

**IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA**

**IN THE KADUNA JUDICIAL DIVISION**

**HOLDEN AT KADUNA**

**SUIT NO: KDH/KAD/9/EFCC/2014**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA .....COMPLAINANT**

**AND**

**MOHAMMED KABIR SANUSI .....APPLICANT**

**RULING**

This is a Notice of Preliminary Objection filed by the defendant challenging the powers of the prosecutor in this case to prosecute the case. The Preliminary Objection which prays for an order to stop the prosecutor from prosecuting this case is premised upon the following grounds:-

1. The case does not bother on Economic and Financial Crimes
2. It is not the Federal Republic of Nigeria that is the complainant
3. The allegation as contained in Section 364 of the Penal Code Law precludes the High Court from trying the offence

4. The offence as contained in the charge is not Advance Fee Fraud as contemplated by the prosecutor.

Sole issue for determination was formulated by learned Counsel for the defendant/applicant. The issue is:-

***Whether the EFCC can exercise prosecutory powers over the offences alleged in the charge.***

The learned prosecutor formulated two Issues for determination. They are as follows:-

1. Whether the offences charged border on financial and Economic Crimes
2. Whether EFCC with powers akin to the Nigeria Police Force is precluded from prosecuting the charge in this case.

Nr. S.A. Akanni of learned counsel for the applicant submitted that although EFCC has power to prosecute offences under the Penal Code, such power is not at large. The offences that EFCC can prosecute, he contended, must be limited to economic crimes. He referred to Sections 7 and 46 of the Economic And Financial Crimes Commission Act 2004 and the decision in *NYAME V FRN* (2010) 3 SCNJ (pt. I) 28 at 70. Mr. Akanni submitted that Forgery is not an economic crime. He also contended that Count 1 of the

charge though alleging fraud under the Advance Fee Fraud & Other Fraud Related Offences Act is not an economic crime but only criminal breach of trust. He referred to *ANAGORUWA V STATE* (1998) 1 ACLR 435 at 483 and *AHMED V FRN* (2010) ALLFWLR (pt. 538) 861 at 872 – 874 learned counsel further submitted that reading the entire provision of Section 46 of the Act would show that it is the Police that has power to prosecute the offences in this case and not the EFCC.

H.M. Mohammed the learned prosecutor argued that two issues he formulated together in opposition to the Notice of Preliminary Objection. He submitted that the offences for which the defendant was charged are economic and financial crimes. That count 1 alleged fraud while counts 2 and 3 alleged forgery and using forged documents as genuine. Both offences, argued the prosecutor, are not violent offences but offences committed to gain illegal wealth. He referred to the unreported FCT High Court case NO. FCT/HC/CR/154/14 between *FRV VS NWOKOBIA CHRIS & 1 OR* delivered on 11<sup>th</sup> May 2016. He referred to Sections 363 and 366 of the Penal Code which create the offences of forgery and using forged documents as genuine and submitted that “fraud” is an elements to prove in both sections. He referred also to Section 17 for the definition of the word “fraudulently” Mr. Mohammed further argued that “intent to defraud” is also



one of the elements of the offences under Section 1(1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act. That all the 3 counts allege economic crimes which the EFCC by virtue of Section 7(2) (b) and (f) of the EFCC Act has power to enforce and prosecute. *NYAME V FRN* (2010) 7 NWLR (pt. 1193) 344 (2005 – 2010) ECLR 240 and *AKINGBOLA V FRN* (2012) 9 NWLR (PT. 1306) (CA) 511 at 532 were referred to in support of the submission that EFCC under the Penal Code and other Laws has the power to prosecute. He urged me to discountenance the objection and dismiss it as lacking in merit.

It is now well settled by plethora of Judicial authorities that the Economic And Financial Crimes Commission has express power under Section 13(2) of the Act to prosecute offences so long as they are financial crimes. See *FRN V NYAME* (2005 – 2010) ECLR 240 at 289, *AKINGBOLA V FRN* (Supra) at 532, *AHMED V FRN* (Supra) at 874. This power the commission has even in relation to offences under the Penal Code and Criminal Code Laws Section 7(2) (f) of EFCC Act. See *NYAME V FRN* at p. 289, *AKINGBOLA V FRN* at 532 and *AHMED V FRN* at 874.

Section 46 of the EFCC Act defined economic and financial crimes in the following terms:-

*“46 “Economic and Financial Crimes” means non violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organised manner thereby violating existing legislation governing the economic activities of government and its administration and includes any forms of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste, and prohibited goods etc”*

The above provision clearly defined economic and financial crimes generally as the “non violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organised manner.” The use of the expression “etc” at the end of the provision is an indication that further, similar items, other than the ones specified therein, are included. Thus the categories of economic and



financial crimes are not exhausted and could include other criminal offences. One of the instances of economic and financial crimes specified in Section 46 above is "any form of fraud". Now the accused person is standing trial on 3 count charge alleging that he obtained property by false pretence contrary to Section 1(1) (a) of the Advance Fee Fraud And Other Fraud Related Offences Act 2006 and also for forgery and using as genuine forged documents contrary to Sections 363 and 366 of the Penal Code Law.

One of the ingredients of the Offence of obtaining property by false pretence as defined under Section 1(1) (a) of the Advance Fee Fraud And Other Fraud Related Offences Act is that the accused made representation with intent to defraud. See EDE V FRN (2001) 1 NWLR (pt. 695) 502 at 512. It has been stated in AHMED V FRN (Supra) at p. 874 paragraph E – G that two constituents or ingredients of the offence of forgery punishable under Section 364 of Penal Code are knowledge and fraudulent intention. Fraud is also one of the ingredients of the offence of using as genuine forged document. Section 17 of the Penal Code defined "*fraudulently*" and "*with intent to defraud*" in the following terms:-

*"A person is said to do a thing fraudulently or with intent to defraud who does that thing with intent to deceive and by*

***means of the deceit to obtain some advantage for himself  
or another or cause loss to any other person.”***

Thus fraud is one element that must be present in both the offences of forgery and using as genuine forged documents punishable under Sections 364 and 366. To succeed in relation to all the 3 counts therefore the element of fraud must be established by the prosecution. In count 1 it was alleged that the accused with intent to defraud, induced Hajiya Zainab Bello to part with the sum of N5 Million for the purchase of property when there was no such sale transaction. The allegations in counts two and three are that the accused forged a Deed of Assignment and used it as genuine with intent to defraud the nominal complainant. It is clear therefore that the false pretence, forgery and using as genuine the alleged forged documents were perpetrated by the accused person with the objective of earning wealth illegally. On the whole therefore, I am satisfied that all the 3 counts in the charge alleged economic and financial crimes as defined under Section 46 of the EFCC (Establishment) Act 2004. I so hold.

Having regard to the provisions of Sections 7(1) (a), 7 (2) (f) and 46 of the EFCC Act and Section 1(1) (a) and 3 of the Advance Fee Fraud And Other Fraud Related Offences Act as well as Sections 17, 364 and 366 of the Penal Code read together the only conclusion to reach is that the EFCC

has the power and competence to initiate criminal prosecution against the accused person as charged in this case. I so find and hold. In the final analysis the Notice of Preliminary Objection lacks merit and is hereby accordingly dismissed.

Signed

**Hon. Justice M.T.M. Aliyu\_Judge**

17/07/16.