

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI –ABUJA**

BEFORE HIS LORDSHIP: HON.JUSTICE D.Z. SENCHI

COURT CLERKS: – T. P. SALLAH & ORS

COURT NUMBER: 14

DATE: 2/01/19

FCT/HC/CR/04/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ----- COMPLAINANT

AND

**1.ABDULWAHEED A. POPOOLA
2. AUGUSTINE JAMES
3.CYRINUS VALENTINE RICHARD** } **DEFENDANTS**

JUDGMENT

On the 9th day of April, 2014, the Defendants pleaded not guilty to the amended charge containing six (6) counts. The six (6) counts amended charge are as follows:-

COUNT ONE

That you Abdulwaheed A. Popoola, Augustine James and Cyrinus Valentine Richard on or about September 29th, 2009 within the jurisdiction of the High Court of the Federal Capital Territory did conspire among yourselves to commit an unlawful act to wit: obtaining money by false pretence and thereby committed an offence contrary to section 8(a) and punishable under section

1(3) of Advance Fee Fraud and other Fraud Related Offences Act, 2006.

COUNT TWO

That you Abdulwaheed A. Popoola, Augustine James and Cyrinus Valentine Richard on or about September, 29th 2009 within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud did obtain the sum of N8,500,000 (Eight Million Five Hundred Thousand Naira only) from one Engr. Ben Ogun (Director, Trainfield Builders Merchant Limited) purportedly for the sale of two plots of land described as plot Ed 4 and Ed 3, within sabon lugbe south West Extension layout with Ref: MFCT/ZA/AMAC/SLSW/ED4 dated 11TH March, 1998 and ref: MFCT/ZA/AMAC/SLSW/ED3 dated 11th March, 1998 respectively to him under the false pretence that two plots of land exist which pretence you knew to be false and thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and other Fraud Related Offences Acts, 2006 and punishable under section 1(3) of the same Act.

COUNT THREE

That you Abdlwaheed A. Popoola, Augustine James and Cyrinus Valentine Richard on or about September 29th, 2009 in Abuja within the judicial Division of the High of Justice of the FCT forged a certain document captioned ABUJA MUNICIPAL AREA COUNCIL, OFFER OF TERMS OF GRANT/ CONVEYANCE OF APPROVAL with Ref: MFCT/ZA/AMAC/SLSW/ED4 dated 11th March, 1998 and did commit an offence contrary to section 362 (a) and punishable under section 364 of the Penal Code LFN (Abuja) 1990.

COUNT FOUR

That you Abdulwaheed A. Popoola, Augustine James and Cyrinus Valentine Richard on or about September, 29th 2009 in Abuja within the judicial Division of the High Court of Justice of the FCT forged a certain document captioned ABUJA MUNICIPAL AREA

COUNCIL, OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL with ref: MFCT/ZA/AMAC/SLSW/ED4 dated 11th March, 1998 and caused the said document to be used as genuine and you thereby committed an offence contrary to section 366 and punishable under section 364 of the Penal Code LFN (Abuja) 1990.

COUNT FIVE

That you Abdulwaheed A Popoola, Augustine James and Cyrinus Valentine Richard on or about September 29th , 2009 in Abuja within the judicial Division of the High Court of Justice of THE FCT FORGED A CERTAIN DOCUMENT CAPTIONED ABUJA MUNICIPAL AREA COUNCIL, OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL with ref: MFCT/ZA/AMAC/SLSW/ED3 dated 11th March, 1998 and did commit an offence contrary to section 362(a) and punishable under section 364 of the Penal Code LFN (Abuja) 1990.

COUNT SIX

That you Abdulwaheed A. Popoola, Augustine James and Cyrinus Valentine Richard on or about September 29th , 2009 in Abuja within the judicial Division of the High Court of Justice of the FCT Forged a certain document captioned ABUJA MUNICIPAL AREA COUNCIL, OFFER of TERMS OF GRANT/CONVEYANCE of APPROVAL with ref: MFCT/ZA/AMAC/SLSW/ED3 dated 11th March, 1998 and caused the said document to be used as genuine and you thereby committed an offence contrary to section 366 and punishable under section 364 of the Penal Code LFN (Abuja) 1990.

Upon the pleas of not guilty by the Defendants, the prosecution upon its case for hearing on the 3rd day of March, 2014. Four witnesses testified on behalf of the prosecution. The four (4) witnesses are Engineer Ben Agunas PW1, Isaac Fayum Iorobo a staff of Abuja Municipal Area Council as PW2, Emmanuel Ikhonii testified as PW3 and the investigating officer of this case Jimmy

Tanko, an operative of the Economic and Financial Crimes Commission testified as PW4.

The following exhibits were admitted in evidence and marked on behalf of the prosecution thus:-

- (1) Offer of terms of grant/conveyance of approval by Abuja Municipal Area Council to Abshats Global Concepts Limited is exhibit 1,
- (2) Abuja Municipal Area Council offer of terms of grant/conveyance of approval to Ogagwu Ventures dated 11th March, 1998 is exhibit 2 while the cash receipt of A.U General Properties is exhibit 3.
- (3) The Trainfield Builders Merchant Limited petition to the Chairman Economic and Financial Crimes Commission dated 30th July, 2013 was received in evidence as exhibit 4 while the Abuja Municipal Area Councils letter to the Chairman Economic and Financial Crimes Commission on investigation activities on plots Nos ED4 and ED3 is exhibit 5.
- (4) The Power of Attorney between Abshats Global Concepts Limited and Trainfield Builder Merchant Limited is exhibit 6.
- (5) The statements of the 1st Defendant, Abdulwaheed A. Popoola are exhibits 7 and 7 (a) respectively.
- (6) Those statements of the 2nd Defendant to the Economic and Financial Crimes Commission are exhibits 8, 8 (a) and 8(b); while.
- (7) The statement of the 3rd Defendant, Cyrinus Valentine Richard to the Economic and Financial Crimes Commission was equally received in evidence as exhibit 9.
- (8) The bindle of documents with a covering letter to the Chairman Economic and Financial Crimes Commission by Zenith Bank Plc pursuant to the letter of the Commission dated August 26th , 2013 is exhibit 10 while that of Ecobank

dated 30th August, 2013 to the Chairman Economic and Financial Crimes Commission is exhibit 10 (a).

- (9) The Corporate Affairs Commission's letter dated 12th September, 2013 to the Chairman Economic and Financial Crimes Commission pursuant to the Commission's letter of investigation activities on Abshats Global Concepts Limited is exhibit 11 while the certificate of incorporation and statement of shares capital and return of allotment form CAC2 of Abshats Global Concept Limited are exhibits 11(a) and 11 (b) respectively.

All the four (4) witnesses that testified on behalf of the prosecution were duly cross-examined by the Defence and discharged by the order of this Court without objection. Thus, at the close of evidence by the prosecution, the 2nd and 3rd Defendants entered their defence by testifying on their behalf.

The 2nd Defendant, Augustine James testified as DW2 while the 3rd Defendant Cyrinus Valentine Richard testified as DW1. The 1st Defendant did not testify or call evidence in his defence. In fact, by the records and proceedings in this case, the 1st Defendant jumped bail and left the shores of Nigeria according to his Counsel, that the 1st Defendant left for Ireland due to the fact that his wife passed away thereby leaving his children behind in Ireland. Thus, after several adjournments, the 1st Defendant failed refused or neglected to show up to defend the suit since the 22nd day of February, 2016. Pursuant to the non-appearance of the 1st Defendant, the learned prosecuting Counsel applied under section 352 (4) of the Administration of Criminal Justice Act 2015 for an order to proceed with trial of the case and the application was accordingly granted.

Be it as it may, the 1st Defendant at the close of evidence by the prosecution, elected to file a no case submission while the 2nd and 3rd Defendants proceeded to enter their defence as earlier stated. The no case submission was filed on 11th July, 2016. The

prosecution then filed a reply to the no case submission of the 1st Defendant on 3rd November, 2016.

In his written address on the no case submission, the learned Counsel for the 1st Defendant in his introduction stated that the 1st Defendant along two other Defendants are standing trial for a six count charge under section 1(3), 1(1) (a), of the Advance Fee Fraud and other Fraud Related Offences Act Cap A6 Laws of the Federation of Nigeria, 2004 and sections 362 (a) and 366 of the Penal Code LFN (Abuja) 1990.

Relying on the cases of **NELSON MOORE V FRN (2012) LPELR 19663 (CA) and ONAGORUWA V STATE, (1993) 7 NWLR (pt303) page 49 at 83** submitted that for a no case submission to succeed, the Defendant must establish any one of the followings:-

- (a) There has been no evidence to prove an essential element to the alleged offence;
- (b) The evidence adduced by the prosecution has been so discredited as a result of cross- examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

He also relied on the cases of **IBEZIAKO V C.O.P VOL1 ALL NLR 61, OLAWALE AJIBOYE & ANOR V STATE, (1995)8 NWLR (pt414) page 408 at 414- 415 and ODIDO V STATE, (1995) 1 NWLR (pt 369) page 88 at 110.**

In considering the no case submission learned Counsel urged me to be guided by the following:-

- (a) Whether actus reus and mens rea of the offence has been faultlessly proven;
- (b) Whether the evidence put forward by the prosecution has been dented, weakened, discredited or could support the case and if the court will not convict.

Thus, on the offences pursuant to section 1(3), 1(1) (a) of the Act, learned Counsel posed a question as follows "if there has very been an intention by the 1st Defendant to carry out mens rea or actually carried out the act?

He then submitted that for the offence of obtaining money by false pretence, he referred me and relied on the elements or ingredients of the offence as enunciated in the case of **AGUBA V FRN, (2014) LPELR 23211 (CA)**. He also cited the cases of **ONWUDIWE V FRN, (2006) ALL FWLR (pt 319) page 774 at 812 – 813, and ODIAWA V FRN (2008) ALL FWLR (pt439) page 436**.

Learned Counsel submitted that the evidence of PWS1,4 and 3 clearly exonerated the 1st Defendant. According to the learned Counsel PW1 testified that the contract of the subject matter was not between him and the 1st Defendant and that the 1st Defendant voluntarily refunded to PW1 the sum of N5,000,000.00 but that PW1 refused to collect the money. He stated that PW4, the investigating officer confirmed the testimony of PW1.

On the offence of forgery, learned Counsel referred me to sections 363 and 364 of the Penal Code. He then submitted that the foundation of the case of forgery against the 1st Defendant is anchored solely on the opinion of PW2, a staff of Abuja Municipal Area Council to the effect that the land is not within approved layout in the Zonal Planning and not genuine. He then stated that at no time did PW2 in his testimony that he referred to paper itself as forged.

On the ingredients of the offence of forgery learned Counsel referred me to the case of **AITUMA V STATE, (2006) LPELR 7647 (CA)**.

He submitted that the document alleged to be forged was not subjected to any analysis or any form of scrutiny and that it must be proved that it was the Accused person that forged the document. He relied on the case of **IDOWU V THE STATE**

(1998) LPER 1427(SC) and **ALAKE V THE STATE (1992) 9 NWLR (pt26) page 260.**

The learned Counsel for the 1st Defendant stated further that under cross examination PW4, the investigating officer testified that no forged document nor any incriminating evidence was found with the 1st Defendant. He then contended that by the evidence of the prosecution witnesses in this case none of the ingredients of the offences alleged against the 1st Defendant has been proved by the prosecution. In conclusion learned Counsel urged me to discharge and acquit the 1st Defendant.

On the otherhand, the learned prosecuting Counsel stated that at this stage of the no case submission, the issue is whether the prosecution has made out a prima facie case against the Defendant for which he has to stand trial or enter his defence at the trial.

The learned prosecution stated that a no case submission means that there is no evidence on which, even if the Court believes it, it could not convict. He relied on the case of **EKEWUNUGO V FRN, (2008) 15 NWLR (pt1111) page 630 and UBANATU V C.O.P (2000) 2 NWLR (pt643) page 143.**

Than at paragraph 2.5.1 of the written reply, the learned prosecuting Counsel stated the essential ingredients of both offences of obtaining money by false pretence under section 1(1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and making of false document or forgery under sections 362 and 363 of the Penal Code, LFN (applicable in Abuja).

The learned prosecution at paragraphs 2.6- 2.8 of his written reply to the 1st Defendant's no case submission submitted to the effect that by the oral testimonies of the prosecution witnesses and the documentary evidence before the Court, evidence exist to establish the ingredients of the offences upon which the 1st Defendant was charged. He submitted further that the totality of the evidence of the prosecution shows that the 1st Defendant

conspired with the two Defendants to obtain money by false pretences and also forged documents. He then referred me to the evidence of PW2 wherein exhibits 1, 2 and 5 were tendered and admitted in evidence. According to the prosecution that PW2 testified that exhibits 1 and 2 are not genuine as they do not emanate from relevant issuing authority. The prosecution contended also that PW3 testified that himself, the 2nd and 3rd Defendants want to meet the 1st Defendant at Intercontinental Bank where the 2nd Defendant gave the money to the 1st Defendant.

The learned prosecution then submitted that a prima facie case is not the same thing as proof beyond reasonable doubt. He stated that at the stage of where a no case submission is made on behalf of an accused, the issue is not whether the prosecution has proved the charge against the accused beyond reasonable doubt but whether a prima- facie case has been made out by the prosecution against the accused so as to make it necessary for the Court to call on the accused to open his defence to the charge. He stated further that at this stage of the proceedings the trial Court is not to evaluate or weigh the evidence or the credibility of the witnesses does not arise.

The prosecution contended further that when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it but the Court is only called upon to take note and rule accordingly.

In conclusion the learned prosecution stated that by the testimonies of PWS1,2,3 and 4 and exhibits 1-5, there is a prima facies established by the prosecution against the 1st Defendant that requires him to enter his defence.

Now to resolve the no case submission made by the learned Counsel for the 1st Defendant the following issue is distilled for determination:-

" Whether the prosecution has made out a prima facie case against the 1st Defendant that requires the 1st Defendant to enter his defence in this case."

As rightly submitted by the learned prosecuting Council, a prima facie case is not the same thing as proof beyond reasonable doubt. Thus, at the close of the prosecution's case, when a no case submission is made on behalf of an Accused person, the position of the law was aptly captured in the case of **IKENNA ISIBOR V THE STATE, (2018) LPELR 44834** where the Court of Appeal, Benin judicial Divisions says:-

"When, after the prosecution has closed its case, a no case submission is made by the defence, all that is required of the trial Court to formally justify its decision is to say whether or not the prosecution has made out a prima facie case requiring an explanation from the Accused person. The trial Court, at the stage of ruling on a no case submission, is not expected to formally evaluate the evidence, ascribe probative value thereto and make specific findings of fact to determine if the evidence is sufficient to justify a conviction. The trial Court, where it dismisses a no case submission, should be brief so that the merits of the substantive case will not be jeopardized or prejudiced."

See also **FAGORUWA V STATE, (2014)10 NSCC 309 AND OKOOGOR ADANA V STATE, (2018)3 NWLR (pt1605) page 94.**

Arising from the above, it is the case of the 1st Defendant that the witnesses called by the prosecution especially PWS1,3 and 4 exonerated him from the commission of the offence as the prosecution failed to establish mens rea and actus reus. Further, the 1st Defendant's Counsel submitted that PW2 never testified that the title documents are forged but only testified that they are not within the approved planning layout.

Be it as it may, the essential element of the offence of obtaining money by false pretence under section 1(1) (a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 are set out in the case of **OMOREDE DARLINTON V FRN, (2018) LPELR, 43850** Supreme Court states as follows:-

- (1) That there was a false pretence made by the accused to the person defrauded.
- (2) That the thing stolen or obtained is capable of being stolen.
- (3) That the Accused did same with intent to defraud.

The Supreme Court in the case of **ODIAWA V FRN, ALLFWLR (pt439) page 436 at 447** broke down in simplified style the ingredients further as follows:-

- (1) There is a pretence
- (2) The pretence emanated from the Accused
- (3) It is false
- (4) The Accused knew of its falsity or did not believe in its truth
- (5) There was intention to defraud
- (6) That the thing is capable of being stolen
- (7) That the Accused induced the owner to transfer his whole interest in the property.

In respect of the offence of forgery, under section 363 of the Penal Code, the prosecution is required to establish the following:-

- (a) That the Defendant made the false document;
- (b) That he did so with the intention to commit fraud. See **MUHAMMAD AL- AMEENAL- HALEEL V FRN,**

**(2015)LPELR 25902 (CA). AITUMA V THE STATE
(2007) 5 NWLR (pt 1028) page 466.**

While in respect of the offence of conspiracy to obtain money by false pretence have the same ingredients as provided under section 96 and 97 of the Penal Code. Hence the ingredients lies in the bare agreement and association to carry out an unlawful Act which is contrary to or forbidden by law, whether that act be criminal or not and of course whether or not the Accused persons had knowledge of its unlawfulness.

See the cases of **ADESINA KAYODE V THE STATE, (2016) LPELR 40028 (SC), IKECHUKWU OKON V THE STATE, (2014) CLARIK V THE STATE, (1986) 4 NWLR (pt35) page 381.**

Having stated the ingredients of the offences contained in the six count amended charge, the question now is whether the prosecution has established a prima facie case against the 1st Defendant in the instant suit.

Firstly, the submissions of the learned Counsel for the 1st Defendant to the effect that by the testimonies of PW1 and PW4 exonerated the 1st Defendant from the commission of the offence. The submission of Counsel for the 1st Defendant is far from the truth. I have seen exhibits 7 and 7 (a), the statements of the 1st Defendant made to the officials of the Economic and Financial Crime Commission. The statements of the 1st Defendant exhibit 7 (a) supports the testimony of PW2 as well as PWS1 and 4. Further, by the evidence of PW2, exhibits 1 and 2 are not within the approved layout of Abuja Municipal Area Council hence amounting to not being genuine. This also appears supported by the statement of the 1st Defendant, exhibit 7 (a) wherein he admitted to getting alternative plot or refund the amount paid by the nominal complainant.

Thus, by the testimonies of PWS1, 2, 4 and exhibits 7 and 7 (a), the 1st Defendant requires to make some explanation and

be subjected to cross examination. Hence therefore, by the evidence adduced by the prosecution witnesses and the exhibits before the Court, the prosecution has presented some credible evidence against the 1st Defendant upon which the six count amended charge will proceed and requires some explanations from the 1st Defendant.

Thus, therefore, the no case submission made on behalf of the 1st Defendant fails and it is accordingly dismissed.

As I said earlier, on the 15th February, 2017 the 3rd Defendant testified as DW1 while the 2nd Defendant testified on 18th January, 2018 as DW2. The 1st Defendant on the otherhand by the proceedings of 9th March, 2016, by the provision of section 352(4) of the Administration of Criminal Justice Act, 2015, the 1st Defendant having jumped bail and he is on the run despite affording him several opportunities to appear and enter his defence, the 1st Defendant failed, neglected or refused to enter his defence and the case therefore proceeded in the absence of the 1st Defendant.

Having said the above, the brief facts and evidence of the prosecution's case against the Defendants is that by exhibit 4, the petition to the commission, it alleged that the Defendants received the sum of N8,500,000.00 under the pretence to sell plots of land to PW1 as conveyed by exhibits 1,2 and 6. And by the testimony of PW2, a staff of Federal Capital Development Authority in the Zonal Planning office of Abuja Municipal Area Council stated that when they received a letter of investigation activities from Economic and Financial Crimes Commission, in respect of Plots ED3 and ED4, they carried out verification and they discovered that the Plots were not allocated and they conveyed their findings vide exhibit 5 to the commission that the allocations in exhibits 1 and 2 are not genuine. Similarly, by the testimony of PW3 to the effect that after several months after the sale of the Plots, PW1 called on PW3 that the purported plots ED3 and ED4 does not exist. According to PW3, he contacted the 2nd and 3rd Defendants on

the issue. PW3 testified that both himself, the 2nd and 3rd Defendants proceeded to meet the 1st Defendant wherein the Defendants admitted that there was a problem and the Defendants agreed to sort out the problem or provide alternative plots to PW1. Then PW4, the investigating officer in his narration before the Court that in the course of his investigation he confirmed exhibits 1 and 2 as not genuine.

On the otherhand, the case of the 3rd Defendant, Cyranus Valentine is that the 1st Defendant met him and told him that he has land for sale. The 1st Defendant gave him the title documents which he verified at the Abuja Municipal Area Council land Zonal Office as genuine. DW1 testified that PW1's cousin, PW3, Emmanuel Ekhiria expressed interest in purchasing the plots of land on behalf of PW1. According to DW1, both PW3 and the 2nd Defendant visited the Land Zonal office of Abuja Municipal Area Council and the plots were confirmed genuine and thereafter PW1 through PW3 effected payment which payment was transmitted into the account of the 1st Defendant.

The 2nd Defendant testified as DW2. DW2 stated that PW1 had a land transaction with the 1st Defendant in which they confirmed the genuiness of the land from Abuja Municipal Area Council Zonal Land Office. Subsequently, PW1 paid for the land and the 1st Defendant executed a Power of Attorney for the sale to PW1. DW2 testified that PW1 instructed him to effect change of ownership for the land and also apply for Technical Deed Plan (TDP) from Abuja Municipal Area Council. According to DW2 the Technical Deed Plan was not approved by Abuja Municipal Area Council and then DW2 DWs1 and 3 met the 1st Defendant and informed the 1st Defendant that the technical Deed Plan was not approved by Abuja Municipal Area Council. DW2 testified that then the 1st Defendant told them that Abuja Municipal Area Council having refused to approve the Technical Deed Plan, the 1st Defendant offered alternative plot to PW1 and PW1 rejected the alternative as being too far. The 1st Defendant offered another alternative and PW1 rejected. DW2

then testified that the 1st Defendant state that he does not have another land and that he will refund the money to PW1. DW2 testified that the 1st Defendant issued a cheque of N5,000,000.00 for the refund of PW1's money. However, DW2 testified that when the time to present the cheque came for payment, the cheque was presented and there was no money in the account. DW2 finally testified that the Defendants agreed to refund the sum of N8,000,000.00 to PW1 and his share for the refund is N3,000,000.00.

After the conclusion of evidence of both the prosecution and the 2nd and 3rd Defendants, final written address was ordered to be filed and exchanged.

In the final written address of the 2nd Defendant's Counsel, two issues were formulated for determination as follows:-

- (1) Whether the prosecution has proved its case against the 2nd Defendant beyond reasonable doubt?
- (2) Whether the 2nd Defendant is criminally liable for the offences charged.

ISSUE ONE.

At paragraphs 4,01- 4.04 of the final written address of the 2nd Defendant's Counsel, he submitted that by section 36 (5) of the Constitution, Federal Republic of Nigeria, 1999 (as amended) the 2nd Defendant is presumed innocent until proven guilty. He submitted that in line with this constitutional requirement, the prosecution failed to prove the offences the 2nd Defendant is charged beyond reasonable doubt. He relied on the cases of **ALABI V STATE, (1993) 9SCNJ (pt1) page 109. WOOLMINGTON V DPP (1935) AC 462 and UMANI V STATE, (1988)1 NWLR (pt70) page 274.**

On the offence of forgery, learned Counsel for the 2nd Defendant at paragraphs 4.05- 4.13 of his final written address to the effect

that a person is deemed to have committed forgery if he makes a false document in any of the circumstances mentioned in section 362 of the Penal Code and then enumerated the ingredients of the offence of forgery or making a false document. He relied on the case of **MALACHI ELISHA BROWN & ANOR V THE STATE (2011) LPELR 4465 (CA) MARK ONOCHIE ODUAH V FRN, (2012) LPELR 9220 (CA) AND AITUMA V THE STATE, (2007) 5 NWLR (pt1028) page466.**

In the instant case, learned Counsel for the 2nd Defendant submitted that the prosecution failed to show any link between the alleged forged documents and the 2nd Defendant. He submitted that the only thing the prosecution was able to prove against the 2nd Defendant was that the 2nd Defendant was an agent of PW1 and nothing more. He submitted that the actus reus or the mens rea was not proved by the prosecution. He relied on the cases of **LIMAN V STATE, (2016) LPELR 9843 (CA) AND ORENO v STATE, (2014) LPELR 22806 (CA).**

At paragraph 4. 16 of the written address of the 2nd Defendant, Counsel submitted that there are material contradictions in the case of the prosecution and it would be unsafe to convict the 2nd Defendant with such evidence. Then at paragraphs 4.22 of the written address learned Counsel pointed out the material contradictions in the evidence of PW1 and PW3 on whether the forged documents emanated from the 2nd Defendant.

On exhibit 8 (a) –(c), the statements of the 2nd Defendant, learned Counsel submitted that these statements did not qualify as a confessional statement because it did not satisfy the tests or criteria for the admission of such statement under section 28 of the Evidence Act. He also relied on the case of **SOLOMON THOMAS ANKPAN V THE STATE, (1992) NWLR (pt248) page 449 AND YESUFU V STATE, (1976) 6SC167.**

ISSUE TWO

At paragraphs 4.32-4.34 of the written address, Counsel for the 2nd Defendant submitted that the 2nd Defendant is not liable for

the offence charged on the grounds that the act of forgery was not his own act and he did not authorized it. And that by the testimony of DW2, the 2nd Defendant has discharged his burden and he is entitled to be discharge and acquitted.

The counsel for the 3rd Defendant on the 20th April, 2018 filed their final written address. And at paragraphs 3.2.1- 3.2.6 submitted whether the prosecution has proved the charge against the 3rd Defendant.

For the offence of obtaining money by false pretence contrary to section 1 (1) (a) and punishable under section 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006 against the 3rd Defendant, at paragraphs 4.4.1- 4.4.6 of the final written address, learned Counsel stated the essential elements of the offence of obtaining money by false pretence which the prosecution must prove beyond reasonable doubt against the 3rd Defendant. He referred and relied on the cases of **REV. VICTOR MUKORO V FRN (2015) LPELR 24439 (CA)**. As to whether the prosecution has proved the essential ingredients of the offence under Section 1 (1) (a) and punishable under Section 1 (3) of the Act, learned Counsel asked the question whether there as a representation from the 3rd Defendant to PW1 or his agents on the authenticity of Plots ED3, ED4, i.e. exhibits 1 and 2?

He submitted at paragraphs 4.11 – 4.23 of his address that it was not the evidence of PW1 or any of the witnesses before this Honourable Court that the 3rd Defendant made any representations or gave any assurances to either PW1 or his Agents, 2nd Defendant or PW3 as to the genuineness of exhibits 1 and 2 or the existence of Plots ED3 and ED4, the subject matter of this suit. He stated that the 3rd Defendant is not an Agent of PW1 but an Agent of 1st Defendant and that it was the 1st Defendant that represented to the 3rd Defendant that Plots ED3 and ED4 were owned by the companies as shown on the offer letters, exhibits 1 and 2. Counsel submitted that exhibits 1 and 2 were handed over to the 3rd Defendant by the 1st Defendant

and that the 3rd Defendant placed reliance on exhibits 1 and 2 as genuine and according to Counsel, it is up to the buyer to do his due diligence which by the testimony of DW2, PW1, the 1st Defendant and himself (3rd Defendant) proceeded to Abuja Municipal Area Council to conduct a search which result of the search okay the plots for purchase.

Learned Counsel then submitted that none of the witnesses for the prosecution gave evidence to the effect that the 3rd Defendant gave PW1 assurances that plots of land were genuine. Learned Counsel further referred me to the elicited answers under cross examination of PW1's admission that he contracted at least two persons, one of them PW3 his brother and relative to verify the authenticity of exhibits 1 and 2. He then contended that the elicited evidence from PW1 under cross examination is corroborated by the testimony of PW3 who stated that he gave exhibits 1 and 2 to the 2nd Defendant to conduct a search. He also stated that PW3 testified that the decision to purchase the plots by PW1 was on the advice of the 2nd Defendant, Mr. Augustine James and not hinged on any representation from the 3rd Defendant.

However, learned Counsel for the 3rd Defendant submitted that assuming but not conceding that the 3rd Defendant made any such representations as to the authenticity of exhibits ED3 and ED4 to PW1 or his Agents, such representations has not been shown to be the reason why PW1 parted with the sum of ₦8,500,000.00 as PW3 stated that the decision to buy the plots emanated from DW2, the 2nd Defendant.

On whether the prosecution established that the 3rd Defendant made any representation which was false to the knowledge of the 3rd Defendant, at paragraphs 4.44 – 4.53 of the address of the 3rd Defendant, learned Counsel submitted to the effect t that the prosecution failed to establish the ingredient. He relied on the evidence of PW3, Emmanuel Ikhuria and that of PW1 that they conducted independent search through the 2nd Defendant, PW1's

property Agent and came out with the outcome that the plots ED3 and ED4 were okay.

On the charge of Conspiracy, he referred to Section 8 (a) of the Advanced Fee Fraud and Other Related Offences Act, 2006 and then set out the ingredients of the offence at paragraphs 4.56.2 – 4.56.4 of his final address and then submitted that the prosecution failed to establish that the 3rd Defendant had a common intention with other Defendants to defraud PW1, the nominal complainant. According to Counsel, the 3rd Defendant was only an Agent of the Seller, the 1st Defendant that got caught up with the problem of recertification, regulation, double or multiple allocations characteristic of Abuja Municipal Area Council.

At paragraphs 4.59 – 4.64 of the final written address, Counsel for the 3rd Defendant submitted that the 3rd Defendant never knew the 1st and 2nd Defendants as well as PW3. According to Counsel the 3rd Defendant was only approached by the 1st Defendant in a hotel to help sell plots ED3 and ED4. He submitted further that there is no evidence before the Court that there was any sort of relationship between the 1st and 3rd Defendants or the 2nd Defendant to misrepresent facts to PW1 contained exhibits 1 and 2 hence, the prosecution failed to prove conspiracy.

On the offence of forgery, learned Counsel submitted that the prosecution failed to prove the ingredients enumerated at paragraphs 4.67.1 and 4.67.2 of the written address. According to Counsel that the prosecution failed to investigate and find out whether Lugard Edegbe truly allocated plots ED3 and ED4 during his tenure as Zonal Manager and whether the documents were genuine. Learned Counsel submitted that the 3rd Defendant as DW1 testified that he was at the Zonal Manager's office to conduct the search at the time of transaction and that PW3 confirmed such searches. He stated that the 3rd Defendant do not have any other means of verifying the document other than relying on the representations from the Zonal Manager's office. He therefore contended that the evidence before the Court

created serious doubt that the 3rd Defendant forged or participated in the forgery of exhibits 1 and 2.

In conclusion, Counsel for the 3rd Defendant urged me to resolve the issues in favour of the 3rd Defendant and hold the view that the prosecution failed to discharged the burden of proof on all the counts against the 3rd Defendant and he urged me to discharge and acquit the 3rd Defendant.

The prosecution in his final written address distilled four issues for determination as follows: -

- (a) Whether the prosecution has proved the one count of conspiracy against the Defendants beyond reasonable doubt.
- (b) Whether the prosecution has proved the one count charge of obtaining money under false pretence against the Defendants beyond reasonable doubt.
- (c) Whether the prosecution has proved the two counts charge of using as genuine against the Defendants beyond reasonable doubt.

ISSUE ONE

At paragraph 3.1.2 of the address, the learned prosecuting Counsel submitted to the effect that conspiracy is one of the offences which can be predicated on circumstantial evidence which is evidence not of the fact in issue but of other facts from which the fact in issue can be inferred.

The prosecution submitted that the overt act or omission which evidences conspiracy is the *actus reus* and every conspirator must be referable and very often is the only proof of the criminal agreement. He relied on the cases of ***OBIAKOR V STATE, (2002) 10 NWLR (pt 776) page 612 at 628 – 629, DEVIN V STATE, (1994) 5 NWLR (pt 346) page 522 at 534 and EDE V FRN (2001) 1 NWLR (pt 695) page 502 at 512 – 513.***

The prosecution then set out the ingredients of the offence of conspiracy and then submitted that there is enough corroborative evidence by PW's 1 – 4 on the facts adduced and that the Defendants carried into effect their decision to forge documents as genuine.

On the offence of obtaining money under fake pretence against the Defendants, at page 8 of the prosecution's written address, she set out the ingredients of the offence and also relied on the cases of **ONWUDIWE V FRN, (2006) 10 NWLR (pt 988) page 382 at 431 – 432, ALAKE V STATE, (1991) 7 NWLR (pt 205) page 567 and EDE V FRN (Supra).**

To prove the 1st and 2nd ingredients of the offence, the prosecution relied and referred me to the vivid testimony of PW1, the nominal complainant and how he knew the 2nd Defendant and how the 2nd Defendant introduced two plots (exhibits 1 and 2) for sale. According to the prosecution that the 1st and 3rd Defendants played different roles as owner and promoter to the land respectively.

In respect of 3rd, 4th and 5th ingredients, the prosecution relied on the evidence of PW's 1 – 3 and exhibits P3 and P5 which according to her are very clear on the issue.

According to the prosecution that the Defendants knew that the land was not genuine but gave PW1 the impression that they had conducted search on the land and found it to be genuine. The prosecution relied on exhibit 3, the receipt issued by the 2nd Defendant for part-payment for the land.

On counts 6 and 7, submitted that the amount of ~~N~~8,500,000.00 is capable of being stolen and she relied on the evidence of PW's 1 – 4 and exhibits tendered in Court.

As to whether the prosecution has proved Counts 2 and 5 bothering on forgery of exhibits 1 and 2, the prosecution set out the ingredients the prosecution is required to prove as follows: -

1. That the Defendants made false documents;

2. That they did so with the intention to support a false pretence and make PW1 part with his property/money.

Hence, in consideration of the offence of forgery the learned prosecution urged me to bear in mind the pronouncement of the Supreme Court in the cases of **AGWUNA V A.G FEDERATION (1995) 5 NWLR (pt 396) page 418 paragraph F – G and PEARCE HENSHAW C.O.P, (1963) 7 ENLR page 122.**

In the instant case the prosecution submitted that PW1 testified and tendered exhibits 1 and 2 which were given to him by the three Defendants in this case and that all the three Defendants acknowledged Exhibits 1 and 2 as documents they gave to PW1. The prosecution also referred me to the testimony of PW2 and exhibit 5.

In respect of Counts 4 and 6 bothering on using as genuine exhibits 1 and 2 against the Defendants, the prosecution referred me to section 366 of the Penal Code Act Cap 532 LFN (Abuja) 1990 and then set out the ingredients of the offence at page 13 of her written address. She submitted that using as genuine a forged document, the Defendants may not necessarily be the forger. According to the prosecution, all that is required is that the Defendants know it to be forged or has reason to believe it is forged.

In the instant case the prosecution submitted that the Defendants knew the said allocation letters, (exhibits 1 and 2) were forged.

In conclusion the prosecution urged me to uphold the submissions of the prosecution and hold the view that the prosecution has proved its case against the Defendants beyond reasonable doubt and to accordingly convict them.

Now in order to resolve the contending issues raised in the final written addresses of parties in this case, I am of the humble view that the following issue for determination is apt and it will assist the Honourable Court resolve and determine this case thus:

"Whether in the instant case, the prosecution has profer credible evidence and prove the essential elements of the six counts amended charge against the Defendants beyond reasonable doubt."

As a preamble, it is the law that in criminal cases, the standard of proof is placed on the prosecution to prove the essential ingredients of an offence beyond reasonable doubt against the Defendant(s). This is in line with the provision of Section 135 of the Evidence Act, 2011 (as amended). See also **AKPA V THE STATE, (2007) 2 NWLR (pt 1019) page 500 at 519 – 520, UDO V STATE, (2006) ALL FWLR (pt 337) page 456 at 457.**

It is also the law that the prosecution can prove the guilt of a Defendant either: -

- (a) The confessional statement of the Accused person;
- (b) Circumstantial evidence; or
- (c) Evidence of eye witnesses of the crime.

See the cases of **BITO SEMAKA V THE STATE, (2018) LPELR 44001 (CA), SOPAKIRIBA IGBIKIS V THE STATE, (2017) LPELR 41667 (SC) and OGEDENGBE V THE STATE, (2014) LPELR 23065 (SC).**

Having said the above, the coast is now clear to consider the essential ingredients of each count offence as contained in the amended charge whether the prosecution has adduced evidence to prove same against the Defendants beyond reasonable doubt.

The first count is for the offence of Conspiracy by obtaining money under false pretence contrary to Section 8 (a) and punishable under Section 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

Firstly, Section 8 of the Advance Fee Fraud and Other Related Offences Act provides: -

"A person who: -

- (a) Conspire with, aids, abets or counsels any other person to commit an offence; or
- (b) Attempts to commit or is an accessory to an act or offence, or
- (c) Incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act, commit the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act."

Now for the prosecution to succeed in establishing the offence of Conspiracy under Section 8 (a) of the Act, "it is settled law that the essential ingredient of the offence of Conspiracy lies in the bare agreement and association to carry out an unlawful act, which is contrary to or forbidden by law, whether that act be criminal or not and of course whether or not the accused persons had knowledge of its unlawfulness." See **ADESINA KAYODE V THE STATE, (2016) LPELR 40028 (SC), IKECHUKWU OKON V THE STATE, (2014), CLARK V STATE, (1986) 4 NWLR (pt 35) page 381.**

In other words, the ingredients of Conspiracy that require to be established against the Defendants beyond reasonable doubt, to put it simply: -

- (1) That there was an agreement between two or more persons;
- (2) That the agreement was to do or cause to do an illegal act;
or
- (3) To do a legal act by illegal means.

Further, I want to state also that in proving the offence of conspiracy, evidence admissible against one conspirator is also admissible against the others once the offence of Conspiracy is proved. See **JOSEPH OLANREWAJU V THE STATE, (2014)**

LPELR 23811 (CA), SAMSON AIGBE & ORS V THE STATE, (1976) 9 – 10 (SC) 77.

Having said the above position of the law, it has also been held in plethora of judicial authorities that it is difficult for the prosecution to prove agreement as an ingredient of Conspiracy. The reason being that Conspiracy is hatched by the Conspirators in utmost secrecy and it is therefore practically impossible to prove *mens rea* or intention to commit the offence of Conspiracy. However, as rightly submitted by the learned prosecuting Counsel at paragraph 3.1.2 of page 6 that the overt act or omission which evidences conspiracy is the *actus reus*.

I quite agree with the view of the learned prosecution. The reason being that it is the act(s) or role played by each Defendants that the court will look and infer whether those acts are in pursuance to the commission of an offence or the doing of an illegal thing.

In the instant case, PW1, Engineer Ben Ogun is the nominal complainant. In PW1's testimony, he states: -

"Sometimes in July 2009, I came to Abuja from London, United Kingdom and in company of my relative, Emmanuel Ikhuria, we met with Augustine James (2nd Defendant) with the intention of buying me a landed property to develop for an Estate in Abuja."

PW1 testified further: - "He told us that he has land for sale in Goza Village along Airport Road Abuja. He presented to me two allocation papers. The 1st was in the name of Abshat Global Concept Ltd and the 2nd in the name of Ogagwu Ventures. We cited the papers in his office and we told him that we are interested in the land."

PW1 testified further thus: - "He (2nd Defendant) now called C. Y Richard (3rd Defendant) whom he said he knows the exact location of the plot of land." PW1 stated: - "Then myself

Emmanuel (PW3), Augustine James (2nd Defendant) and C. Y Richard (3rd Defendant) all drove to the location of the plot of land at Goza Village. Then C. Y Richard showed us the location of the plot of land. We told them that we are interested in the land. We drove back to Augustine James office at Naowa Shopping Complex. We then discussed and negotiated the price. Augustine James told me he can verify the authenticity of the allocation papers and I instructed him to do so in company of my relative Emmanuel Ikhuria." PW1 testified that "Again in company of my relative, Emmanuel Ikhuria (PW3) we went to Augustine James office and he told me and he confirmed to me that the allocation papers are genuine. Then we agreed on the price and each plot was for ₦4, 000,000.00 each and the total for the two plots was ₦8, 000,000.00."

After payments had been effected, PW1 testified thus: -

"Thereafter, I instructed a Land Surveyor to establish the beacons and we went to Abuja Municipal Area Council Surveying Department. To our greatest surprise we were told that the allocation papers were fake. Then we went in company of Emmanuel Ikhuria to Augustine James (2nd Defendant) to tell him about our findings that the allocation papers were fake. He then arranged with C. Y Richard (the 3rd Defendant) to take us to the office of Abdulwaheed Popoola (1st Defendant). We met in Abdulwaheed Popoola's office at Gudu Market and Abdulwaheed Popoola said he knows what to do and he will find us alternative plot of land. That he is well connected with Abuja Municipal Area Council."

After a careful review of the testimony of PW1, the evidence of PW2, Isaac Fayum Iorbo, a staff of Federal Capital Development Administration attached to Zonal Planning Office Abuja Municipal Area Council confirmed that when exhibits 1 and 2 were verified, they were found not genuine. PW3 also in his testimony supports

the evidence of PW1 and added that after the payment in respect of exhibits 1 and 2, PW3, the 2nd and 3rd Defendants went to meet the 1st Defendant and a four (4) page Power of Attorney was brought. PW3 testified that he signed as a witness for the buyer (PW1) while the 1st Defendant signed and C. Y Richard the (3rd Defendant) signed as a witness for the 1st Defendant. PW3 also testified that when PW1 called him that the plots of land were not in existence, he immediately called the 2nd and 3rd Defendants wherein the three of them met the 1st Defendant and held several meetings.

He then testified that the Defendants admitted that there was a problem and they offered alternative land.

PW4 is the Investigating Officer in this case and part of his findings was that he confirmed payment of ~~₦4,000,000.00~~ and ~~₦1,500,000.00~~ through Zenith Bank Plc and Ecobank and the beneficiary was the 2nd Defendant, Augustine James. Exhibits 10 and 10 (a) were received in evidence through PW4. PW4 also testified that as part of their investigation activities on Plots ED3 and ED4, Abuja Municipal Area Council confirmed that the letters of allocation exhibits 1 and 2 were not genuine.

Now by the testimonies of PWs 1 – 4 and exhibits 1, 2, 4, 5, 6, 7, 7 (a), 8, 8 (a) and (b) and 9 can the roles played by the Defendants constitute inference of conspiracy to obtain money from the nominal complainant under false pretence that plots ED3 and ED4 exist and genuine?

As I said earlier, conspiracy is usually hatched in utmost secrecy and intention of the conspirators is normally inferred from circumstantial evidence. In the instant case the 1st Defendant by the evidence of PWS 1 and 4 and exhibits 11 and 11 (a), is the owner of Abshat Global Concept Limited and Ogagwu Ventures were purportedly issued with exhibits 1 and 2, the letters of allocation of Plots ED3 and ED4. The 1st Defendant, by the evidence before the Court, exhibits 1 and 2 were in possession of the 2nd Defendant in which he offered to the nominal complainant

PW1 for sale. As a circle towards the attainment of the set objective, the 2nd Defendant called the 3rd Defendant who now showed to PWS 1 and 3 including the 2nd Defendant, the plots ED3 and ED4. PW1 in his evidence clearly stated that Augustine James, the 2nd Defendant told him that he would verify the genuineness of the Plots and that on his return in September, 2009 from London, United Kingdom, the 2nd Defendant confirmed to him that exhibits 1 and 2 were genuine. However, by the testimony of PW2, it is confirmed that exhibits 1 and 2 were not genuine. Secondly neither the 1st, 2nd or 3rd Defendants testified as to how exhibits 1 and 2 were procured because by the evidence of PW2, he testified as follows: -

"After our verification we discovered that the plots were not allocated by the office and we reply the Economic and Financial Crime Commission accordingly."

Thus, by the evidence of the prosecution witnesses and the exhibits tendered before the Court, *mens rea* can be drawn from the *actus reus* of the Defendants to infer conspiracy. In the case of **USMAN KAZA V THE STATE, (2008) LPELR 1683**, the Supreme Court held: -

"In the offence of Conspiracy, the mens rea is not easy to locate as it is mostly, if not invariably, buried in secrecy. And so, the actus reus of the offence which is easier to locate can draw the mens rea to the open, and make it possible for the Court to find inculpatory evidence."

Further, the Supreme Court held: -

"A Conspiracy is complete if there are acts on the part of an accused person which lead the trial court to conclusion that he and others were engaged in accomplishing a common object or objective."

In the instant case, apart from the testimonies of PWS 1 – 4 and the exhibits tendered in Court, the statements of the Defendants, exhibits 7 (a), 8, 8 (a) and 9 admitted to PW1 that exhibits 1 and 2 were genuine that eventually made PW1 to part with the sum of ~~₦~~8,500,000.00 to the Defendants. Thus, by the *actus reus* of the Defendants which have now drawn the *mens rea* in the open, the offence of Conspiracy has been established against the Defendants by the prosecution beyond reasonable doubt and I so hold.

In respect of count two, by the evidence of PWS 1 and 3 and indeed the statements of the Defendants exhibits 7(a), 8, 8 (a) and 9, there was a representation by the Defendants and the representation was made to PW1 upon which PW1 parted with the sum of ~~₦~~8,500,000.00. Further, the Defendants knew that exhibits 1 and 2 do not exist and yet they induced the nominal complainant to deliver and transfer the sum of ~~₦~~8,500,000.00 to the Defendants. The sum of ~~₦~~8,500,000.00, there is no doubt is capable of being stolen.

In the case of **OMOREDE DARLINGTON V FRN (Supra) Peter – Odili JSC**, on the elements of obtaining money under false pretence state the ingredients thus: - (1) that there was a false pretence made by the accused to the person defrauded. In the instant case, by exhibits 7 (a), 8(a) and (b) and 9, the Defendants admitted that exhibits 1 and 2 were genuine and this was further confirmed by the testimonies of PWS 1, 3 and 4 until PWS 1, 3 and 4 discovered that Plots ED3 and ED4 contained in exhibits 1 and 2 were none existent. And the evidence of PW2, a staff of Federal Capital Development Administration posted to Abuja Municipal Area Council confirmed that exhibits 1 and 2 did not emanate from their office. Thus, the representation was false and there is no doubt that the sum of ~~₦~~8,500,000.00 which was paid to the Defendant is capable of being stolen. And more importantly, the representation by the Defendants of exhibits 1 and 2 was done with the intention of defrauding the nominal complainant and that was why the 1st Defendant agreed to provide alternative plots which PW1 refused to accept.

Thus, therefore, based on the testimonies of PWS 1, 2, 3, and 4 and exhibits 1, 2, 5, 7 (a), 8 (a) & (b) and 9, I hold the view that the prosecution has proved the ingredients of the offence of obtaining money under false pretence against the Defendants beyond reasonable doubt and I so hold.

For the offence of forgery punishable under Section 364 of the Penal Code LFR (Abuja) 1990, the law is that in a charge of forgery the prosecution must prove that it was the accused person that did the forgery. The evidence of the prosecution must prove specifically that it was the accused person that did the forgery. See **AITUMA V THE STATE, (Supra) and MUHAMMAD AL-AMEEN AL-HALEEL V FRN (2015) LPELR 25902 (CA)**.

In the instant case, PW2 testified that exhibits 1 and 2 are not genuine as they did not emanate from their office. PW2 did not state whether exhibits 1 and 2 were forged by the Defendants. The evidence of PWS 1, 3 and including the evidence of PW4, the investigating officer did not state or testify that it was the Defendants that forged exhibits 1 and 2. Thus, in the instant case, it is correct as submitted by the prosecution that exhibits 1 and 2 were forged or not genuine as testified by PWS 1, 2, 3 and 4 but the question is who forged the documents, exhibits 1 and 2? Other essential elements of the offence i.e. that the Defendants know the document or writing to be false and that the Defendants intend that the document to be acted upon to the prejudice of PW1 in the believe that it is genuine, can be established from the evidence of PWS 1, 2, 3, 4 and the statements of the Defendants. However, the most critical ingredients that it was the Defendants that forged the document or writing is completely absent.

The law therefore is that the prosecution has the responsibility or onus of proof of all the essential elements of the offence of forgery as contained in counts 3, 4, 5 and 6 of the charge. In the instant case, prosecution having failed to prove one of the essential ingredients and indeed the most important ingredient, I hold the view that the prosecution failed to discharge the onus of

proof of the offence of forgery against the Defendants beyond reasonable doubt and I so hold. Accordingly, the Defendants are hereby discharged and acquitted of the offence of forgery under counts 3, 4, 5 and 6 of the charge.

The Defendants having been discharged and acquitted on counts 3, 4, 5 and 6, as I found earlier that the prosecution has proved the essentials ingredients of the offences of conspiracy and obtaining money under false pretence against the Defendants beyond reasonable doubt punishable under Section 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006, the Defendants are hereby convicted on counts 1 and 2 as charged.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
2/01/2019

Plea of allocutus

Kamaga: - I thank the Court for being fair in this case and the consideration of all issues. Having said the above, as a plea of allocutus, I plead with the Court to be lenient with the 2nd convict and impose sentence on the following grounds: -

The 2nd convict is married with children and the children are in various schools and responsible for their up keep; responsible for his family and aged parents. The 2nd convict has no previous record of conviction and he has never been encountered with this type of case. We undertake on behalf of the 2nd convict that he would be more careful in his business and confining the 2nd convict in prison custody will have a multiplier effect on his family

and relations. The offences upon which the 2nd convict is convicted have option of fine. We passionately plead that the 2nd convict be given an option of fine.

Ajeh: - On behalf of the 3rd convict, I appreciate the energy put in by this Honourable Court. As a plea of allocutus, I plead that the Court to show mercy on the 3rd convict in the course of the sentencing. The 3rd convict is a young man with a wife and kids whom depend on him for their livelihood in addition to his parents. I also want the Court to take note of the 3rd convict's conduct in the course of investigation and trial which conduct has been very remorseful. The 3rd convict was the one that assisted in the arrest of the 1st convict while the matter was with the Police at Zone 7 before transferring to Economic and Financial Crime Commission. The 3rd convict fully restituted the nominal complainant of the agency fee he was paid based on their understanding of plots ED3 and ED4. The 3rd convict while the matter is pending, provided to PW1 an alternative plot in resolution of the dispute. This fact was communicated to the Economic and Financial Crime Commission and the Honourable Court by the nominal complainant himself. The 3rd convict has no criminal record and I urge the Court to sentence the 3rd convict by giving him an option of fine.

Abdallah: - We have no records of previous conviction of the convicts and the convicts have fully restituted the victim. I also apply that the Court to defer sentencing of the 1st convict until we got him arrested.

Sentence:-

Court: - In passing the sentence on the 2nd and 3rd Convicts, I take into account the plea of allocutus presented by their respective Counsel. I especially take into account that the 2nd and 3rd Convicts are 1st offenders and that they have no criminal records either here in Nigeria or elsewhere. I equally take into account that both convicts have families, children and aged parents that depend and rely on them for sustenance. Importantly also I take into account that the victim in the instant case had fully restituted the nominal complainant. I will therefore be lenient in passing the sentence on the convicts. In the circumstance, I have taken into account the punishment section for the offences i.e. Section 1 (3) of the Act which provides a maximum of 20 years and minimum of 7 years imprisonment without an option of fine.

In view of the plea for mercy of the 2nd and 3rd convicts, I will impose a minimum of sentence on them. Accordingly, the 2nd and 3rd convicts are hereby sentenced to a term of imprisonment for Seven (7) years on each of the two counts and the sentence to run concurrently. The sentence on the 1st convict is hereby deferred and I hereby reiterate my earlier Order that the bench warrant issued for his arrest, be executed by all security agencies.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
2/01/2019