

**IN THE CHIEF MAGISTRATE'S COURT**  
**OYO STATE OF NIGERIA**  
**IN THE IBADAN MAGISTERIAL DISTRICT**  
**HOLDEN AT IBADAN**

**BEFORE HIS WORSHIP: N. A. J. OGUNBONA (MRS.)**

**SUIT NO. MNE/230/2016**  
**COURT NO.**

**BETWEEN:**

**COMMISSIONER OF POLICE**

**VS.**

**OGUNDEJI EBUN**

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**J U D G M E N T**

The Defendant was arraigned in court on 20/9/16 on a two counts charge as follows:-

**Count 1:**

That you Ogundeji Egun 'm' on the 11<sup>th</sup> day of March, 2015 at Opposite Bovas Filling Station, Bodija Area, Ibadan in Ibadan Magisterial District did unlawfully obtain the sum of N2.1M from one Dr. Uguru Hyacinth 'm' with pretence to buy him a Toyota Corolla 2010 model knowing same to be false and thereby committed an offence contrary and punishable under Section 419 of the Criminal Code Cap. 38 Vol. II Laws of Oyo State Nigeria 2000.

**Count II:**

That you Ogundeji Egun 'm' on the 11<sup>th</sup> day of March, 2015 at Opposite Bovas Filling Station, Bodija Area, Ibadan in the Ibadan Magisterial District did steal the sum of N2.1 Million property of one Dr. Uguru Hyacinth 'm' and thereby committed an offence contrary and punishable under Section 390 (9) of the Criminal Code Cap. 38 Vol. II Laws of Oyo State Nigeria 2000.

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O. A. (Mrs.)

At the arraignment the accused pleaded not guilty to the 2 count charge against him and was legally represented.

In proving the case against the defendant, the prosecution called two witnesses the complainant and the Investigating Police Officer.

The following exhibits were also tendered as exhibits.

1. Exhibit A - statement of the complainant dated 19/8/15
2. Exhibit B - Deposit slip of First Bank Slip No. 6269365
3. Exhibit C statement of the defendant dated 8/2/16
4. Exhibit D letter of undertaking dated 9/2/16
5. Exhibit D1-A leaflet paper containing account detail
6. Exhibit D2 - A printed copy of letter dated 29/3/17

The defendant also gave evidence in his own defence.

The prosecution witnesses were duly and thoroughly cross examined by the learned counsel for the defendant, and defendant also cross examined by the prosecution.

At the close of the case of the two parties learned counsel filed and adopted as final address a written address dated 22/8/17. In his address before the court learned counsel for the Defendant posited this issue, for consideration which is whether with seriously incurable defect in the two count charge of obtaining by false pretence and stealing where one of the vital constituent elements in proving the case "with intent to defraud" is missing on the charge sheet is sustainable and maintainable.

Learned counsel for the defendant further submitted that throughout the evidence led through PW1 and PW2 the prosecution failed to prove essential ingredient of count 1 and count 2.

Learned counsel further submitted that the constituent elements of obtaining by false pretence as can be inferred from Section 419 are:-

- (1) That there is a pretence
- (2) That the pretence emanated from the accused person.

- (3) That it was false.
- (4) That the accused person knew of its falsity or did not believe in its truth.
- (5) That there was an intention to defraud
- (6) That anything capable of being stolen.
- (7) That the accused person intended to transfer complaints whole interest in the party to himself.

Learned counsel submitted that the omission of intent to defraud in the draft of count 1 is fatal to the case of the prosecution. He referred the court to **ODESANYA J. in OJULARI KOSOKO VS. C.O.P. CCHCJ/5/74 as 550 QUEEN VS. ABUAH (1961) ANLR 635.**

He urged the court to uphold the submission and acquitted and discharge the defendant.

I have taken time in critically and diligently considered all the evidence placed before the court the exhibits tendered, the address by the learned counsel for the defendant, the authorities cited and the provision of the law under which the defendant was arraigned.

In criminal trials, the offence charged can be proved either by direct evidence or by circumstantial evidence. In direct evidence, the existence of a thing or fact is proved either by its actual production or by the testimony or admissible declaration by someone who has himself perceived it. By circumstantial evidence which is sometimes called indirect or perspective evidence the existence of a fact or thing is logically inferred from other proved facts.

The nature of circumstantial evidence sufficient to support a conviction in a criminal trial must be cogent, complete and unequivocal. It must be compelling and must lead to the irresistible conclusion that the accused and no one else is the offender.

An evidential burden placed on the prosecution in criminal cases has also been defined in *ESANGBEDO VS. STATE (1989) 4 NWLR (Pt. 113) at 70* to mean the burden of introducing adducing or producing evidence on any particular issue.

As stated earlier the burden of proof in criminal cases is placed in the prosecution and the standard thereof is proof beyond reasonable doubt.

However, O. O. Adekeye J.C.A. as he then was in *Akinyemi Vs. State (1999) 6 NWLR Pg 6 NWLR Pt. 601 pg. 449 at 464 par F-H* it was explained this proof beyond reasonable doubt is not one that must be beyond reasonable doubt it does not mean that a case against an accused person must be proved beyond any shadow of doubt. The golden thread rule, that crime is to be beyond reasonable doubt was postulated within the realm of reason. It must not be stretched beyond reasonable doubt otherwise it will cleave. The prove beyond reasonable doubt must be allowed to meet at bay and only rightly employed in deserving cases. From the totality of the evidence of both parties in this case i.e. that of the prosecution and the defendant and the exhibits tendered and admitted, the following issue seem to have been joined and this need no further proof.

- (1) That PW1 got to know the defendant through one Dr. Akibu who gave PW1 defendant's phone number to be contacted in respect of sales of car.
- (2) That PW1 liked and wanted to buy a Toyota Corolla 2010 model seen on the sued purportedly owned by the defendant but for a choice of better colour as advised by the defendant, decided to follow the defendant to Cotonou for a better choice.
- (3) That based on 2 above, both defendant and PW1 went to Cotonou, saw PW1's choice, negotiated for the price and decided to release to the Defendant at Sango Ogun State Nigeria sum of N1.5M with

promise to send the balance and based on which PW1 copied the chassis number of the said car.

- (4) That by letter of undertaking before the court as an exhibit Defendant having failed to deliver the car. Subsequently paid sum of N500,000.00 to the PW1 as can be seen in exhibit D dated 9/2/16.

The above having been highlighted, it is a worthy advise that the learned counsel reproduce evidence as given before the court and not to be twisted to personal desire as justice is not one sided sword.

PW1's evidence before the court and his extra judicial statement to the police were unshaken even in heat of cross examination and exhibit of transfer and payment before the court as regards. It is last payment to the defendant being between 26<sup>th</sup> of March to 4<sup>th</sup> of April, 2015 and contrary to the submission of the learned counsel that the dealer in Cotonou sold the said car to another person after several months which is contrary to the statement which the defendant himself wrote at the police station when the matter was still very fresh in his memory that he had crossed the said car to Nigeria but that it was seized by the Nigeria Custom Operative and taken to Abuja. Though the statement of the defendant are poles contradictory to his evidence before the court as defendant gave distinct and separate evidence before the court from his statement to the court and under which he fell under the heat of cross examination. That the court is answered to trade unreliable and therefore ground and evidence in ***MBEN VS. STATE (1988) 7 S.C.***

On the omission of the word "***intent to defraud***" on the face of the charge in count 1, agree with the learned counsel that the omission is fatal. However in **Oder Vs. F.R.N. 2005 1NCC 305**, the court held that the an accused can be convicted for a lesser offence though not charged for the lesser offence.

It is a fact the PW1 via phone discussion with the defendant was led to a shed at Bodija where PW1 saw some cars and when he demanded for the owner, defendant came out and identified himself to the PW1.

Defendant took PW1 to Cotonou to the car sheds where PW1 picked his choice. Having liked his choice, and after negotiation decided to transfer into the defendant's account same day sum of N1.5M which defendant admitted during cross examination but failed to deliver the car as agreed to the PW1 but gave reason of the surge in exchange of cefas used in Cotonou that could not purchase the agreed car but similar one which is contrary to his statement that he did cross the car with the money but that it was seized.

Though offence of stealing is with recourse to provision of Section 383 and 390 (9) of the Criminal Code, conversion is one of such definition which is proved against the defendant.

Thus, I hold that though intent want to defraud is missing in count 1 of the charge as learned counsel for the defendant submitted, the court finds the defendant guilty of lesser offence of conversion even though not charged.

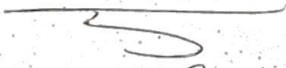
In total consideration of all the evidence before the court. The court finds that defendant not guilty in respect of count 1 the defendant is accordingly acquitted and discharged in respect of count 1.

However based on the proved evidence before the court. The Defendant is found guilty of conversion of sum of N2.1M belonging to the PW1.

In sentencing the Defendant, the court considered the fact that the Defendant paid sum of N500,000 to the PW1 at the Police Station, but to serve as deterred to others, the defendant is hereby sentence to one year imprisonment or paid of N50,000.00 option of fine.

In addition to this, the defendant is also to pay to the PW1 as compensation sum of N1.6M money had and received by the Defendant from the complainant.

That is the judgment of the court.

  
Cm1  
27/12/12