

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE .Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 26
CASE NUMBER : SUIT NO: CR/130/15
DATE: : MONDAY 8TH OCTOBER, 2018

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. KAYODE GABRIEL ADENIJI
2. KABRIEL GLOBAL CONCEPT LTD
3. MILDE LANDMARK VENTURES LTD } **DEFENDANTS**

1st Defendant in court.

Benjamin Manji – for Prosecution.

A.O Oloriaje – for the Defendants.

Prosecution’s Counsel – the case is for Judgment and we are ready to take same.

JUDGMENT

The Defendants were arraigned on a five count charge of Conspiracy, criminal breach of trust and obtaining money under False pretence, punishable under section 97(1) and 312 of the Penal Code Law cap 532, Laws of the Federation of Nigeria (Abuja) 1990 and section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006.

The Defendants pleaded not guilty to all the count charge. In proof of its case, the prosecution called 6 witnesses and tendered 7 Exhibits. At the close of its case, all the three Defendants at the time opted to make No Case Submission. In its considered ruling delivered on the 15th of May, 2017, the court disagreed with the Defendants' counsel, consequently dismissed the No CASE Submission and called upon Defendants to enter defence.

Prosecution opened its case with Detective Aduko Michael testifying as PW1. He said in his evidence that

he is an Operative of the Economic and Financial Crimes Commission and a member of the team that investigated this case. He stated in his evidence that he came to know the Defendants through a petition dated 20th May, 2014 (Exhibit “A”) on behalf of Mrs. Christiana Adetola Makanjuola against the Defendants. He said he and his team of investigators investigated the petition, and that letters of investigation activities were sent to the Corporate Affairs Commission to verify the status of the two companies involved in the allegations, to Banks to obtain the certified true copies of the account opening packages and statement of accounts, to Abuja Geographic Information Systems (AGIS) to ascertain the true ownership of the plot of land involved in the allegation and to that extent, a caveat was placed on further transaction on the land. PW1 said in the course of investigation, the 1st Defendant was subsequently arrested at the site of the said property and was brought to the office. He stated further that Exhibit “A” was shown to the 1st Defendant who read it and

offered to make voluntary statement in reaction to the allegations therein. He made voluntary statement in his own hand writing and made further additional statement and signed same (Exhibit “E”).

He said the team of investigators invited some private individuals (PW2, PW4 and PW5) who were sold portions of land in contention without the consent of the Petitioner and they reported and made voluntary statements admitting the fact that they bought plots of land from the 1st Defendant through one of his companies, 2nd Defendant, and were issued allocation letters, receipts for payment for same. He stated further that the offer letters of allocation signed by the 1st Defendant and receipts of payment issued to them by the 1st and 2nd Defendants were recovered (Exhibit “C”). He stated further that the letter of investigation written to Fidelity Bank to ascertain payment made by PW2 and his Company Oak Services Ltd for a portion of land sold to him by the 1st Defendant was responded to via Exhibit “D”s. He stated that all monies paid by

individual' purchasers of portions of the land are with the 1st Defendant who never remitted a dime to the Petitioner who is the owner of the land.

Witness also stated that investigation further revealed that the Petitioner entered into and signed a Memorandum of Understanding (MOU Exhibit "F") with the 1st Defendant through his company, the 2nd Defendant. He said no clause in the Memorandum of Understanding (MOU) allowed the 1st and 2nd Defendant to sell bare land to anybody and stated further that investigation revealed that contrary to the Memorandum of Understanding, the 1st Defendant sold portion of the Petitioners' land without their consent and did not remit the proceed to them but misappropriated same, and that in the course of investigation, the 1st Defendant was confronted with all these facts and documents, and it was then that it was discovered that the 2nd and 3rd Defendants belong to the 1st Defendant; neither the Memorandum of Understanding nor the sale agreement empowered the

Defendant to sell any portion of the plot of land to any individual without the consent of the Petitioner; the Defendants acted in contravention of the terms of the Memorandum of Understanding and sale agreement by selling portions of the plot of land without the consent and approval of the Petitioner; the proceeds from the sale were never remitted to the Petitioner.

Under Cross – examination, PW1 stated that he has been with Economic and Financial Crime Commission (EFCC) for 8 years now. He also said the nominal complainant signed Memorandum of Understanding with the Defendant, and that the said Memorandum of Understanding allowed the Defendant to develop the property and the said Memorandum of Understanding shall transform into a proper agreement.

It is further the evidence of PW1 under cross – examination that he did not know the state of the land before the Memorandum of Understanding and that the Defendant has sold part of the land. PW1 stated further

that he did not visit the land but his colleague did and that he did not know how many building are in the land, and that 1st Defendant did not say he was the owner of the land, but was selling the land.

In conclusion, PW1 said that 1st Defendant withdrew all the money he sold the land and used same.

He was discharged in the absence of any re – examination.

PW2, Mr. Uche Okeke said he is a businessman and the Managing Director of Oak Services Ltd. He said 1st Defendant was introduced to him as the owner of the company constructing Olive Estate at Gwarimpa, Abuja. He supplied rods to the site and was informed of available plots of land for sale by 1st Defendant's staff. He said he made enquiry to know who the owner of the plot is but the 1st Defendant told him that the plot of land belongs to PW3 who is his relative and the 1st Defendant assured him that he has full authority to sell some of the plots of land. PW2 further stated that he

was shown a copy of the Certificate of Occupancy. He said he conducted a search at AGIS to verify the true ownership of the land and made further enquiry from other individual (PW4 and PW5) who were already developing theirs wherein they confirmed to him that they bought from the 1st Defendant.

He said he bought his own plot for N13 Million and paid N10 Million by cheque in favour of the 2nd Defendant and the balance of N3Million by supplying the 1st Defendant iron rods worth that amount. He identified Exhibit “C” as the offer letter of allocation and receipt of payment issued to him by 1st Defendant for the purchase of his plot of land. He also identified Exhibit “D” Fidelity bank statement of account of his company Oak Service Ltd to demonstrate the transfer of N10 Million to the 2nd Defendant on the directive of 1st Defendant. He said he had almost completed his building on the land before it was sealed up by Economic and Financial Crimes Commission (EFCC). He stated that after the sealing up by the Economic and

Financial Crimes Commission (EFCC) he approached the 1st Defendant to find out what the issues were but the 1st Defendant told him there was a slight misunderstanding between him and PW3 which would be settled in no time but up until the time of giving evidence had not been settled.

PW2 during cross –examination said he believed the 1st Defendant when he represented to him that the owner of the plot of land is his relative. He said the iron rods supplied to 1st Defendant were not paid for but 1st Defendant told him to deduct it from the outstanding purchase price for the plot of land he bought. He also said he does not know if 1st Defendant used the proceeds to develop the property but learnt that the issues between the 1st Defendant and the Petitioner (PW3), bordered on the purpose for which the proceeds from the sale of the plots of land were used.

PW2 was discharged.

PW3 was led in evidence. Mrs. Christiana Adetola Makanjuola is the Allottee of the plot of land covered by Exhibit “G”. She said she knows the 1st Defendant and has met him twice before meeting him in court. She said she and her husband Mr. Makanjuola wanted to develop the said plot of land into a housing Estate but because of lack of money they could not. She said her husband introduced 1st Defendant as a person who said he will develop the land into a housing estate, deduct expenses and cost of land and then share the profit after selling the houses. She said they entered into an agreement and signed Memorandum Of Understanding (i.e Exhibit “F”).

PW3 also stated in her evidence that they discovered that contrary to the Memorandum Of Understanding (Exhibit “F”) signed, 1st Defendant had sold portions of the land to different individuals without informing them or seeking their consent and converted the proceeds of sale.

PW3 was shown Exhibit “F” (her petition to EFCC) which she identified and acknowledged.

Under cross – examination, PW3 stated that throughout the transaction her husband dealt with the 1st Defendant, and that there was foundation on the land at the time of the agreement before the accused was asked to stop prior to the contract agreement, and that 1st Defendant was not given consent to sell. That Exhibit “G” i.e Certificate of Occupancy was with her and that there is not case of forgery of Exhibit “G”.

Brig. Gen. Silver Ogbogu Rtd gave evidence as PW4. He said he is pensioner and a contractor.

He said he bought a plot of land from Engr. Emma who signed a purchase agreement with him for N15 Million. He said when he wanted to develop it, he met 1st Defendant who assured him that the plot belonged to him and that he was in charge of the site. He stated that he asked the 1st Defendant for the title documents of the land and the 1st Defendant showed to him bundle of

documents including drawings for the site. He further stated that the 1st Defendant issued him a signed offer letter of Allocation and signed (Exhibit “C”) showing that he bought the land from the 1st and 2nd Defendants immediately he told him he bought it from Engr. Emma confirming to him that he knows Engr. Emma and they are on the same page. He stated further that though he bought the land for N15 Million from one Engr. Emma, but he later got to know that Engr. Emma bought it for N10 Million from 1st Defendant. He said he informed the 1st Defendant that he bought it for N15 Million from Engr. Emma. He stated emphatically that the 1st Defendant cannot deny selling the land to him. He stated further that the 1st Defendant issued to him the offer letter of allocation as the owner of the land. 1st Defendant did not issue it on behalf of any lady or anybody.

During cross – examination, PW4 stated that Engr. Emma gave him sales agreement and Power of Attorney. That the 1st Defendant issued him offer letter,

and that 1st Defendant was on the site when some police men came to the land.

He said he is a lecturer with the University of Abuja and that he knows the 1st Defendant as a family friend. He stated that the 1st Defendant informed him some time in 2008 that PW6 Mr. Makanjuola asked him to develop his property for him. He said the 1st Defendant offered a parcel of land to him for N14Million which he paid by instalment into the account of 2nd Defendant on the directive of 1st Defendant. He said 1st Defendant took him to the land and also issued him offer letter of allocation Exhibit “C”. He said he has never met Mr. Makanjuola before and did not pay any money to Mr. Makanjuola. He also identified and confirmed Exhibit “C”. He said during cross –examination that 1st Defendant cannot deny collecting money from him even though he did not claim ownership of the land.

PW6 Mr. Gbenga Makanjuola. He said he is the husband of PW3, the Petitioner and allottee of said plot

of land. He said he has known the 1st Defendant for about 8 years. He said the 1st Defendant was introduced to him by one of his former staff Sunday Owolabi as his friend and a brother. He said the 1st Defendant subsequently met him in Abuja and came to his office to further introduce himself and the nature of his business to him. He stated that 1st Defendant informed him that he is an Engineer, Builder, Developer, and a General Contractor. He said in the course of their discussion, 1st Defendant mentioned to him that he has a plot of land to sell and that he was still marketing it, and asked if the 1st Defendant can get a buyer for the land, he said 1st Defendant said there was no need selling the land that he had a better idea which will even enable PW6 make more money than selling the plot of land. He said 1st Defendant told him as a developer, he could develop the plot of land into an estate then they will thereafter sell the houses. He said he told the 1st Defendant he does not have money for that and that was the reason why he wanted to sell to which the 1st

Defendant responded that money was not a problem as he was willing to fund it and as developer and a builder he knew how to manage the little funds he had to handle the project. He said after persuasion from the 1st Defendant, he gave a copy of the certificate of occupancy to the 1st Defendant to enable him conduct a search to confirm the genuineness of the plot of land and even introduced him to his own lawyer to assist him with the search. He said that he informed the 1st Defendant that the plot of land belongs to his wife PW3. He said the 1st Defendant wanted them to enter into a joint development agreement where 1st Defendant will provide the fund for development of the land and PW6 will use the plot of land as his equity contribution. After the completion of the project, the houses were to be sold and more profit would then be made and shared. He said he and the 1st Defendant had several meetings on the matter and 1st Defendant kept assuring him that he is able to handle financing the project, that 1st Defendant in trying to convince him told him he had

handled a similar project in Kuje and other places in Abuja. He said he told 1st Defendant to give him time to think about it and get back to him on the issue. He stated further that 1st Defendant came to him with a copy of a joint development agreement he had with another company on a similar project for his consideration and that 1st Defendant mounted pressure on him but he told 1st Defendant he will not rush to sign a joint development agreement rather they should sign an Memorandum of Understanding that will state the responsibilities of each party on the project which, if agreeable between parties, can lead them to sign a joint development agreement. Pursuant to this, his wife, the allottee signed a Memorandum of Understanding (MOU) with 1st Defendant and his company 2nd Defendant. He said he was not always in Abuja due to a program he was running at the University of Ilorin and because of his absence, 1st Defendant without contacting him and without his or his wife's consent and approval, sold portion of the land to private

individuals contrary to the signed Memorandum of Understanding and misappropriated the proceeds. He said the 1st Defendant did not inform him or his wife before he started selling portions of the plot secretly and converting the proceeds. He said no clause of the agreement empowers him to sell anything on the land or the land without the consent of the owners. He said he discovered what 1st Defendant had done and confronted him while expressing his displeasure at the betrayal of trust. He said the 1st Defendant did abate on the sale of the land. He also discovered that some material supplied on the land were taken and used to build the 1st Defendant's personal house.

He stated that all the building that had been constructed on the land were erected by those private individual whom 1st Defendant sold portion of the plot of land to without authority, that when he told the 1st Defendant to stop work he responded that the land is no longer his hence he has to write to Economic and Financial

Crimes Commission (EFCC) who had since taken over the property and commenced investigation.

Under cross –examination, PW6 stated that his wife owned the land in question and that Memorandum of Understanding was executed in 2012 and that he prepared the Memorandum of Understanding, and that he has never handed over the land to the Defendants. That 1st Defendant sold the land and issued allocation letters.

That he reported to Economic and Financial Crimes Commission when Defendant was selling his land.

In the absence of other witness, prosecution then closed its case to pave way for defence.

The Defendant opened its defence. PW1 1st Defendant testified as follows:-

Kayode Gabriel Adeniji – He is the 1st Defendant in this Charge and the owner of 2nd and 3rd Defendants. He stated that he is an Engineer, developer and also a

businessman. He stated that he did not know the Petitioner PW3 until she testified in court but said he knows PW6 the husband of the Petitioner. He said he was introduced to PW6 by a childhood friend who was working for him when PW6 was in the National Assembly. He said PW6 informed him he has a parcel of land and that he has no money to develop it so he wanted to sell and that he should look for a buyer. He said that he told PW6 that he wanted to see the land and PW6 directed one of his staff Mr. Peter to take him to see the land. He said after seeing the parcel of land he told PW6 not to sell it but PW6 said he had not money to develop it. He said that he advised PW6 not to sell and that since he 1st Defendant is a developer, he can work with PW6 to develop the property but PW6 insisted he had no money. He said he informed PW6 that he would shoulder the financial responsibility. But PW6 asked him how he would fund it, and asked if he intended to get a bank loan. In responding, he told PW6 that there are many ways of doing it as developer, and

it was not necessary to apply for a bank loan which will be time consuming and cumbersome. He assured PW6 that he would go into the land and start work with the money he had at hand consequent upon which PW6 gave him a copy of the certificate of occupancy.

He said he got to the land negotiated and settled the Gwari people in the land with N20 Million and briefed the PW6 orally as they are working based on brotherhood but that he photographed the process of paying the Gwari people. He said when he told PW6 about the expenses he told him to go ahead that at the end of the project it will be valued and the cost of development on the land will be deducted from the total sale.

DW1 stated further that he informed PW6 that he wanted the plot of the land and that he got a consultant who did the drawing and concept of the building and also got development control approval for a fee of

N21Million. He tendered documents by consultant Exhibit “D2”, “D3” and “D4”.

He also tendered documents of approval from Development control of FCDA as Exhibit “D7,” “D8”, “D9”, “D10”, “D11” and “d12”.

He said when he moved to site PW6 told him to use his company name to secure loan in the bank but he refused.

He said he paid a surveyor N3 Million to divide the parcel of land into 15 plots. He stated further that he demolished the existing building on the land with N2Million and also did perimeter fence with N65 Million.

He said PW5 paid 14Million for his plot.

He stated that there was a ground breaking ceremony which he invited PW6 to but unfortunately PW6 did not make it because of his journey to Dubai, and tendered

pictures marked “D13” and “D14” which were rejected as no foundation was laid as required by law.

He said he sold a plot to one Engr. Emma for N10 Million who sold to PW4. He stated further that he sold a plot to PW2 for N13 Million and that all these transactions took place between 2008 – 2009. He said it was his wife who advised him to do an agreement in case of eventualities so that he can have something to hold on to since he has been spending his money, that was what led to the Memorandum of Understanding in 2011. He said PW6 prepared the Memorandum of Understanding single handedly but when he went through it ninety percent of the content was what they had agreed on.

He said PW6 went into politics in 2013 and requested N20 Million from him but he could not provide the money, that PW6 thereafter offered to sell the parcel of land to him for N270 Million but eventually they agreed for N230 Million and signed a sales agreement. He said

that he approached the ICPC cooperative and entered into agreement with them. PW6 detailed a lawyer to go with him to the ICPC and gave him a letter to Enterprise Bank. He applied to tender the letter as Exhibit “D15” but same was rejected. He said the money collected from those who bought portion of the plot from him was put back into the project and that the purpose of selling the plot was to raise money for the project. He stated that he spent over N500 Million on the project. He also tendered the agreement between him and ICPC as Exhibit “D16”.

He said on cross – examination that he moved into his personal house in 2010.

That he is the owner of 2nd and 3rd Defendants. That he entered into Exhibit “F” (Memorandum of Understanding and Agreement to sale) with the Petitioner in respect of the parcel of land. That he advised PW6 to develop the land when PW6 said he wanted to sell it and that he sold portions of the land.

He said the purpose of the agreement was because of the money he had spent and the Memorandum of Understanding contained the amount he had already spent in paragraph 9, 10 and 11. That the Memorandum of Understanding did not contained N14 Million paid by Prof. Kolawole. That he did not give a dime from the proceeds of the sale to the Petitioner or her husband PW3 and PW6. That also collected N10Million and N3Million worth iron rods from PW2 as payment for a portion of land.

DW1 was discharged.

DW2 Mr. Ayo Yusuf said he is contractor and was awarded a contract for construction of one block of six units of three bedrooms in Olive Estate Abuja. He tendered photocopies of letters of award and acceptance as Exhibit “D17” and “D18” respectfully. He testified that he built up to lintel level in all the six units before EFCC sealed up the place. He tendered pictures he took of work he had done before the EFCC stopped work in

the place as Exhibit “D19” and “D20”. He said because the 1st Defendant has not paid him for work done, he has been sued at Upper Area Court Kado and 1st Defendant is coming to testify in that case for him.

On cross – examination, he stated that all he knows about the land and the relationship between the 1st Defendant and the PW3 and PW6 was what 1st Defendant told him.

That the valuation report tendered by him was not signed by the Quantity Surveyor who allegedly prepared same.

Parties close their case to pave way for filing and adoption of final written addresses.

The Defendants formulated two issues for determination to wit;

- a. Whether the Prosecution has proved its case against the Defendants beyond reasonable doubt as required by law.

- b. Whether with the totality of evidence put forward by the defence, it will be justifiable to convict the Defendants on the allegation in charge preferred against them in this court.

Learned counsel while arguing the above maintained that a critically looking at the testimonies of PW1, PW2, PW3, PW4, PW5 and PW6 the court will notice that the prosecution has failed woefully to prove the ingredients of the offence charge and therefore court was urge to discharge and acquit the Defendants.

The Prosecution on its part, formulated a sole issue for determination to wit, whether from the quatum of evidence adduced by the prosecution, It could be that it has discharged the burden on it by proving the offences for which the Defendants are charged beyond reasonable doubt.

Learned counsel submit that from the totality of all the evidence led, it is obvious that the prosecution has proof

it case. Court was urge to convict the Defendants as charge.

The Defendant upon receipt of the Prosecution final written address. Filed a reply on point of law. Where learned counsel submit that counsel final written address cannot take the place of evidence in law. Therefore court was urge to discountenance with same and discharge and acquit the Defendants.

On the part of court, after a careful consideration of the processes filed, oral and documentary evidence cum the respective final written addresses of counsel, I shall adopt the 1st issue formulated by the Defendant as issue for determination by this Honourable court to wit;

Whether the prosecution has proved its case against the Defendants beyond reasonable doubt as required by law.

By the provision of section 139 of the evidence Act 2011, the burden of proof in a criminal case lies on the

prosecution and is discharged if the guilt of the accused is established beyond reasonable doubt.

Count 1 hinges on the offence of criminal conspiracy contrary to section 97 of the penal code.

To succeed in above count charge, the prosecution is required to prove the following:-

- a. An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.
- b. Where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by more of the parties in furtherance of the agreement.
- c. Specifically that each of the accused individual participated in the conspiracy.

It is a well settled principle of law that in a charge of conspiracy, meeting of the minds of the accused persons is a necessary ingredient. Indeed, the actual

commission of the offence is not necessary to ground a conviction for the offence.

All that is necessary is a meeting of the mind to commit an offence and this meeting of the mind need not be physical. *ODIDO VS STATE (1995) 1 NWLR (Pt. 369) Page 88 at 93 – 94.*

The Prosecution in prove of it case, called six (6) witnesses who gave evidence and tendered various documents as Exhibits.

PW1 (Detective Adariko Michael testified to the effect that he came to know the 1st accused person through a petition written on behalf of Mrs. Christiana Adetola Makanjuola (PW3).

It is his testimony before the court that an investigation activities were sent to the Corporate Affairs Commission to verify the status of the two companies involved in the allegation.

The Response of the investigation activities were tendered Exhibits “B” and “D” respectively.

It is further the evidence of PW1 that the team of investigators invited some private individuals i.e (PW2, PW4 and PW5) that the Defendants sold portions of the plot of land in contention without the consent of the Petitioner. The receipts and letter of allocation signed by the 1st Defendant and the receipts of payment issued to them by the 1st and 2nd Defendant were tendered as Exhibit “C”.

PW1 stated that by virtue of memorandum of understanding, i.e Exhibit “F”, no portion of it permitted the 1st, 2nd and 3rd Defendants to sell a bare land without the consent of the nominal complainant.

Exhibit “C” are receipts issued by the 2nd Defendant to one Mrs. Kemi, Kolawale for the purchase of the portion of the land in dispute and equally contained letter of offer issued to Mrs. Kemi Kolawale by the 2nd Defendant (Kabriel Global Concept Ltd.) also in the

said Exhibit “C” are offer letters issued to Choice Oak Services Ltd, Silver Ogbogu by the 2nd Defendant.

I have perused the content of the said Exhibit “F” i.e Memorandum of Understanding (MOU) which to my mind seem to be the bone of contention.

By paragraph viii of the Memorandum of Understanding, it was mutually agreed that the project cost/construction cost which shall be mutually agreed upon by the parties shall be borne by the developer and may include but not limited to funding from the financial institution.

Paragraph X of the memorandum is hereby reproduce *“that the property shall be built and sold by the developer with the cooperation of the client when completed to interested members of public at it current market value as will be determined by retained professional valuers of the developer and the client.”*

From the above quoted paragraph, can it be said that the Defendants complied with the agreement when they

sold Plots of the land in issue and issued Exhibit “C” without the consent of the nominal complainant?

My answer is certainly in the negative.

Indeed, the proof of conspiracy is generally a matter of plausible inference deduced from certain criminal acts of the accused done in pursuance of an apparent criminal purpose in common between them. This is because it is generally recognised in law that in a charge of conspiracy, proof of actual agreement which is an essential ingredient of the crime is not always easy to come by.

Thus the facts that there is no positive evidence of any agreement between the accused persons to commit the offence is not enough to hold that the prosecution cannot establish the charge of conspiracy. *YAKUBU VS STATE (2011) LPELR 19749 (CA)*.

From the evidence before me, particularly from the testimonies of PW1 – PW6 and Exhibits “C” and “D” which are receipts issued by the 2nd Defendant,

allocation letters issued by the 2nd Defendant, and the statement of accounts of the 2nd and 3rd Defendants it is obvious that there was common intention among the accused persons. I so hold.

On whether the common intention was to commit crime, I shall delved into same in considering count two charge i.e criminal Breach of Trust punishable under section 312 of the penal code.

For avoidance of doubt the said section is hereby reproduce;

“Whoever, being in any manner entrusted with property or with dominion over property, dishonestly misappropriate or converts to his own use or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied which he has made touching the discharge of such trust or wilfully

suffers any other person so to do, commits criminal breach of trust.”

To succeed in the proof of criminal Breach of Trust, prosecution is required to prove:-

1. That accused was entrusted with property or with dominion over it.
2. That he;
 - i. Misappropriated it or
 - ii. Converted it to his own use
 - iii. Used it
 - iv. Disposed of it
3. That he did so in violation of;
 - a. Any direction of law prescribing the mode in which such trust was to be discharged or
 - b. Any legal contract expressed or implied which he had made concerning the trust or

- c. That he intentionally allowed some other persons to do as above.
4. That he acted as in 2 above.

In proof of the ingredient of the above offence i.e criminal breach of Trust, the prosecution called a total number of 6 witnesses and tendered various documents.

Indeed, documentary evidence being permanent in form, is more reliable than oral evidence. It is used as a hanger to test the credibility of oral evidence. It is also settled that the importance of documentary evidence is that it could be used to resolved an issue or conflicting evidence ***OGUNDIPE VS THE MINISTER OF FCT & ORS (2014) LPELR 22771 (CA)***.

The prosecution in establishing that the Defendant were entrusted with the piece of land to wit; plot no. 19 Gwarinpa I Cadastral Zone Co2 covered by certificate of Occupancy No. Ib62w.zac 27-sef4r-cf62u-10 dated 10th November 2005 measuring 1:33Ha in the name of Mrs. Christiana Adetola Makanjuola (PW3) tendered

Exhibit “F” which is memorandum of understanding between the Defendants and the nominal complainant (PW3).

For avoidance of doubt, relevant paragraphs of the Memorandum of Understanding between the parties are hereby reproduced:-

Paragraph viii “the project cost/construction cost which shall be mutually agreed upon by the parties shall be borne by the developer and may include but not limited to funding from financial institution, cost of materials and equipment, cost of labour, marketing/sales expenses, incidental expenses and every other expenses incurred during the building/sale of the project.”

Paragraph ix “the parties jointly agree that adequate records of expenses and costs be kept for the purpose of determining the profit accruable from the project.”

Paragraph x “that the property shall be built and sold by the developer with the cooperation of the client

when completed to interested members of the public at its current market value as will be determined by retained professional valuer of the developer and the client.”

Paragraph xi “the developer may provide the adequate and appropriate sum required as indemnity to the original occupiers of the said land for the above project/property and this shall be with the knowledge of the client.”

It is the contention of the prosecution as stated by PW3 and PW6 that the Defendants sold some portions of land entrusted to them vide Exhibit “F” to PW2, PW4 and PW5 without the consent of the nominal complainant and converted the proceed for his personal use which conduct amount to criminal breach of Trust.

In support of the allegation, prosecution tendered Exhibit “C” which are receipts, offer letter and power of Attorney issues by the 2nd Accused person which is a

cooperate body owned by the 1st accused person to PW2, PW4 and PW5.

A cursory look at the receipts and offer letters issued to PW2, PW4 and PW5, would reveal they were issued by the 2nd Defendant in its name and not on behalf of the nominal complainant.

In their testimonies PW2 (Mr. Uche Okeke) stated that he bought his portion of land for N13 Million and that he paid N10 Million by cheque in favour of the 2nd Defendant and was issued Exhibit “C” series by the 1st Defendant, PW4 (Brigadier General Silver Ogbogu) stated that he bought his land for N15 Million from Engineer Emma.

It is his evidence that when he wanted to develop it, he met 1st Defendant who assured him that the plot belonged to him and that he was in charge of the site. He also identified Exhibit “C” series i.e offer letter issued to him by the 2nd Defendant.

Equally PW5, Professor Kolawole Mounted the witness box and stated that he bought his land for N14 Million from the 1st Defendant and paid into the account of the 2nd Defendant and was issued offer letter in the name of the 2nd Defendant.

Prosecution also tendered Exhibit “B” which contained the certificate of incorporation of Mide Landmark Ventures Limited and Kabriel Global concept Limited with the particulars of Director showing that both companies is owns by the 1st Defendant, Exhibit “D” which is response to the letter of investigation activities by Fidelity Bank Plc. in the said Exhibit, statement of account showing how money was paid into the account of 2nd Defendant was attached.

Corroborating the position of the Exhibit “D”, PW1 under cross examination stated that 1st Defendant withdrew all the monies he sold the land and used same.

It is trite law that the offence of criminal breach of trust will be committed when a person who is entrusted with

or has dominion over property or money, misappropriates or convert same to his own use or disposed - of it in violation of any contract, express or implied, which he had made concerning the trust or contrary to the directive given to him or he intentionally allowed some other person to do same. ***ONUOHA VS THE STATE (1988) 7 SC (Pt. 74) at 93 – 94.***

In his defence, DW1 (1st Defendant) stated that the land was plotted into 15 plots and 3 were sold out to PW2, PW4 and PW5 in 2008 as agreed with PW6 prior to the existence of Memorandum Of Understanding i.e Exhibit “F”.

It is also the evidence of DW1 that all the proceeds of the said sale of land were invested into the land.

Pictures photograph to show how he compensated some indigenous people in the land, were tendered by DW1.. The law on documentary evidence is trite.

Indeed, documentary evidence is a hanger to test the veracity of oral evidence.

A glance at the offer letter given by 1st Defendant who gave evidence as DW1 to PW2, PW4 and PW5 shows contrary. The offer letter given to PW2, PW4 and PW5 were all given in 2011 contrary to DW1 assertion that they were given in 2008.

I have equally seen Exhibits “D1” – “D6” tendered by DW1 which tend to suggest that 1st Defendant paid money to some Gbagi indigenes who were occupying the said plot of land. But failed woefully to called at least one witness to corroborate his assertion as proper foundation was not laid to show that the picture was taken on the subject matter.

Qst.. Where are they said indigenes? Why were they not called to testify to that effect? Are they death or alive?

Anybody could have posed anywhere for pictures to be taken and used in court. I however must absence that in tendering such picture photograph(s) the evidence of one or two of them allegedly paid the compensation who appeared in the picture photograph becomes

necessary to corroborate the evidence of DW1 who said he paid compensation to them.. such corroborative evidence is missing in this case.

Indeed, the intention of parties in respect of the transaction can be seen from Exhibit “F” (Memorandum Of Understanding) executed by both parties.

As earlier stated in the preceeding part of this judgment, there is no clause in the Memorandum of Understanding aforementioned, authorising the Defendants to sell bare plots of land.

From the sum total of the evidence put forward by prosecution, I am convinced that the prosecution was able to establish by evidence that the 1st, 2nd and 3rd Defendants, being entrusted with property belonging to PW3 and same violated both the express and implied terms of Exhibit “F” entered into by selling plots of land from the land in issue and converting the proceeds

of the said sell in violation and abuse of the Trust given to them.

Counts 3, 4 and 5 borders on obtaining money from PW2, PW4 and PW5 under the false pretence that he has power and authority to sell portions of the land belonging to PW3 to them and letters of offer and receipts were issued in the name of 2nd Defendant.

The charge against the Defendants on counts 3-5 borders of obtaining money by false pretence contrary to section 1(3) of the advance fee fraud and other fraud related offence Act No. 14 of 2006. Section 1(3) of the said Act is the punishment section. Section 1(1) which prescribes the offence reads thus;

“notwithstanding anything to the contrary in any other enactment or law, any person who by any false pretence, and with intent to defraud:-

a. Obtain from any person in Nigeria or in any country, for himself or any other person

- b. Induces any other person, in Nigeria or in any 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 induce by false pretence, is guilty of an offence under the Act.”*

In order to succeed in a charge of obtaining by false pretences, the prosecution must proof the following ingredients.

- a. That there is a pretence
- b. That the pretence emanated from the accused.
- c. That it was false
- d. That the accused knew of its falsity or did not believe in its truth.
- 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 own interest in the property. *ALAKE VS STATE (1991) 7 NWLR (Pt. 205) 567.*

The prosecution in proving above offence called a total Number of 6 witnesses.

PW2 Mr. Uche Okeke told the court that he supplied rods to the site where 1st Defendant was constructing and that he made an enquiry to know who the owner of the plot is but the 1st Defendant assured him that he has full authority to sell some of the plots of land.

PW2 stated he bought his portions of land for N13 Million Naira and he paid N10 Million to 2nd Defendant vide its fidelity account. And that he issued offer letter in the name of 2nd Defendant vide Exhibit “C”.

PW4, Brigadier General Silver Ogbogu RTD, told the court that he bought his land from one Engr. Emma for N15 Million and that when he wanted to develop it, he met 1st Defendant who assured him that the plot belonged to him and that he was in charge of the site.

It is the testimony of PW4 that 1st Defendant showed to him bundle of documents including drawings for the site and he was issued an offer letter by the 2nd Defendant.

PW5 Professor Kolawole told the court that the 1st Defendant offer a parcel of land for him for sale for N14 Million Naira and that he paid same. And that the 1st Defendant through his company 2nd Defendant issued him letter of offer vide Exhibit “C”.

The law with respect to transfer of unexpired residue in land related transaction, is very clear.. only a person who has been duly allocated reversionary interest i.e right over a piece of land and or who has the legal authority vide appointment as Attorney, can validly transfer any such interest in such land. Where there is no express right to transfer interest, any such alleged transfer becomes null and avoid in view of the ageless principle of *nemo dat quod non habet* which mean no one gives out what he does not have. I rely on **ALAYA**

VS ISAAC (2012) LPELR – 9306 (CA), OMIYALE VS MACAULEY (2009) 7 NWLR (Pt. 1141).

The questions that begs for answer are two:-

Qst.. Where did Defendant get authority to sell plots of norminal complaints' land to PW1, PW4 and PW5?

Qst.. Was there any land in law at all, belonging to the Defendants?

Indeed the onus is on the party who assert the affirmative to prove his assertion. It is however the law that once the court is very convinced that the ingredients of an offence is established, prosecution is then adjudged to have discharged that burden of prove. I have seen and read the contents of the documents tendered before me, on the one hand and listened to the viva – voice evidence adduced by Prosecution and Defendants on the other part.

There is truly no part of the evidence before me suggesting compliance with the agreement between Defendant and the nominal complainant in this case.

There is however abundant evidence before suggesting that 1st Defendant in collaboration with other Defendants sold part of the plots in question to people and was paid various sums of monies being consideration..

Qst.. Are Defendants who contrary to the agreement i.e Memorandum Of Understanding sold plots of land which they never had, not guilty of false pretence as charged?

From the above, could it be said that the prosecution has proved the offence of false pretence? PW2, PW4 and PW5 gave account as stated above how the 1st Defendant who made representation to them and made them believe that he had authority and power to sell the plots of land.

By Exhibit “C”, 1st Defendant who is the owner of 2nd Defendant gave receipt of payment in the name of the 2nd Defendant and not in the name of PW3 who is the owner of the land.

A cursory look at the offer letters issued to PW2, PW3 and PW4, shows that some were given in the name of 2nd Defendant and not in the name of PW3.

Qst.. Was 1st Defendant mandated to alienate any portion of the said land by way of express sell of plots without the consent of PW3?

The answer is certainly in the negative from the reproduced paragraph of the said memorandum of understanding.

From the evidence before me therefore, it is obvious that the 1st Defendant never informed PW3 and PW6 that he had issued letters of allocation and payment receipt in the name of 2nd and 3rd Defendant in respect of the land.

It is also clear that the 1st Defendant knew that the land does not belong to him and that Exhibit “F” never empowered him to divide the land into plots and sell same. 1st Defendant issued receipts and letters of allocation and signed them as if 1st Defendant is the original allottee or had Power of Attorney to so do.

From the totality of the evidence adduced before me, is it not very clear that 1st and 2nd Defendants merely collected monies from unsuspecting members of the public on the pretext that they were selling what was theirs when they knew full well that the land wasn't theirs?

Without much ado, I am very convinced.

From the testimonies of PW1, PW2, PW3, PW4, PW5 and PW6 that 1st Defendant induced PW2, PW4 and PW5 to transfer monies to him under false pretence. He is guilty as charged.

Indeed, proof beyond reasonable doubt does not means proof beyond the shadow of a doubt. The law would fail

to protect the community if it admitted 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, the case is proved beyond reasonable doubt but nothing short of that will suffice. *AKPAN VS STATE (2014) LPELR 22741 (CA)*.

In summation, the accused persons are hereby guilty of Count 1, 2, 3, 4 and 5 and accordingly convicted as charged.

Justice Y. Halilu
Hon. Judge
8th October, 2018

ALLOCUTUS

Oloriaje:- Standing before the court is the convicted 1st Defendant. He acted in good faith. The convict is the bread winner of his family. Convict has been battling financially since the project stopped. I must humbly urge the court to temper justice with mercy. He does not have any criminal record. We urge the court to note that he is a man of good character and tremendous respect. We urge the court to impose fine with relation to section 97 and 312 of the Penal Code.

We also urge the court to have mercy and find a way to reprimand the convict.

Manji:- We urge the court to exercise discretion on Counts 1 and 2.

On counts 3, 4 and 5 court has no discretion to exercise. We urge the court to give the maximum – sentence.

Court:- Case is stood down to 3pm for sentencing.

Justice Y. Halilu
Hon. Judge
8th October, 2018

3.00Pm

APPEARANCES

Benjamin Manji – for Prosecution.

A.O Oloriaje – for the Defendants.

SENTENCING

I have listened to the allocutus of the convicts through their counsel, Oloriaje Esq., I have equally listened to the reaction of Manji of counsel for the Prosecution.

I have carefully looked at the punishment sections for the said offences charged under sections 97(1), and 312 of the Penal Code and Section 1(3) of the Advance Fee Fraud and other related Offences Act, 2006.

We live in a society where people simply act like gangsters and semi – gods.

Trust is a difficult game that only those who have the fear of God should play. The 1st Defendant clearly has put himself in this very embarrassing state.

I only hope he will find a place in history to forgive himself. Whatever that means to him.

Even though, counts 1 and 2 afford me the opportunity to exercise discretion, I am afraid counts 3, 4 and 5 has no such discretion under the Advance Fee Fraud Act 2006.

I however must emphasise the need for people to be careful with their relationship with people and government.

Wherever you find yourself either as government employee or entrusted with personal trust, you are to take such responsibility very serious with the fear of

God. That only shall be reason for a good and prosperous Nigeria.

The attitude of the convicts is clearly not that of people worthy of being entrusted. God forbid. I hereby sentence the 1st, 2nd and 3rd Defendants to a term of six months in prison with relation to criminal conspiracy; seven years with relation to criminal breach of trust and another seven years with relation of receiving monies by false pretence. These terms shall run concurrently.

This, I believe shall be enough reason for people to be careful in this life. May God forgive us all.

1st Defendant shall serve his terms in Suleja prison.

Justice Y. Halilu
Hon. Judge
8th October, 2018