

IN THE COURT OF ANAMBRA STATE OF NIGERIA  
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION  
HOLDEN AT NNEWI.

BEFORE HIS LORDSHIP, THE HON JUSTICE O. M. ANYACHEBELU ON  
TUES THE 23<sup>RD</sup> DAY OF JAN 2018.

SUIT NO HN/ 42C/2010:

**BETWEEN:**

THE STATE

**APPLICANT**

**AND**

HENRY NWOSU

**DEFENDANT**

**JUDGMENT**

The charge in respect of this case was initially filed on 17<sup>th</sup> December 2010. It was then a one count information of obtaining by false pretence contrary to Section 1 (3) of the Advance fee fraud and other related Offence Act, 2006.

The particulars of offence were supplied. It was one of the cases inherited by this court upon transfer to the Nnewi Judicial Division. Several other reasons had prolonged the trial, for example applications for adjournment to get the Defendants to attend. etc.

Be that as it may, plea was initially taken on 10<sup>th</sup> February 2014. The Defendant pleaded not guilty. Before trial started, the prosecution prayed for leave to amend the charge by way of substitution. The order granting leave to amend was thus made on 20<sup>th</sup> May 2014.

Actual trial started on 20<sup>th</sup> May 2014 with the evidence of PW1. Altogether two (2) witnesses testified for the prosecution. The prosecution tendered fifteen (15) exhibits. The case of the prosecution was closed on 18<sup>th</sup> February 2016.

The defence opened on 22<sup>nd</sup> September 2016 with the evidence of the Defendant who testified as DW1. He was a lone witness. He did not tender any exhibit.

After the close of the case for the defence, the prosecution again prayed for leave to amend the charge with regards to the amount in question. The application was granted and the charge was further amended in terms of the

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amended charge filed on 30/3/2017. The amended charge which formed the basis of this trial is thus;

**COUNT 1** – That you, Henry Nwosu and some other persons at large between the 1<sup>st</sup> day of June 2006 and 31<sup>st</sup> day of December 2007 at Akamili Umudim Nnewi in the Nnewi Judicial Division did by false pretence and with intent to defraud, obtain from Sir Gabriel I. K. Momah the sum of N14,000,000.00 (fourteen million naria) under the false pretence that you sold a piece of land situate at Umuele, Umudim Nnewi to him, a representation which you knew to be false and thereby committed an offence contrary to Section 1 (3) of the Advance fee fraud and other related offence Act, 2006.

The Defendant yet again pleaded not guilty to the charge as amended. The parties subsequently filed their written addresses without further evidence.

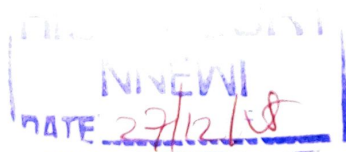
The evidence before the court can be summarized thus;

PWI was one Gabriel Ikechukwu Momah who is also the complainant in this case. He told the story of how in June 2006, the Defendant and his elder brother, one Bartholomew Nwosu came to his shop to tell him about a piece of land measuring 24 Plots which they proposed selling and ploughing the proceeds of the sale into their business of motorcycle tyre and tubes which was incidentally the PWI's line of business too. According to them, the land in question is situate opposite Nnewi North Local Government Secretariat.

The Defendant and his brother further brought the documents of title numbering six (6) and showing how the land was purchased.

The six (6) number documents were admitted and marked as follows:

1. Exhibit P1 – Deed of Assignment between Mrs. Catherine Arinze and Henry Nwosu dated 12/4/2003.
2. Exhibit P1 (a) – Deed of Conveyance between Mrs. Patty Arinze and Mr. Henry Nwosu dated 7/2/2004.
3. Exhibit p1 (b) – Deed of Conveyance between Mrs. Patty Arinze and Henry Nwosu dated 16/4/2005.
4. Exhibit P1 (c) – Deed of Conveyance between Patricia Arinze and Henry Nwosu dated 25/11/2006.





5. Exhibit P1 (d) – Deed of Assignment between Chukwuma Okoye and Henry Nwosu dated 2007.
6. Exhibit P1 (e) – Deed of Assignment between Mrs. Azuka Okoye and Henry Nwosu dated 2007.

PW1 then demanded to see the land and was shown the land by the Defendant and his brother. After inspection, they agreed on a price of N14 million. Prior to the said transaction, the Defendant and his brother were unknown to the PW1.

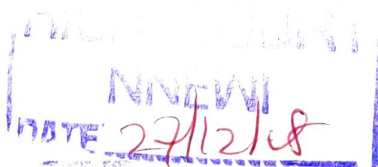
The Defendant and his brother indicated that payment of the land should be with the goods of the PW1 being Golden Racing Horse and Kenda Tubes and Tyres, instead of cash. The parties thereafter entered into an agreement.

The several documents said to have been entered into serially and in bits were admitted as exhibits and marked as follows:

7. Exhibit P2 – Deed of Conveyance between Henry Nwosu and Sir Ikechukwu Momah dated 20/10/2006.
8. Exhibit P2 (a) – Deed of Conveyance between Henry Nwosu and Sir Gabriel I. K. Momah dated 3/4/2007.
9. Exhibit P2 (b) – Deed of Conveyance between Henry Nwosu and Sir Gabriel I. K. Momah dated 4/5/2007.
10. Exhibit P2 (C) – Deed of conveyance between Henry Nwosu and Sir Gabriel I. K. Momah dated 15/5/2007.
11. Exhibit P2 (d) – Deed of Conveyance between Henry Nwosu and Sir Gabriel I. K. Momah dated 22/9/2009.

The agreement between the parties was that some part of payment for the lands would be invested in goods while the remaining would be paid in cash. The Defendant eventually collected the goods of the PW1 and was issued receipts to that effect, and in his custody.

The 28 number duplicate copies of sale invoices totaling N9,424,000.00 (nine million, four hundred and twenty four thousand naira) were admitted as a bundle and marked as Exhibit P3.



PW1 subsequently paid some amounts of money to the Defendant in cash. No receipt was issued to him by the Defendant to that effect. PW1 however issued payment vouchers to the Defendant which he duly signed. The 25 number payment vouchers yielding a total sum of N3,014,350 were admitted and marked as Exhibit P4.

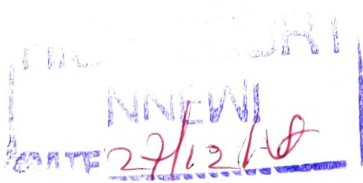
Thereafter, the Defendant demanded money from the PW1 to effect survey of the land. The PW1 obliged and gave him the sum of N300,000.00 (three hundred thousand naira). No receipt was issue to PW1 and till date, the said survey was never effected. The Defendant again demanded money for fencing of the land. The total cost of N630,000.00 (six hundred and thirty thousand naira) as agreed by both parties was given to the Defendant by PW1. The land was however not fenced as agreed.

PW1 later engaged the services of some people to clear the said land. As they were clearing the land, they were challenged by some people. PW1 reported this to the Defendant who assured him that they were merely seasonal farmers. Not convinced, the PW1 confronted the people on a part of the land. He was told that the land belonged to them and alleged the Defendant had earlier on collected N22 million from one Nnaike Nzewi from Otolo Nnewi on the same land.

Consequent upon this, PW1 consulted his solicitor. They also reported at CPS Nnewi. The Defendant and his brother agreed that the land does not belong to them in the presence of the DPO. The DPO confirming that this was a case of fraud, transferred the case to State CID Awka. Defendant refused to make statement both at Nnewi police station and at Awka. The State CID Awka charged the case to Magistrate Court Nnewi where the Defendant was remanded.

The PW1 alleged that while the case was in court, the Defendant kept pleading that he would refund the money if he sells his other land. When he was released, he deposited a total of N1.3 million in the PW1's account. PW1 alleged that the period of payment and the Defendant's plea to settle the debt delayed the prompt prosecution of the case in the High court.

At a time, the Defendant further gave PW1 a cheque of N1.2 million which was dishonoured on presentation. The Fidelity Bank Plc cheque No 07209822 for the sum of N1.2 million dated 18/1/2013 was annexed and marked as Exhibit P5.





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Apart from the N1.3 million, the Defendant has not refunded any other sum. The amount in the charge is exclusive of the N1.3 million the Defendant paid as refund.

Under cross-examination by the defence counsel, PW1 admitted not to have investigated the ownership of the land in question before purchasing same. He however denied that the Defendant used the landed properties as security for the business transaction with the PW1. He also denied to have reported the matter to the Nnewi Association of Spare Parts Association.

PW2 was the Investigating Police Officer named Ambrose Irabor initially attached to the office of the Area Commander Nnewi but now attached to State CID Owerri. His version was that on 8/5/2009, a petition was written by one Godwin Eneghalu Esq. on behalf of the complainant and referred to his team for investigation.

Prior to this, the Defendant had previously been arrested and charged to court. He was remanded at Onitsha prison in a case of obtaining under false pretence.

When the present case was assigned to them, the complainant (PW1) made statement, telling the story of how over N14 million was fraudulently obtained from him by the accused under the pretence of sale of land.

The Defendant while in prison custody also made his statement and signed same. The statement of the Defendant dated 2/6/2009 was admitted and marked as Exhibit P6.

After investigation, the Defendant was charged to court. In the course of investigation, some documents were handed over to the police by the Complainant. He identified exhibits P1 – P5.

Under cross-examination, PW2 contended that they did not arrest the Defendant's brother along with the Defendant because the complaint was against the Defendant and others which could not be ascertained.

With that, the prosecution closed their case on 18/2/2016. Defence opened on the 22<sup>nd</sup> September 2016. The Defendant testified as DW1. He denied admitting the offence at the CPS Nnewi.

His version in defence was that the Complainant usually supply goods to him on credit. He then defrays the payment as he sells. At a time, the complainant invited him to his office where he brought out a book containing

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that the Defendant was indebted to him to the tune of N12,600,000= (twelve million, six hundred thousand naira) and demanded for same. Defendant requested that he exercise patience for him to collect money from his debtors and pay the complainant. Two days after, the complainant invited him again. The Defendant went with the sum of N2 million to see the complainant, in the company of his brother Mr. Bartholomew Nwosu. The payment of the N2 million reduced the debt to N10,600,000.00 (ten million, six hundred thousand naira) which the Defendant promised to pay soonest.

However at about 3.00 pm the same day, the Defendant's shop keeper called to inform him that some people from NASPA (Market Association) came and locked up the shop. They came in the company of Sir I. K. Momah. Defendant put a call to the complainant who confirmed the story stating that he needed his money and that Defendant must deposit something.

Notwithstanding locking up the Defendant's shop, after about one week, the Complainant invited the Defendant again to his shop and on getting there, he was arrested by the police and taken to the station where the complainant insisted that the Defendant should pay or at least make some deposit. Complainant further requested that the Defendant can as well give his land to him. Defendant told him that the land in question had not been settled between him and the owners and as soon as it is settled, they will deliberate on that.

The complainant advised the Defendant not to make statement to police as he only needed his money or collateral. The Defendant was thereafter detained. That same day, at about 7.00pm, one policeman called Friday brought out the Defendant and informed him that the complainant gave instructions that the Defendant should not make statement. He however encouraged the Defendant to make statement and he obliged.

Later the Defendant handed over the land to the complainant to hold as collateral with no intention of selling same.

The complainant later transferred the case to State CID Awka where he was further detained. The next day, the complainant came to the State CID demanding for his money but the Defendant maintained that he had no money and that his shop were he would have generated money from had been under lock and keys. Complainant left only to return five days later promising that the Defendant will remain in custody.

After a month, the complainant came back to the State CID in the company of the Defendant's wife and brother. He informed the Defendant that they have all settled and that the Defendant's brother agreed that he should take

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the land. Defendant objected, reinstating that he had not yet settled with the owners of the land.

The Defendant mentioned that two weeks after he had paid the complainant the sum of N2million in the presence of the Defendant's brother and after the complainant had locked up his shop, he again paid him another sum of N600,000.00 (six hundred thousand naira) and after a while he made another payment of N2.5 million, all in the presence and company of his brother, Bartholomew. After the last payment, the complainant asked them to go and they will see later.

Three days later and not hearing from the complainant, the Defendant went to him, asking that he should unlock his shop. He refused and rather arrested the Defendant with police. It was the said arrest that brought about this suit. The Defendant insisted that the 28 invoices being Exhibit P3 were not issued to him. He maintained that the complainant did not pay any money to him for survey of the land as he was not a surveyor.

Under cross-examination, he confirmed that he was issued receipt by the complainant for all the monies paid to him but that the receipts were inside the shop locked up at the instance of the complainant. He denied that the goods the complainant supplied him were part of the payment of the land. He stated that the goods were supplied to him in order for him to sell and pay the complainant back as was reached in their agreement.

Defendant conceded issuing the complainant a cheque being exhibit P5 but contended to have refunded the amount to the complainant who had refused to return the cheque. He also maintained not to have sold the land to the complainant and denied knowing about Exhibits P1, P1 (a) – (e) all being the land agreements. He also maintained not to have executed any land document.

With the close of the case for the Defence, and before adoption of final addresses as earlier stated, the charge was once again amended with leave of court in terms of the amended charge filed on 30/3/2017.

On the 25<sup>th</sup> day of October 2017, both counsel duly adopted their final addresses.

I have read the charge, record of proceedings, and exhibits tendered at hearing. The documented final written addresses as adopted on 25/10/2017, are noted and appreciated. Learned counsel for the Defendant in his final address filed on 4/4/17 formulated a lone issue for determination. On their part, the

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learned Deputy Director for the Prosecution also formulated a lone issue. Both issues appears to be on the same tone.

Accordingly I adopt the following lone issue as sufficient to determine the case. It is "Whether based on the evidence before the court, the prosecution proved their case against the Defendant beyond reasonable doubt?"

The charge before the court is the amended charge filed on 30/3/2017. The details are already reproduced as indicated above. In summary it is to the effect that the Defendant and some others at large between 1<sup>st</sup> day of June 2006 to 31<sup>st</sup> December 2007, did by false pretence and with intention to defraud obtain the sum of fourteen million naira N14,000,000= from one Sir Gabriel Ik. Momah under the false pretence of selling a piece of land which the Defendant at all times knew to be false.

The offence is said to be contrary to Section 1 (3) of the Advance fee fraud act other related offences Act 2006.

It is conceded that the above offence though made contrary to Section 1 (3) of the Advance Fee Fraud Act is akin to the offence commonly called 419 i.e. offence of obtaining by false pretence.

As a preliminary, it needs be reinstated that this is a criminal trial and it is conceded that the onus is always on the Prosecution to prove the case against the Defendant beyond reasonable doubt.

See Section 131 of the Evidence Act.

See also the case of

**UWA VS STATE**  
**2015 8 NWLR PART 1450**  
**Pg 438.**

As was rightly submitted by learned Deputy Director, proof beyond reasonable doubt does not imply beyond any shadow of doubt. If the evidence is strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence – of course it is possible, but in the least probable, the case is proved beyond reasonable doubt.

See the case of UWA VS STATE (Supra)

The necessary ingredients which need be proved can be gathered from decided cases.

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In the case of

**STATE VS AJULUCHUKWU  
2011 5 NWLR PART 1239**

**78, Ratio 5**, the court therein indicated the following

ingredients.

- a. That there was a pretence
- b. That the pretence emanated from the Accused.
- c. That it was false
- d. That the accused person knew of its falsity
- e. That there was intention to defraud
- f. That the thing is capable of being stolen
- g. That the accused person induced the owner to transfer his interest in the property.

See also

**ONWUDIWE VS FRN  
2006 10 NWLR PART 988  
Pg 282.**

See also the cases cited

- (1) **EDE VS FRN  
2001 1 NWLR PART 695,  
Pg 502 at 510.**
- (2) **BAMIDELE VS STATE  
2003 3 ACLR  
Pg 102.**

Having laid this foundation, how far did the prosecution go bearing in mind the heavy burden cast on the Prosecution to prove beyond reasonable doubt. As a matter of fact, the Defendant is entitled to keep silent. The burden does not shift.

Two witnesses testified for the prosecution in proof of their case. The Complainant namely Sir Gabriel Ikechukwu Momah testified as the PW1.

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According to PW1, it was in the month of June 2006 that the Defendant and his senior brother, one Bartholomew came to his shop and a proposed selling 24 Plots of land said to situate opposite the Nnewi North Local Government Secretariat to the PW1. They had proposed ploughing the proceed into business. According to PW1, he was presented with document of title i.e. Exhibits P1, P1 (a) – P1 (e). It is noteworthy that the Defendant denied presenting those documents to the PW1. Let me also state, that from all the circumstances, the denial by the Defendant appears more like an afterthought in a bid to escape liability. Whether it was presented initially for sale or in between as collateral is another issue. Nevertheless, that is not the crux of the matter.

PW1 conceded that he was shown the land and eventually price agreed at N14m. According to PW1, the Defendant and his brother opted to be paid by supply of goods from the PW1. He proceeded to say that the documents were made serially or in bits. The important thing actually is that the five No documents which had different dates were admitted as marked as Exhibits P2, P2(a) – P2 (d) respectively.

One fact is sure. From the onset, the case of the Prosecution showed that the transaction between the PW1 and Defendant related to sale of land. Whether that is true or not is a different kettle of fish bearing in mind the fact that the Defendant denied selling any land to the PW1.

It must be reiterated that at this stage, quite unlike at the stage of no case submission, the credibility or otherwise of the evidence by the Prosecution in proving the case beyond reasonable doubt has to be considered.

I say so because, the PW1 testified that it was in the month of June 2006 that the transaction was said to have taken place and it was at that initial period that the alleged document of title of Defendant were presented, after which the land was inspected, and price agreed at N14m.

Now dealing with issue of credibility of the case for the Prosecution, the following points need to be stressed.

1. According to the star witness i.e. PW1, he testified that the agreed price was N14M which he was to be paid substantially by supply of goods and by cash.

A perusal of the initial document of Defendant's title allegedly handed over to the PW1 in June 2006 showed that indeed out of the three documents i.e. Exhibits P1, P1 (a) and P1 (b), the other three documents

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were dated after June 2006 giving some doubt as to whether it was possible that they were part of document of title presented to the PW1 in June 2006 based on which he was persuaded to part with his money and goods.

Exhibit P1 (C) is dated 25<sup>th</sup> November 2006 prepared by Bar. F. C. Nwankwo.

Exhibit P1 (d) is dated 2007. While exhibit P1 (e) is also dated 2007.

I have been unable to reconcile this anomaly notwithstanding the defence of the Defendant

2. The PW1 tendered 28 (No) Sales Invoices which were said to have yielded a total of N9,424,000.

They were duplicates admitted and marked as Exhibit P3 as a bulk.

These exhibits were sales invoices to show the goods supplied to the Defendant. The worth of these goods were to be part of payment for the land, yet they were duly indicated as Debit Sales meaning that the Defendant who purportedly received was to pay back.

It is significant that the exhibits P3 (28 receipt) showed debit sales notwithstanding that under cross-examination, the PW1 tried to portray that they were credit sales relating to land. That could not be so.

If it was part payment for an already concluded sale, then it can no longer be debit sales.

This again raised serious doubt as to the intention of the transaction as it relates to the purported land sale.

3. Exhibits P2, P2 (a) to P2(e) were the purchase agreements relating to the sale of land transaction between the PW1 and Defendant. The total amount as indicated in the 6 agreement came to N13.3m.

According to PW1 while testifying in chief, the N13m which he conceded as refund made by the Defendant was exclusive of the said sum of N14m as indicated in the charge. There is no evidence from the Prosecution to explain the amount said to have been obtained under false pretences could still be N14m.

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The court bears in mind that in order to find the Defendant guilty, the court must find him guilty as per the charge and no more or less. Anything to the contrary gives the impression that the PW1 is not sure of the amount that was received from him.

No wonder in the course of the proceedings, the Prosecution had cause to amend the charge and the amount in question.

4. The evidence from the Prosecution, particularly from PW1 was that the agreed price for the land was N14m from the onset. Yet the PW1 stressed and maintained that he subsequently paid the Defendant the sum of N630,000= to enable the Defendant fence the land for him. But under cross-examination, the PW1 stated that the said N630,000= was included in the N14m which is the initial agreed price. How that was possible I am yet to appreciate, bearing in mind that the issue of alleged N650,000= payment for fencing arose only subsequently.

Under cross-examination, PW1 answered thus;

Q – In your statement to the Police, did you state that you paid N3,014,000 in cash and N9,365,500= in goods?

Ans – I did not state so, I merely told police that the Defendant collected the sum of N14m for land he purported to sell to me.

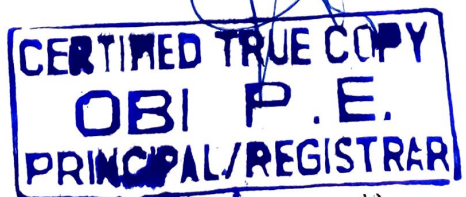
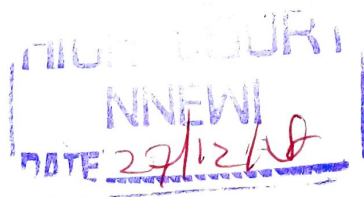
Q – You did not tell police that the Defendant collected N650,000= for fencing?

Ans – I did not, I merely summed up the whole money he collected from me including this N650,000= before arriving at approximately N14m.

5. In order to further show the uncertainty in the charge as indicated, the PW1 under cross-examination now conceded that the 1.3m which in chief he stated was exclusive of the N14m was actually a part of the refund.

Q – Put – The Defendant has refunded you the sum of N1.3m leaving a balance of about N5m?

Ans – Yes, since that time, he has refunded 1.3m, but the balance is about N12m.





PW2 was the investigating Police Officer. He merely confirmed that exhibits p1 to P5 series were handed over to him at the investigation stage, but that he did not investigate the title to the land.

With respect, his evidence did not really add value to the case of the prosecution practically.

PW1 alleged in his evidence, that the Defendant admitted not being the owner of the land before the DPO. With respect, that statement alone cannot be said to be an admission or confession to the crime. As a matter of fact even the IPO was very silent on that aspect as it was not part of his evidence.

The exhibit P6 said to be the extra judicial statement by the DW1 tendered by the PW2 was not helpful in any way to the extent that one wonders if actually this case was investigated.

The Defendant testified in his defence as a lone witness. He testified as DW1. That was after the no case submission was overruled. He denied the charge as leveled against him. He denied ever making any admission at the Police Station, and really there was nothing more from the Prosecution to sustain that alleged admission. He conceded that PW1 used to supply him goods on credit and he pays back as he sells.

From the defence, it appears the Defendant concedes that the initial debt to the PW1 flowing from the credit supplies was at a stage N12.6m. He alleged he had effected some payments namely 2M, 2.5M and N600,000 which totaled N5.1M.

Under cross-examination, DW1 answered;

Q – What is your relationship with PW1?

Ans – We relate as friends. He supplies me goods on credit.

Q – So he supplied you goods upto 12M even before he started demanding payment?

Ans – Yes that is true.

From the defence, he maintained that he never sold land to the PW1. He conceded showing him the land at the point of providing collateral insisting that he had always maintained that he had not really concluded matters relating to the sale of the land to him (DW1).

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It is obvious from the trend of defence that the Defendant may have made some contradictory statement or indeed not told the whole truth when he denied the documents Exhibits P1, P1(a) to P1 (d). I believe he handed over those documents to the PW1. Whether it was as sale or subsequently as collateral was subject to proof.

It may well be that the Defendant as an afterthought portrayed what may not be the true position by denying the documents. However, one fact is certain that without prejudice to the purported land transaction, that he PW1 had cause to supply goods to the Defendant which has not been offset by a valid title transfer and the consideration not refunded.

It must be borne in mind that even if for any reason the court finds the Defence not totally credible, yet the burden of proof beyond reasonable doubt does not shift.

As far as the case of the prosecution is concerned, it is hinged on purported receipt of N14m for alleged sale of land under false pretences. If it was truly a land transaction and the title established to be tainted, then it is a clearer case of failure of consideration for which the PW1 is entitled to refund. I do not with respect find the evidence from the Prosecution as credible enough to sustain the case in terms of the charge before the court. It is beclouded with doubts which must be resolved in favour of the defence.

On issue of purported failure of consideration, the defence counsel graciously referred to the case of **STATE VS OSLER 2005 4 ACLR Pg 515 (Ration 8)** where the court stated thus;

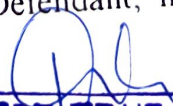
"It is apparent from the evidence that this was a contract and there was failure of consideration and remedy lies in a civil action".

The Defendant on his part admits business transactions on credit with PW1. Whether the refunds he alleged to have made are true or false and what is the actual outstanding would be subject of another forum.

For now suffice it to say that having considered the evidence before me as it relates to the charge before the court, I find that the Prosecution failed to prove the case beyond reasonable doubt. The lone issue is therefore resolved against the Prosecution.

Accordingly, and in the circumstances, the Defendant, namely Henry Nwosu is hereby discharged and acquitted.

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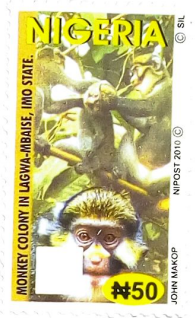


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O. M. ANYACHEBELU

Judge.  
23<sup>rd</sup> Jan 2017.

Parties – Defendant is present.

Appearances – N. J. Nwankwo Esq., Deputy Director, for the State.  
Achukwu Achike Esq. for the Defendant.



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