

IN THE HIGH 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
MON THE 21ST DAY OF MAY 2018.

SUIT NO HN/39C/2016:

BETWEEN:

THE STATE : : : : **PLAINTIFF**
AND
IKENNA OGBUKAGU : : : : **DEFENDANT**

JUDGMENT.

The charge in respect of this case was filed on 27th September 2016. It is a one Count charge of obtaining by false pretence contrary to section 1 (1) (2) (3) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

From the said charge, the statement of offence in respect of this case reads as follows:

“Obtaining by false pretence contrary to Section 1 (1) (2) (3) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006”.

The particulars of the offence read as follows;

“Ikenna Ogbukagu on or about the 21st day of January, 2015 at Skye Bank Plc, Nnewi North Local Government Area within the Nnewi Judicial Division did by false pretence and with intent to defraud, obtained the sum of One Million Naira (N1,000,000.00) from one Chukwuka Joseph Ifeanyi of God’s Wisdom School, Okpuno-Umuemem, Otolo, Nnewi”.

On the 21st November 2016, the sole Defendant pleaded not guilty to the charge as read. Actual hearing commenced on 19th January 2017, with the evidence of PW1.

Altogether the prosecution fielded 3 witnesses while the Defence testified as a lone witness. The testimonies of the prosecution witnesses are herein below summarized.

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PW1 was one Francis Uzo Nwabuzor who held himself out as an employee of Obi Best and Co, being the Company name for their land Agency. He worships in the same church being God's Battle Axe Ministry, Uruagu, Nnewi with the Defendant, and sometime around September 2014, after church service, the Defendant introduced himself to PW1 as an Auctioneer and further informed him that he has a property to sell on behalf of Nnokwa Micro-Finance Bank Ltd. PW1 in response told the Defendant that he is a land agent agreed to buy the said property or find a buyer.

Subsequently, both parties went to inspect the said property situate at Inyaba, Umudim Nnewi. PW1 now informed one Chukwuka Joseph, the complainant about the land. PW1, together with the Defendant went to the complainant's house to settle the price which was settled for N10,000,000.00 (Ten million naira). The Defendant requested that the complainant should deposit the sum of N1,000,000.00 in order to show seriousness to buy. The complainant conceded, wrote a cheque of N1m in the name of the Defendant and handed same to him.

Thereafter the complainant called his surveyor to go with them to the site of the property in order to confirm the beacon numbers. However on getting there, it was discovered that the survey plan beacons were different from the beacons on ground which raised doubt as to the particular land. As a result, the complainant demanded for a refund of his N1 million which the Defendant promptly refunded him.

Later, the Defendant called PW1 and stated that the Bank has reconfirmed the actual land. The complainant was notified and the surveyor further confirmed the land when they all went there. The earlier price of N10,000,000.00 was re-agreed and the Defendant demanded for a cheque of N1,000,000.00 in his name and a cheque of N6M in the name of Nnokwa Micro Finance Bank. He stated that the balance of N3M will be paid when the agreement is executed.

The complainant subsequently invited PW1 alone to his house and insisted that he will not write a cheque of N1,000,000.00 in the name of the Defendant. He further called the Defendant on phone but he contended that it was the agreement he had with the bank. Based on that, the complainant wrote the two cheques as demanded and handed over to PW1, insisting that the PW1 should hand over the cheques directly to the Bank manager.

PW1 did as was instructed and handed over the cheques to the Bank Manager, one Mr. Fidelis Asiegbu. The photocopies were returned to the complainant while PW1 kept his own copies to himself. Thereafter PW1

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informed the Defendant that the cheques have been handed over to the Bank Manager. The Defendant promised to see the complainant with the documents being the photocopies. The complainant took the photocopies to his lawyer to prepare the agreements.

Two days later, PW1 was notified by the complainant that his lawyer insisted that the land does not belong to the bank, claiming that Ibeto Micro Finance Bank wrote to the complainant warning him to desist from buying the land. The complainant further demanded that they should go and re-collect his two cheques from Nnokwa Micro Finance Bank.

PW1 notified the Defendant on phone. The bank also refused to return the cheques. The complainant maintained that it was the PW1's duty to retrieve the cheques. After about two months, the complainant agreed to go to the bank with the PW1. On getting there, they refused to return the cheque or money, insisting that they must first of all conduct a Board Meeting.

The complainant made a report at the State CID, Awka. All the parties were invited at the State CID. Eventually the bank returned the cheque of N6M but the Defendant refused to return the cheque of N1m.

Under cross-examination, PW1 agreed that there are two pending litigations between the Nnokwa Micro Finance Bank and one Chief Nzewi Augustine and Ibeto Micro Finance Bank respectively over the said land which arose after their failed transaction showed that the owner of the land used the same documents to secure loan from the two banks.

PW1 conceded that the Defendant is a licensed Auctioneer whom the bank asked to sell. He maintained that the Defendant told him that the land belongs to the bank but he took no further step to confirm the assertion because he believe the Defendant as he was his brother in Christ.

PW1 confirmed being a party to Suit No HN/81/2015 between Chief Augustine Nzewi Vs Nnokwa Micro Finance Bank & 2 Ors

PW2 was one Chukwuka Joseph Ifeanyi, the proprietor of god's Wisdom International School. He conceded knowing the Defendant through the PW1. He stated that early September 2014, the PW1 came to his office, notifying him that he had land for sale at Umudim Nnewi on behalf of Nnokwa Micro Finance Bank. The sale was made known to him by one of his brothers in the church. On PW2's request, the Defendant being the Auctioneer was introduced to the PW2 who was further taken to the land. Afterwards the PW2 indicated interest and they agreed on N10m.

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PW2 invited a surveyor to confirm the size of the land but at the site, the beacon numbers could not be traced. The surveyor stated that the land did not correspond to the survey plan they brought. PW2 had earlier on deposited a cheque of N1m in the name of the Defendant. The Defendant later returned the cheque on demand by PW2 when the said land failed to correspond with the survey plan.

In November 2014, PW1 met again with PW2 informing him that the actual land had been ascertained. The surveyor confirmed so and they subsequently came to see the PW2 with two people from Nnokwa Micro Finance Bank. PW2 went with them to inspect the land. He was further persuaded by PW1 to purchase the land.

As requested by the Defendant, on 21st January 2015, PW2 made a cheque of N1m in the name of the Defendant and N6m in favor of the bank. After 2 days, the documents reflecting the transaction was given to him so as to enable him prepare agreements. He then took the photocopies to his lawyer to enable him prepare the agreement.

The next day, PW2's lawyer informed him that the said land is the property of Ibeto Micro Finance Bank and that there are two lands suits over the land. A copy of the letter from Ibeto Micro Finance bank to Nnokwa Micro Finance Bank stating that the former was the owner was brought to PW2.

The PW2 informed PW1 of the development. He also called the Defendant and demanded for the return of his money or cheque. After some months of waiting for the Defendant to pay him and he failed, PW2 went to Ibeto Micro Finance Bank where the Manager confirmed not to have ever seen the Defendant and that they are not ready to bargain over the land.

PW2 hinted the Defendant the information he got but he promised to discuss with Nnokwa Micro Finance Bank. He called PW2 later to tell him that he will get his money in six months time when Board Meeting will be held.

Subsequently, PW1 and PW2 met with the Bank who advised that PW2 should wait till the land is sold. PW2 rejected same. After waiting for almost five months, PW2 instructed a counsel to petition on his behalf to the Commissioner of Police. The parties were all invited. They were subsequently taken to Assistant Commissioner of Police, State CID who advised them to return the money.

Later when they returned to police, the bank brought a cheque of N6m to PW2 and apologized to him, stating that the Defendant would return the N1m

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issued in his name. The Defendant refused to pay same. The matter was thereby charged to court. PW2 mentioned that when he issued the two cheques, he retained photocopies of same.

The photocopies of the said Skye Bank Cheques for the sum of N6m and N1m respectively were however rejected and marked as Rejected 1 and 2 respectively for stated reasons.

PW2 conceded having received a letter from Ibeto Micro Finance Bank to Nnokwa Micro Finance Bank as earlier mentioned.

The Certified true copy of the letter from Ibeto Micro Finance Bank Ltd dated 6/2/2015 was annexed and marked as Exhibit P1.

PW2 further contended that efforts to retrieve the original copies of the cheques from the bank failed but he was issued an authorized statement of Account showing the payment together with a certificate.

Copy of the Statement of Account in respect of God's Wisdom International School Ltd at Skye Bank Plc together with the Bank Certificate were admitted and marked as Exhibits P2 and P2 (a) respectively.

Also a Fidelity Bank Cheque of N6m was given to the PW2 by Nnokwa Micro Finance Bank. However the bank refused to release the original cheque to him but issued a statement of account to prove it was credited to PW2's account together with a bank certificate.

Copy of the Statement of God's Wisdom International School Ltd by Fidelity Bank together with the Bank Certificate were admitted and marked as Exhibit P3 and P3(a) respectively.

PW2 maintained that the Defendant acknowledged the cheque of N1m paid in his name by PW2 but has up till date refused to refund the said sum.

Under cross examination PW2 insisted that it was his lawyer that notified him of a pending ligation between Ibeto Micro Finance Bank and Nnokwa Micro Finance Bank. PW2 denied that during his first attempt at purchasing the land, one Chief Augustine Nzewi came up with claim over the property.

He maintained to have made proper inquiry as to the title of the Bank to the land. He denied that the N1m cheque made in the name of the Defendant was intended to be used to offset part of the expenses used in prosecuting Chief Augustine Nzewi and was unrefundable.



PW3 was one Sgt Akpan Samuel – Force No. 424960 attached now to Area Command Headquarters Awka.

He told the story of how on 28th May 2015, a petition to Commissioner of Police was endorsed and referred to State CID. It was assigned to his team for discrete investigation and report. The petitioner was invited and he volunteered statement. On 1st June 2015, one of his witnesses, Francis Uzo Nwabuzor also made a voluntary Statement. Afterwards, a team of detectives led by Supol Gabriel moved to Nnokwa Micro Finance Bank where the accused persons were invited. Three reported and made cautionary statements. They were released on bail.

The Defendant did not honour the initial invitation but reported on 9/6/2015 and made a cautionary statement confessing to the offence. The 3 staffs of the bank claimed that the Defendant did not properly brief them before part payment. The bank staffs subsequently refunded N6m to the petitioner and stated that the Defendant should refund the N1m made in his name. The Defendant maintained in his statement that the N1m was given to him for expenses he incurred for the land. The Defendant was then charged to court.

The statement of the Defendant dated 9/6/2015 was admitted and marked as Exhibit P4.

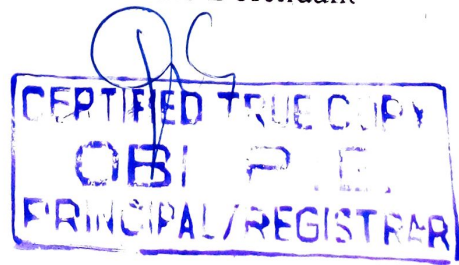
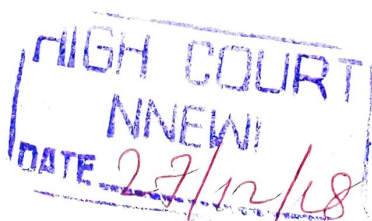
PW3 stated that the other findings he made in respect of the payment are contained in the Police Investigation Report in the Police case file

Original copy of the Police Investigation Report dated 23/6/2015 was annexed and marked as Exhibit P5.

PW3 insisted that the Defendant at all material times knew that the land was not genuine.

Under cross-examination, PW3 confirmed that the Defendant was charged to court because he refused to refund the N1m. He denied that Nnokwa Micro Finance Bank Ltd is the owner of the property and they purported to sell same to the complainant while the Defendant was the auctioneer on their behalf.

PW3 agreed not to have seen the title document of the land, or the processes showing the pendency of any suit as at the time of the transaction, or the title document from Ibeto Micro Finance. He maintained that the Defendant admitted committing the offence.



With the conclusion of the evidence of PW3 on 25th May 2017, the prosecution closed their case.

Defence opened on 18th July 2017. The Defendant testified as DW1. He denied all the allegations made by the Prosecution. His evidence in defence is to the effect that sometime in October 2014, he was briefed by the Nnokwa Micro Finance Bank to sell a certain land for them. He placed a sign post on the said land stating that the land is for sale, as authorized by the bank.

The Bank informed DW1 that the said land was used as collateral by one Chukwuanugo who had defaulted in the payment, and that they have settled to sell.

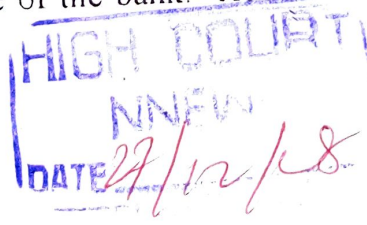
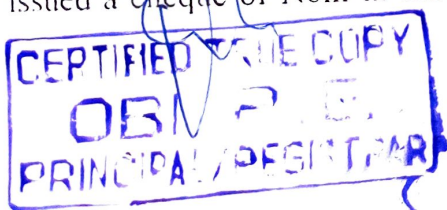
PW1 phoned to inquire about the land but DW1 being in the USA at that moment referred him to one Hyacinth Ifeanyi Anugwogu. They discussed as agreed to await for DW1's return. When he returned, the said Mr. Anugwogu came with the PW1 to see him. They all visited the land and subsequently visited the Obi of Umudim who confirmed that the land is the property of the bank.

Eventually, PW1 told the DW1 that he had found a buyer. They both went to see the said buyer being PW2 in his school and he demanded to see the actual owners. DW1 reported back to the bank. The Bank Manager, the Credit Officer and PW1 all visited PW2, held discussions and PW2 informed them that he would conduct some investigation. Subsequently PW1 called the Defendant and handed him a cheque of N1m written in the name of the Defendant. Later PW2 called the Defendant to inform him that he had lost interest in the land and would no longer purchase the land because the beacons were uprooted and sign post removed. He further requested for refund of the N1M. The Defendant obliged, paid back the said sum into the account given to him by the PW2 and thereafter replaced the signpost.

The Defendant alleged that subsequently, Chief Nzewi told him that he was the person that removed the beacons. The Defendant caused a petition, signed by PW1 and Mr. Anugwogu only to be written. The said petition was referred for investigation and the police charged Chief Nzewi to court for which PW1 was the complainant.

The certified true copy of the Charge No NMC/483C/2014 C.O.P Vs Augustine Nzewi & Anor was admitted in evidence and marked as Exhibit D1.

Later, PW1 came back and insisted on PW2 buying the land. PW2 then issued a cheque of N6m in the name of the bank. He also issued a cheque of



N1m in the name of the Defendant for him to use and recover expenses incurred to secure the land. PW2 was handed over the documents to effect agreement. He insisted on using his own lawyer who incidentally was the lawyer to Ibeto Micro Finance Ltd. PW2 later called, indicating his withdrawal but being away in London for a conference, the Defendant told him to wait till he returns.


On his return, the Defendant, PW1 and PW2 visited the bank and told them the intentions of the PW2. Furthermore, PW2 caused a petition to the police at Awka. The bank refunded the N6m to PW2 who also demanded for a refund of the N1M. The Defendant then reminded him that he earlier on stated that the N1m was for expenses and that PW1 had N380,000.00 out of the said sum.

On his request, the Defendant, PW1 and PW2 all visited Ibeto Micro Finance Bank. At the bank, it was alleged that said Chukwuanugo also borrowed money from them and used the same property as collateral but that of Nnokwa bank, was first in time. The Defendant did not know that Ibeto Micro Finance Bank also had claims to the said property. He told PW2 to exercise patience as he would refund him the money once the new buyer mentioned by the bank pays. The Defendant was subsequently arraigned at the Chief Magistrate Court.

Under cross examination, DW1 admitted to have heard at the State CID Awka about a certain letter from Ibeto Micro Finance Bank to Nnokwa Micro Finance Bank warning of the transaction, but maintained not to have been shown the letter. He admitted to have seen a letter from D. O. Amuta & Co. on behalf of God's Wisdom International Schools and PW2 to Nnokwa Micro Finance Bank. He also admitted to have brought the staff of the Bank to PW2 in order to confirm that he was acting on instruction of the bank.

DW1 maintained that he was not around when the cheques of N6m and N1m were issued and that PW1 handed over the cheques to the Bank staff. He insisted that it was the bank that paid the N1m into his account and he received the credit alert.

DW1 conceded being aware of Chief Nzewi's claim to the land as at the time of the payment of the monies but he insisted he warded him off and chief Nzewi left while the DW1 put back the sign post there. That was why PW2 came back to buy the land. DW1 contended to have given PW2 the survey plan and power of Attorney at the initial stage. He also insisted that Exhibit D1 and the cheques written differently are proofs that the N1m was agreed to be for his expenses.


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DW1 admitted that as at the time he demanded for payment by PW2, the charge against Chief Nzewi was still pending in court. He quickly added that the pW1 and PW2 were aware but paid to pre-empt the other interested buyers. He admitted that till date the said land has not been sold due to the contest between the two Banks.

With the close of the case for the defence, both counsel filed their addresses duly adopted as final addresses on 21/2/2018.

I have read the charge, record of proceedings, and exhibits. I have also read and appreciated the documented final addresses as adopted by both counsel. Both counsel each formulated one issue for determination. Both issues appear similar in content, and is adopted as the lone issue in the following terms; namely,

“Whether from the evidence before the court, the prosecution proved the offence as charged beyond reasonable doubt”.

This is a trial for alleged commission of crime. By the provisions of section 135 (1) of the Evidence Act 2011, the Prosecution has the burden of proving the case, beyond reasonable doubt. That burden does not shift for indeed the Defendant is entitled to in fact remain silent.

In discharging this onerous task, the prosecution is entitled to resort to any of the following means or indeed a combination of any or all of them namely,

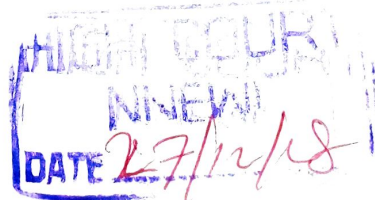
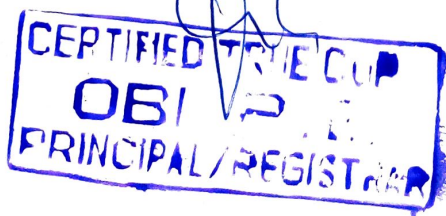
- (1) By direct evidence of eye witness
- (2) By the confessional statement of the Accused.
- (3) By circumstantial evidence.

See

EMEKA VS STATE
2001 14 NWLR (PART 734)
Pg 668.

For avoidance of doubt, it is conceded that proof beyond reasonable doubt does not amount to prove beyond any iota of doubt.

The prosecuting counsel in that regards referred the court to the case of



DIBIE VS STATE
2004 14 NWLR PART 8 (983)
257

AND
AGBO VS STATE (2006)
6 NWLR PART (977)

Pg 545, at 584 – 585 where the Supreme Court in dismissing the appeal, quoted with approval the statement of the law by Denning J. (as he then was) in Miller Vs Minister of Pensions (1947) ALL ER 372 at 373 as follows:

“Proof beyond reasonable doubt does not mean proof beyond the shadows of doubt.

The law will fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice. If the evidence is so 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 not in the least probable”, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

At pages 284 – 285, Para H – A, in the said Dibia Vs State (Supra) the Supreme Court put the position thus:

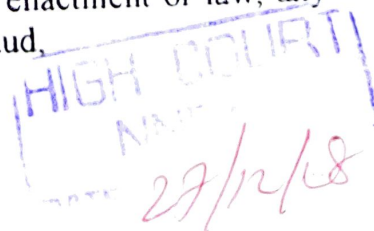
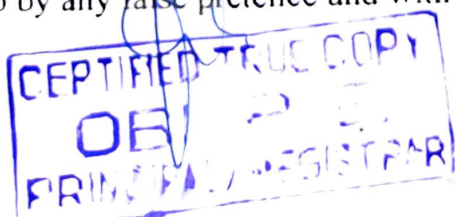
Proof beyond reasonable doubt does not mean the prosecution must prove its case with mathematical exactitude, nor does it mean proof beyond any shadow of doubt. The prosecution is said to have proved its case beyond reasonable doubt, when it has proved all the ingredients of the particular offence the accused is charged with”. (underlining is mine for emphasis).

I have therefore streamlined the underlining sentence in the decision which is proving the ingredients of the particular offence.

The alleged offence for which the Defendant is put to trial is already reproduced as indicated above. In summary it is that the Defendant on or about the 21st day of January 2015 at Skye Bank Plc, Nnewi, did by false pretence and with intention to defraud obtained the sum of One million naira (N1,000,000.00) from one Chukwuka Joseph Ifeanyi of God’s Wisdom School, Okpuno – Umuenem, Otolo Nnewi.

The Defendant is charged under the Advance Fee Fraud and other related offences Act 2006 – section 1 (1) (2) and (3). It provides thus;

1 (1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intent to defraud,



- (a) Obtain, from any other, 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 person 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 false pretence is guilty of an offence under this Act.

(3) Any person who is guilty of an offence under sub section (1) or (2) of this section is liable on conviction to imprisonment for a term of not less than ten years without option of a fine”.

Three cardinal points arise from the wordings of these provisions namely

- (a) Obtaining of money or property
- (b) Obtained by false pretence
- (c) With intention to defraud.

The said offence though under the Advance Fee Fraud Act is akin to the provisions relating to the offence of obtaining by false pretence commonly called ‘OBT’ or ‘419’ under the Criminal Code.

As a guide, the term false pretences is defined in section 418 of the Criminal Code thus;

“Any representation made by words, writing or conduct, of a matter of fact either past or present which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence”.

See also the case of **EDE VS FRN**
2001 1 NWLR (Part 695)
507.

On issue of the aspect of intention to defraud, the learned State counsel referred the court to the case of

UWAKWE VS STATE
2015 ALL FWLR (Part 802)
1618 at 1636 (Para A – B)



where the court of Appeal quoted with approval the statement of the law on the point by Pats Acholonu JCA in

**OKWEJI VS FRN
2003 LPELR (CA/E/B7/2001) as follows,**

“What the prosecution should prove is the intent to defraud by taking into consideration the totality of the circumstances in respect of a particular case. If one obtained money from another by a representation which later facts revealed that it was made to deprive someone of his money illegally, then, it means that right from the word go, he had intent to defraud”.

Adopting the decision in the case of

**ONWUDIWE VS FRN
2006 10 NWLR PART 988
Pg 282, the ingredients can be itemized thus;**

- (1) That there was a pretence
- (2) That the pretence emanated from the Accused
- (3) That it was false
- (4) That the accused knew of its falsity
- (5) That there was intention to defraud
- (6) That the thing is capable of being stolen
- (7) That the accused person induced the owner to transfer his interest in the property.

See also the cases of

- (1) **STATE VS AJULUCHUKWU
2011 5 NWLR PART 1239
Pg 78 Ratio 5.**
- (2) **EDE VS FRN
2001 1 NWLR PART 695
Pg 502 at 510.**

From the evidence as presented by the prosecution, it is not in doubt that the PW2 as the complainant received an offer to purchase the said landed property situate at Ezeamukwu Road, Iyaba, Umudim Nnewi said to belong to Nnokwa Micro Finance Bank Plc, at the cost of N10M. That offer was made by the Defendant through PW1 who is a land agent to the PW2.



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It is agreed that the Defendant at all material times is a licenced Auctioneer acting on behalf of and on the instructions of the said Nnokwa Micro Finance Bank Plc. When the initial offer was made, and the defendant demanded for a deposit of the sum of N1M in his name, that sum was paid vide a cheque to the Defendant. As it turned out, the deal failed when upon initial inquiry at tracing the land, the surveyor found out that the referenced property did not align to the survey plan provided. That botched the deal. Remarkably upon demand, the Defendant was said to have promptly refunded the said N1m.

The deal was to be later reactivated. The actual land in question was traced and the deal sealed at the sum of N10M with request for part payment of N6M in the name of Nnokwa Micro Finance Bank Ltd and N1M in the name of the Defendant.

Interestingly, before the PW2 effected these payments leaving a balance of N3M to be subsequently made, he confirmed from the Bank officials, that the transaction was genuine and that the Defendant was supposedly acting on the instruction of the Bank.

Indeed, the two cheques of N6m in the name of the Bank and N1M in the name of the Defendant were written by the PW2 and handed over to the Bank officials as part payment. As could be discerned from the evidence, it was the bank that handed over the payment of N1M to the Defendant and not directly to the Defendant by PW2.

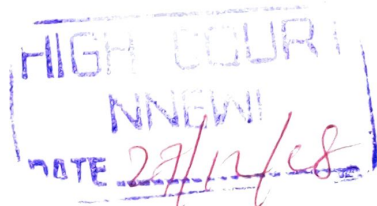
These facts appear not in dispute at all.

As it were, the deal went on smoothly until midway, in the course of documentation that the PW2 discovered through his solicitor that Ibeto Micro Finance Bank was also laying claim to the property in question.

Interestingly, the PW1 who was at the centre of the saga conceded under cross-examination that it was subsequent to the instant transaction that it came to the fore that the Ibeto Bank was also laying claim to the property. What is in dispute is not that the said Nnokwa Bank does not have claim or interest in the property but that Ibeto Micro Finance Ltd also has a similar claim.

Under cross-examination, the PW1 stated thus

Q – These suits arose after this failed transaction revealed the fact that owner of land used the same documents to secure loan from the two banks unknown to the Banks?



Ans – Yes that is true.

The PW1 who was the agent to PW2 the complainant stressed that the Defendant from inception made it clear that the Nnokwa Micro Finance Bank Ltd derived title to sell from the default of a customer owner who used the property as collateral.

Under cross-examination, PW1 stated thus,

Q – At all material times, you were aware that Nnokwa Micro Finance Bank became seized of the land as it was used to secure loan from them.

Ans – I do not know. It was the Defendant that told me it belongs to the Bank.

The implication of all these admissions from the prosecution is that from the inception, the Defendant was merely acting as a licenced auctioneer as agent to a disclosed principal. i.e. the Nnokwa Micro Finance Bank. That fact was indeed confirmed by the PW1 and PW2 hence they proceeded and actually on that basis paid to the Bank directly.

It seems clear to me that there was no false pretence in the action of the Defendant. After all, the PW2 himself insisted he made proper inquiries before paying, implying he was atleast initially satisfied as to the right of Nnokwa Bank before paying.

The only ingredient proved by the prosecution, is the fact that part of the agreed consideration was made in the name of the Defendant. According to the PW2 while concluding the evidence in chief, it was only just because the Defendant refused to refund the N1M that led to their being in court.

According to the PW2 as well testifying in chief, the bank refunded the N6M paid in their name but the Defendant refused to refund the N1M, hence they are in court.

The Prosecution made heavy weather of the fact that the Defendant was well aware that there was a dispute at all material times and therefore urged the court to hold that it amounted to intention to defraud.

It is true that under cross-examination, the Defendant testifying as DW1 stated thus:



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Q - It was over the same land for which PW2 paid N6M to the Bank and N1M in your name that you petitioned against the said Chief Augustine Nzewi that prompted Exhibit D1".

Ans - Yes that is true.

Q - The petition against Chief Nzewi was on 8th October 2014

Ans - Yes.

Q - Exhibit D1 is a criminal charge and was not meant to resolve actual ownership of the said land.

Ans - I do not know. All I can say is that it is Nnokwa Micro Finance that owns.

Q - To your knowledge, you were aware of Chief Nzewi's claim to the land at the time of the payment of the N6M and N1M respectively.

Ans - Yes I am aware that he was claiming. But I had also impressed on him that he had no claim and he left".

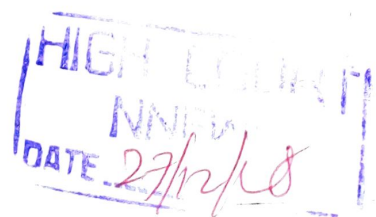
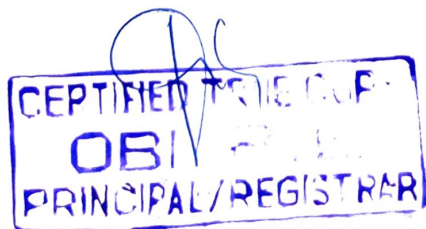
My impression is that even if it is conceded that Chief Nzewi was laying claim, yet if the evidence is adopted, it must be given to the Defendant that he had waived off that claim.

The fact remains that at the time he sought to sell, he believed that actually the Bank was the owner. At all material times, there was nothing on ground to show that the Bank i.e. Nnokwa Micro Finance Bank had dropped their claim to the land. Their source of title was made clear from the onset.

It is clear that even if the claim by the Defendant and the Bank eventually turns out not to be real e.g. if the Ibeto Bank eventually defeats them in court, yet, it is not a clear case of intention to defraud or false pretences. For now, the pretence if any has not been shown to be false.

In the case of **ALAKE VS THE STATE**
1991 17 NWLR PART 205

where at the Pg 574 it was expressed that an honest belief in the truth of a statement by an accused person that later turned out to be false is not a false pretence.



As I had stated earlier, the statement to the effect that the Nnokwa Micro Finance Bank Ltd are entitled to sell has not been shown to be false.

From the evidence before the court, it is clear that it was after the transaction had progressed that the claim by Ibeto Micro Finance Ltd reared its head. A look at Exhibit P1 tendered by PW2 shows the indication from the Ibeto Bank was dated 6th February 2015. Records show that payment by the PW2 was in January 2015.

In exhibit D1, which is CTC of charge against the said Augustine Nzewi and Anor i.e. NMC/483C/2014, the Police in the charge referred to Nnokwa Micro Finance Bank as owner of the property. During the cross-examination of DW1, he had this to say

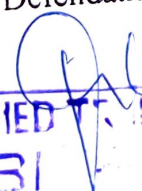
Q – It is true that the said land has till date not been sold due to the contest between Ibeto Bank and Nnokwa Bank?

Ans – Yes it has not been sold. As I said they are currently negotiating.

At trial, it came to the fore and it became obvious that the issue is as to right to sell because the same person used the property to secure loan from both banks

That matter is subjudice and I refrain from commenting. The product of that situation is lack of the issue of false pretence or intention to defraud on the part of the Defendant. The fact that Ibeto Bank or any other party is claiming did not thereby make the claim by Nnokwa Bank false or untenable. For now, no court has declared so.

As far as this court is concerned, the Defendant is on trial because he refused to refund. At trial, he told this court that he had even persuaded the PW2 to exercise patience as the property will soon be sold and PW2 refunded. Without prejudice to the civil suit said to be between the PW2 and Defendant in this case, even though I do not have evidence on which to make a finding of false pretence and/or intention to defraud, yet it is apparent that the consideration for which the money passed failed in the sense that the N1m was conclusively agreed to be part of the total consideration of N10M. The issue of what the money meant to Defendant was between the Nnokwa Bank and the Defendant and it is therefore doubtful if the Defendant should not refund forthwith. Indeed the Defendant is expected to refund.


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HIGH COURT
NNFWA
DATE 27/1/18

As a matter of fact, the Defendant conceded this when under cross-examination he stated.

Q – You did not prior to this charge concede refund of the N1M.

Ans – I approached him even with my wife to exercise patience and that he will be repaid as I do not want trouble.

In the case of **Sate Vs OSELER 2005, 4 ACLR Pg 515 Ratio 8**, 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”.

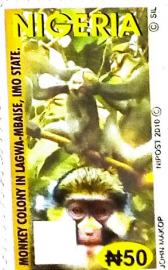
With respect, I adopt the reasoning in this case.

Having stated thus, it is my view having considered this case on the merits that the prosecution failed to prove the major and essential ingredients of the offence, particularly as false pretence and intention to defraud were not established. This is so notwithstanding that it was shown that money which is item capable of being stolen was paid to the Defendant in the process of the transaction.

The lone issue is therefore resolved in favor of the Defendant. I hold that prosecution failed to prove the criminal offence beyond reasonable doubt. In consequence, the Defendant namely Ikenna Okpukagu is hereby discharged and acquitted.

[Handwritten Signature]
O. M. ANYACHEBELU.

Judge.
21st May 2018.



Parties – Defendant is present.

Appearances – I. O. Okenwa Esq. State Counsel for the State.

Ben Chuks Udoh Esq. with Harrison Okafor Esq. for the Defendant.

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