is in possession of the money told them to wait until another tenant made payment then that their money would be refunded. One of the nominal complainants who made full payment the landlord told him to exercise patience.

The accused claimed to know PW2 Chimezie Nwachukwu who paid N400,000.00 for half shop remaining the balance of N200,000.00 which he never paid the accused claimed that the N400,000.00 PW2 paid was remitted to the landlord; he further claimed to make an agreement with PW2 to pay back the money but PW2 refused and joined others to report the matter to EFCC; accused blamed his incarceration for not paying back the money to the nominal complainant.

Accused also claimed to know PW1 Ifeanyi, accused claimed that PW1 approached him for letting of a shop, he took PW1 to the landlord, PW1 paid the landlord N700,000.00 while accused was paid N40,000.00 as agency fees, accused forgot the name of the landlord but the landlord gave receipt to PW1, it is the view of the accused that PW1 was not patient enough to wait for the landlord for the shop.

Accused claimed to know PW3 Nicolas Maduka who approached him for a quarter of a shop; he therefore took PW3 to the landlord Yisa Abdullahi whom he paid N350,000.00. PW3 claimed not to be interested in shop and the landlord refunded N100,000.00 back to PW3 remaining the balance of N250,000.00. the accused further claimed that PW3 had been settled without stating how he had been settled.

Accused also claimed to know Tony Uche PW5 who also came to his office to rent a shop; he took PW5 to the landlord and PW5 paid N250,000.00 to the landlord. PW5 paid the accused N20,000.00 as agency fees, accused claimed to make agreement with PW5 to refund his money collected as rent. PW5 was not also patient enough; he was reported to EFCC by PW5.

After the conclusion of evidence, parties filed their written addresses. The court had gone through the written addresses filed by the parties, since same form part of the record of this court, it is not necessary to summarize same again.

The question that arise is whether the prosecution have established all the essential ingredients of obtaining money by false pretence with intent to defraud contrary to Section 1(1) of the Advance Fee Fraud and Other Fraud related Offences Act No. 14 of 2006.

Count Two – Six relate to the above section while the 1st count relate to the offence of conspiracy contrary to Section 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under Section 1(3) of the same Act.

No shred of evidence was given by the prosecution witnesses about the accused conspiring with any other person to commit the offence in count one. The accused person is hereby discharged and acquitted in respect of Count one of the six counts charge. See NORATURNOCHA v STATE (2011) 6 NWLR (Pt 1242) P 170 where the court held as follows:

“The prosecution has to prove all the essential elements of the offence as contained in the charge, while discharging the responsibility of proving all the ingredients of the offence, vital witnesses must be called to testify during the proceedings. Before a trial court comes to conclusion that an offence had been committed by an accused person”

In trying to see whether the prosecution had established the ingredients of counts 2 – 6, we have to state the ingredients of the remaining five counts charge which border on obtaining money by false pretence with intent to defraud contrary to Section 1(1) of

the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006. Ingredients of offence of obtaining by false pretence are stated as follows in the case of ONWUDIWE v F.R.N. (2006) 10 NWLR Pt 988 Pg 382 at 394 where the Supreme Court stated as follows:

"In order to succeed in the charge of obtaining by false pretence, the prosecution must prove:

- (a) That there is a 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.***

The offence could be committed by oral communication, or in writing, or even by conduct of the accused person".

The evidence of the prosecution witnesses who are the victims of fraud is overwhelming, their evidence is to the effect that the accused pretended to have shop to let for them, whereas the accused did not have any shop to let and the accused knew that he did not have any shop to let. The whole purpose of allowing the witnesses to part with their money to him is to defraud the four witnesses, money collected from the four witnesses are capable of

being stolen, the accused person induced the four witnesses to part with total sum of N1,382,500.00 to the accused which the accused refused to refund to the four witnesses.

Accused in one of his confessional statement dated 3rd Day of July 2007 stated as follows:

"I Dogo Williams have undertaken before the EFCC's Office FCT Unit Abuja. That I will refund the sum of N1,382,500.00 (One Million, Three Hundred and Eighty Two Thousand, Five Hundred Naira) only before this office on or 11th Day of December 2007 unflinchingly".

**(Sgd)
3/17/2007**

The accused never kept to his promise, no money was paid back to the victims of the fraud. The accused denied in his statement on oath that he collected money from the four witnesses, he stated that the victims of the fraud paid directly to the landlord and that what he benefitted was agency fees, but in his confessional statement admitted before this court as Exhibit G1, G2 and G3 accused accepted collecting various amounts from the prosecution witnesses, confessional statement is sufficient to ground conviction. See *F.R.N. v IWEKA* (2013) 3 NWLR (Pt 1341) P. 285 where the court held as follows:

"In appropriate cases, an accused person can be properly convicted on his or her confessional statement alone. Although it is always desirable to have some evidence

outside the confession in further proof of the offence; the absence of such additional evidence would not necessarily prevent a court from convicting on the confessional statement alone provided the statement satisfies the test of being positive, direct and unequivocal”.

Apart from the confessional statement, there are overwhelming oral evidence from PW1, PW2, PW3 and PW5, the evidence of PW1 sustained and established Count No. Six.

The evidence of PW2 Chimezie Nwachukwu sustained and established Count Five, the evidence of PW2 Nicolas Maduka sustained and established Count No. 2, while the evidence of PW5 Tony Uche sustained and established Count No. Three, the evidence of PW4 is that of the I.P.O. who obtained the statement of the accused person.

The undertakings made in writing to pay the money back to the victims including the receipts issued by the accused were equally overwhelming evidence against the accused person; although the accused denied ever making such undertaken nor issue any receipt, that would not preclude this court from admitting same in evidence. See F.B.N. PLC v TSOKWA (2004) 5 NWLR Pt 866 Pg 27 at 310 where the court held as follows:

“I think the issue of admissibility of document largely relates to the relevance of such document in the matter. Admittedly, the respondent denied that it was his signature that was on the withdrawal form. The mere fact that

signature on a document is denied or that person who signed it is not known does not ipso facto render it inadmissible"

In addition, this court can compare the signatures of the accused in the various documents including the receipts under Section 101 of the Evidence Act 2011 and draw conclusion. See GBOKO v STATE (2007) 17 NWLR (Pt 1063) 272 CA where the court held as follows:

"As was pointed out by the lower court, the above provisions of Section 108(1) of the Evidence Act (now section 101(1) of the Evidence Act 2011) gave the court the power to make the comparison. There is no provision that before the court can invoke that power parties must first address it".

It is the duty of the prosecution to establish or prove the charge against the accused person; this court is satisfied that the prosecution had discharged the burden placed on it by law. The prosecutor had established the guilt of the accused person beyond reasonable doubt, the accused is hereby found guilty on the five count charge which is Count No. 2 – 5. See NJOKU v STATE (2013) 2 NWLR (Pt 1339) P. 548 where the court held as follows:

"it is the duty of the prosecution to establish or prove the charge/case against an accused person. In other words, it is the prosecution that bears the burden of proving the guilt of the accused person. For the court to come to conclusion

that the prosecution has discharged the burden placed on it by law; it must be satisfied that the proof is beyond reasonable doubt"

When is a criminal case proved beyond reasonable doubt? See IWUNZE v F.R.N. (2013) 1 NWLR (Pt 1334) Pg 119 where the court held as follows:

"Commission of crime is proved beyond reasonable doubt when the evidence against the accused is strong and cogent enough as to leave only a remote probability in his favour that can be dismissed with the sentence "of course it is possible, but not in the least probable" that he committed the offence. After all proof beyond reasonable doubt is not proof beyond all shadow of doubt"

The prosecutor insisted that if the accused is found guilty of the five count charge, the court must impose the maximum sentence provided by law under the Advance Fee Fraud and Other Related Offences Act No. 14 of 2006. The minimum sentence is 7 years imprisonment without an option of fine; the court does not agree with the submission of the prosecutor in the face of many decided authorities. See the Supreme Court case of AMOSHIMA v THE STATE (2011) 14 NWLR (Pt 1268) P 530 where the court held as follows:

"Where the sentence prescribed upon conviction in a criminal charge is a term of years of imprisonment, then estimating factors such as the age of the convict, whether he

is a first offender, etc can be taken into consideration by the trial court in passing the sentence on the convict, indeed, the trial court has the discretion to employ these factors to reduce the years of sentence. But in a charge where the sentence prescribed is only death, it is not within the competence of a trial court to exercise any judicial discretion to reduce the death sentence to a term of years"

See also the case of MUSA v STATE CA/K/320/C/2008 also cited as (2012) 3 NWLR Page 59 where the court held as follows:

"Issue of sentence is discretionary on the part of the trial court. But the said discretion must be exercised judicially and judiciously. In the exercise of such discretion, the trial court must be conscious of the bounds within which he is kept by the law and must not exceed the same. He must not and will never pass any sentence in excess of the term of years or months stipulated by the law. It can nevertheless pass a less sentence than that provided by the law having regards to the facts and circumstances of each case. It is desirable that in exercising its discretion over sentence, a trial court should state in its judgment the factors that influenced its decision"

The accused is hereby convicted on Count No. 2 – 6.

Allocutus

Defence Counsel – We urge the court to temper justice with mercy in passing the sentence on the accused person.

The accused is a 1st offender; there is no record of earlier conviction. We urge the court to take into consideration the time accused had been in prison custody while the trial last.

Prosecutor – We are leaving the sentence to the discretion of the court.

The accused person is hereby sentenced to five years imprisonment with effect from 6th Day of July 2010 on each Count from Count 2 to Count No. 5.

The terms of imprisonment to run concurrently. The court decided to be lenient with the accused because he is a first offender and some of the witnesses claimed to have had dealing with the accused where accused exhibited honesty before the transaction that went sour.

(Sgd)
Hon. Justice S. E. Aladetoyinbo
(Presiding Judge)
31/3/2015