

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON THURSDAY THE 17TH DAY OF JANUARY, 2019
BEFORE HIS LORDSHIP, THE HONOURABLE
JUSTICE S. M. SHUAIBU
JUDGE

CHARGE NO: FHC/KD/23^c/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

UMAR GALADIMA - ACCUSED PERSON

JUDGEMENT

The accused person herein, **UMAR GALADIMA** is standing trial for an offence contrary to Section 1 (1)(a) and punishable under Section 1 (3) of the Advance fee fraud and other fraud related offences Act, 2006.

The Act provides-

1. (1) notwithstanding anything contained in any other enactment or Law, any person who by false pretence and with intent to defraud-

(a) Obtains, from any other person, in Nigeria or in any other Country for himself or any other person, commits an offence under this Act.

Section 1(3) of the Act prescribes punishment for the offence in the following words:-

(3) A person who commits an offence under Subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not more than 20 years and not less than 7 years without the option of a fine.

The particulars of the offence for which the accused person is standing trial are as Contained in a Single Count charge dated 18th and filed on the 19th April, 2017. They are given as follows:-

*That you **Umar Galadima (m)** sometime in February 2017, in Kaduna in the Judicial Division of the Federal High Court with intent to defraud, obtained the Sum of **Five Million***

and Three Hundred Thousand Naira (N 5, 300, 000.00) from one Jazime Isah Mustapha under the false pretence that you are the rightful owner of the property situate and known as No. 16 Tola Road, Badarawa, Kaduna which you claim you have the right to sell same and you thereby committed an offence contrary to Section 1 (1) (a) of the advance fee fraud and other fraud related offences Act 2006 and punishable under Section 1 (3) of the same Act.

On the 16th May, 2017, the particulars of the offence as contained in the charge were read and explained to the accused person by the Registrar of Court. The accused person denied the offence as contained in the charge.

In the bid to establish the offence against the accused person beyond all reasonable doubt as required by Law, the learned prosecution counsel called two (2) witnesses and tendered a total of Seven (7) exhibits in support of the charge. The facts of this

case leading to the present proceedings against the Accused person are simple and clear. The accused person herein, **Umar Galadima** was previously the rightful owner of a house situate at No. 16 Tola Road, Badarawa, Kaduna. He sold the house to one **Muhammed Hassan** for the Sum of **Five Million Naira** on the 20th October, 2016. Payment was made to the accused person who collected, acknowledged same and executed a sales Agreement between him and Muhammed Hassan as vendor and purchaser respectively. The sales Agreement is exhibit **EFCC 4** in this proceeding.

About Four (4) months later, the accused person sold the same house to **Jazime Isah Mustapha** for Five Million Three Hundred **Thousand Naira**. The sales Agreement between the Accused person, **Umar Galadima** and **Jazime Isah Mustapha** as vendor and purchaser respectively is exhibit **EFCC 2** in this proceeding.

On the realisation that the accused person is not the rightful owner of the property having earlier sold the same house to **Muhammed Hassan for Five Million Naira, Jazime Isah Mustapha** filed a petition against the accused person herein, **Umar**

Galadima before the Economic and Financial Crimes Commission (EFCC), Kaduna zonal office.

The petition to the Commission is exhibit **EFCC 3** in this proceeding. This led to the arrest of the accused person and his trial for the offence whose particulars I have already given before now.

The first witness for the prosecution is **Aminu Muhammed Abbas**. He is a Driver and younger brother of the nominal complainant, **Jazime Isah Mustapha**. He testified on the 21st November, 2017. **Aminu Muhammed Abbas** said that his sister the nominal complainant has Four (4) children. That the father of these children and husband to the nominal complainant was killed by insurgents at Maiduguri. That after the distribution of the Estate of their late father, the children decided to move and settle in Kaduna. They came to Kaduna with thier mother, the nominal complainant, **Jazime Isah Mustapha**. That they looked for a house through an Estate Agent who took them to the accused person, **Umar Galadima**. That they met the accused

person at No. 16 Tola Road, Badarawa, the property, the subject matter of the present charge against the accused person.

That the accused person offered the house for sale. A purchase price of **Five Million Three Hundred Thousand Naira (N 5, 300, 000.00)** was agreed upon. **Aminu Muhammed Abbas** as the first prosecution witness testified that the accused person gave his account details with Eco Bank. That the sum of Five Million Naira was paid in to that account by means of an inter-account transfer from the account of the nominal complainant, **Jazime Isah Mustapha** with Keystone Bank Plc. The witness said that the accused person demanded the payment of the balance of Three Hundred Thousand Naira in cash. The Duplicate Bank Teller issued by the Keystone Bank Plc after the transfer of the Sum of **Five Million Naira** to the account of the accused person is exhibit **EFCC 1** before the Court.

The first prosecution witness **Muhammed Aminu Abbas** said that after the payment, the accused person gave them a sales Agreement and promised that he will vacate and hand over the

house to them within three (3) months. The sales Agreement is exhibit **EFCC 2** in this proceeding.

The witness said that the accused person did not hand over the house to them as promised. Rather they learnt that there is a problem over the property as Court officials and the police were driving the accused person out of the house. The witness said that he made inquiries and was told that the accused person had already sold the house to some other person, Five (5) months earlier before he sold the same house to the nominal complainant, **Jazime Isah Mustapha**.

In his answers to questions in cross examination, **Muhammed Aminu Abbas**, the first prosecution witness said:-

*The accused person said that he is the owner of the house. In fact he was living in that house at the time. The accused person had already sold the house five months earlier before selling the same property to the nominal complainant, **Jazime Isah Mustapha**.*

*The accused person refunded **Two Million Naira** out of the **Five Million Three***

*Hundred Thousand Naira that he was paid for the house. My sister, **Jazime Isah Mustapha** made the payment through her Bank account with Keystone Bank Plc.*

The second and last prosecution witness in support of the charge is **Ishaku Danjuma**. He is an operative with the Economic and Financial Crimes Commission, No. 4 Wurno Road, Kaduna. He gave evidence of a petition submitted by the nominal complainant **Jazime Isah Mustapha** to the Economic and Financial Crimes Commission. That in the petition, the petitioner had complained that one **Umar Galadima** sold a property to her situate at No. 16 Tola Road, Badarawa, Kaduna for the sum of Five Million, Three Hundred Thousand Naira after he had five (5) months earlier sold the same property to some other person for **Five Million Naira**.

The witness identified the petition by the nominal complainant. It was admitted in evidence and marked **exhibit EFCC 3**.

That in the course of investigation, the second prosecution witness **Ishaku Danjuma** said that a letter on investigation

activities was written to Eco Bank Plc. The letter requested for the account opening package and the statement of account of the accused person. The letter is dated 10th March, 2017. The witness said that Eco Bank responded to the Letter by the Commission. That the response was forwarded by a letter from the Bank dated 15th March, 2017.

The letter on investigation activities by the EFCC to Eco Bank Plc and the response by the Bank thereto were admitted in evidence on the 14th December, 2017, through the second prosecution witness and marked **exhibits EFCC 5** and **EFCC 6** respectively.

The second prosecution witness, **Ishaku Danjuma** testified that upon analysing the statement of account of the accused person, it was discovered that the sum of **Five Million Naira** was paid into the account by the nominal complainant, **Jazime Isah Mustapha** by an inter-account transfer from the account of the nominal complainant with the Keystone Bank Plc. The witness further testified that investigation revealed that the sum of Three Hundred Thousand Naira was paid to the accused person in cash at his office at the Court of Appeal, Kaduna.

The witness continued that in the course of investigation, they got the telephone number of one **Muhammed Hassan**, whom the accused person sold the house initially before subsequently selling the same house to the nominal complainant. That they invited **Muhammed Hassan** and he gave them a copy of the Sales Agreement the accused person executed in his favour after he had purchased the house for the sum of Five Million Naira. A copy of the Sales Agreement between **Muhammed Hassan** and the accused person is **exhibit EFCC 4** in this proceeding.

The second prosecution witness, Ishaku Danjuma further testified that the accused person was eventually arrested at Wuse Branch of Eco Bank Plc Abuja with the assistance of the Bank officials after the EFCC had placed a lien on his account with the Bank. That after his arrest and subsequent transfer to the Kaduna zonal office of the commission, the P w 2 said that the accused person made one and two additional statements on the 27th March, 29th March and 11th April, 2017 respectively. These statements were admitted in evidence without objection and together marked exhibit EFCC 7.

The P w 2 **Ishaku Danjuma** concluded his evidence by stating that investigation disclosed that as at the time the accused person sold the property at No. 16 Tola Road, Badarawa, Kaduna, the accused person knew that he had no legal possession or title to the property.

That consequently investigation established a case of obtaining the sum of **Five Million Three Hundred Thousand Naira** by the accused person from **Jazime Isah Mustapha** under false pretence.

In his answers to questions in cross examination, the second prosecution witness said:-

*It is not true that when the Case was reported to us, the nominal complainant **Hajiya Jazime Isah Mustapha** said that all she wanted was her money. The accused person did not inform us upon his arrest that he had rescinded the first purchase Agreement with **Muhammed Hassan**.*

I am not aware of any dispute between the accused person and Muhammed Hassan over the same property. I am not aware that the accused person was ejected from the property in question by **Muhammed Hassan**. I am not aware that the accused person offered his personal residence to the nominal complainant, **Hajiya Jazime Isah Mustapha**. I am not aware that the accused person has money in Abuja in the hand of some other person which the accused person intends to get and pay the nominal complainant her money. There is no clear reason given as to why the accused person failed to hand over the house to the nominal complainant, **Hajiya Jazime Isah Mustapha**.

On the 18th January, 2018 the accused person testified as a witness for the Defence. The accused person admitted that he had earlier sold the house to **Muhammed Hassan**. That at that time **Muhammed Hassan** was living in Lagos. That the sale was done through the Lawyer to **Muhammed Hassan**. The name of the Lawyer is **Muhammed Sulaiman**.

The accused person said that after he sold the house to **Muhammed Hassan**, some person advised him that **Muhammed Hassan** is not a good man and should not be allowed to settle in that community.

The accused person said based on that advice, he contacted the Lawyer to **Muhammed Hassan** and told him that he wants to refund the money paid to him for the house. The accused person said the Lawyer asked him to wait for **Muhammed Hassan** to discuss the issue when he return from Lagos.

The accused person said that it was while he was waiting for the return of **Muhammed Hassan** that an Estate Agent brought the nominal complainant **Jazime Isah Mustapha** and that he

eventually sold the same house to her for the sum of **Five Million Three Hundred Thousand Naira**.

The accused person did not deny that he sold the house to the nominal complainant after he had sold the same house to **Muhammed Hassan**. He did not refund to **Muhammed Hassan** the money paid to him for the house either. Worst still he did not disclose these facts to Hajiya Jazime Isah Mustapha at the time she paid for the house.

In his answers to questions in cross examination, the accused person, **Umar Galadima** as a Defence witness said:-

*I signed an Agreement with **Muhammed Hassan** after I sold my house to him. In that Agreement, he paid me the sum of **Five Million Naira (N 5,000,000.00)** and I accepted and signed. I did not tell the nominal complainant in this Case i.e. Hajiya Jzaima Isah Mustapha that I had already sold the house to Muhammed*

*Hassan at the time she who making
payment for the same house.*

Hearing in this case was concluded on the 27th February, 2018 when the learned Counsel to the accused person closed the case for the Defence. The Court made an order for the filing of final written addresses. The Court fixed the case for the adoption of final written addresses on the 12th April, 2018.

On that day however, the Defence Counsel applied to withdraw his services to the accused person. The accused person then applied for an adjournment of the Case to enable him secure the services of another Counsel to represent him in the proceeding. The Case was accordingly adjourned to the 16th April, 2018.

On the 16th April, 2018, the new Counsel engaged by the accused person was not in Court. The accused person applied for further adjournment of the Case. The Case was again adjourned at the instance of the Defence to the 18th April 2018.

However the Court sat on this Case on the 23rd April, 2018. On that day Counsel appeared for the accused person.

The Court then ordered as follows:-

Final written addresses are hereby ordered as contained in the record of proceeding of the Court of the 27th February, 2018. This Case stands Adjourned to the 30th day of May, 2018 for adoption of final written addresses.

The bail of the accused person to continue.

On the 30th May, 2018 however both the learned Defence and prosecution Counsel applied to the Court to waive the filing of final written addresses on the matter.

The Case was accordingly adjourned to 4th July, 2018 for Judgement. However the Court became **Functus officio** over the matter by reason of my transfer to the Calabar Judicial Division of the Court. Consequently this Judgement is being delivered

pursuant to an assignment order issued by the Chief Judge of the Federal High Court permitting me to deliver it.

Now, the first or original statement of the accused person made on the 27th March, 2017 is also the same with his evidence in Court. That statement is **exhibit EFCC 7** before the Court. The accused person said:-

Umar Bukhari Galadima I was born in Wushishi Local Government Area of Niger State and I attend (sic) Usman Danfodio (sic) I Studies (sic) Islamic Studies. I work with Court of Appeal Kaduna Division. Sometimes in 2017 I sell (sic) my house to Hajiya Jazime Mustapha at the sum of Five Million Three Hundred Thousand Naira Only. The house which is located at No. 16 Tola Road, Badarawa, Kaduna. But already I sold the house to Alhaji Muhammed Hassan who is presently living in the house that I did not inform

her that I sold the house to somebody not until Rent tribunal came to the house and eject (sic) my family that is when she new (sic) that the house was also sold to **Alhaji Muhammed Hassan**. I promised to pay **Hajiya Jazime Isah** Mustapha her money and she accepted. We then agreed I will pay her after three months that the Agreement written and signed by me and her Aminu Mustapha who represent (sic) her. I want to pay them **Two Million Five Hundred Thousand Naira** they said they need their money in full. The money is in my office.

The statement of the accused person as reproduced before now was admitted in evidence without objection and marked exhibit EFCC 7. That means the Defence is satisfied that it was free and voluntary. The statement is confessional as we have already seen. It is therefore relevant and adminible pursuant to the provision of section 29 (1) of the evidence Act 2011.

The content of the confessional statement of the accused person is corroborated by the evidence of the two prosecution witnesses and indeed the evidence of the accused person himself. The confessional statement of the accused person is sufficient to ground conviction. See the Case of **GABRIEL VS THE STATE (2010) 6 NWLR** part 1190 page 280 as well as the case of **MBANG VS THE STATE (2010) 7 NWLR** part 1194 page 431.

Now, the elements constituting the offence of obtaining by false pretence are listed in the Cases of **ONWUDIWE VS. FRN (2006) ALL FWLR** part 319 pages 774 at 812 and the Case of **ALAKE VS. THE STATE (1991) 7 NWLR** part 205 page 567.

These elements are:-

1. *That there was a pretence.*
2. *That the pretence emanated from the accused person.*
3. *That it was false.*
4. *That the accused person knew of its falsify or did not believe in its truth.*
5. *That there was an intention to defraud*

6. That the thing is capable of being stolen.

7. That the accused person induced the owner to part with the property.

In the Case of **ALAKE VS. THE STATE** (*supra*), the Court of Appeal per **NIKI TOBI, JCA** (as he then was) defined **false pretence** as:-

The act of pretending, means to make a person believe in a situation, which in reality is not true. It also means an appearance to show or hide a reality; a false show, a false allegation, a sham; it also means pretention or a pretext.

Now, the facts of this Case do not need further elucidation. I find that all the elements Constituting the offence of obtaining by false pretence under Section 1 (1)(a) of the Advance fee fraud and other fraud related offences Act 2006 have been established by the facts before the Court. The prosecution has proved its Case

against the accused person beyond all reasonable doubt as required by the, provision of Section 135 (1) of the Evidence Act 2011.

The Law is settled that the Defence of an accused person no matter how foolish must be considered. See the Case of **ATTAH VS. THE STATE (2010) 10 NWLR part 1201 page 190** as well as the Case of **OSUOHA VS. THE STATE (2010) 16 NWLR part 1219 page 364**. The Defence by the accused person that he decided to re-sell the same house to the nominal complainant because he was advised that **Muhammed Hassan** is a person of bad character and therefore unfit to settle in that community is untenable, weak and frivolous. That argument could have made some sense, if the accused person had refunded the money to **Muhammed Hassan** or had informed the nominal complainant of that transaction at the time she was paying for the house. I therefore reject that defence.

In the final analysis I find the accused person, **Umar Galadima** guilty of the offence of obtaining by false pretence as created by the provision of Section 1 (1)(a) of the Advance fee fraud and

other fraud related offences Act 2006. The Accused person is hereby convicted as charged.

SENTENCING PROCEEDING

Abubakar Esq:

The convict is a family man. He has an aged mother. The mother is living with him. He has nine (9) children. I therefore urge the Court to temper Justice with mercy by overlooking the convict's inexcusable actions.

Ekweazor Esq:

*There is no evidence of previous conviction against the convict. However I urge the Court to order for restitution to the immediate victim as provided in Section 11 of the Advance fee fraud and other fraud Related offences **Act, 2006** in addition to any other sentence that the Court shall pass or impose on the convict. The convict has already paid back the Sum of **Three Million***

Eight Hundred Thousand Naira
leaving a Sum of **One Million Five**
Hundred Thousand Naira.

Court:

The convict is hereby sentence to
Twelve (12) months term of
imprisonment without an option of fine.
This is in the light of the effort already
made by the convict as disclosed by
the learned prosecution counsel on the
issue of restitution couple with the plea
by the learned Defence Counsel in
mitigation of sentence.

However the convict shall remain in
prison for another Twelve months if he
fails to refund to the nominal
complainant, **Hajiya Jazime Isah**
Mustapha in full.


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HON. JUSTICE S.M. SHUAIBU
JUDGE

Appearances:

J. Saidi esq with P.O.Ekweazor esq for the prosecution.

A. Abubakar esq for the accused person

