

IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE JUSTICE E. ESAN – JUDGE
THIS FRIDAY THE 6TH DAY OF JANUARY 2012

SUIT NO. I/60C/2010

BETWEEN:

THE STATE COMPLAINANT

VS.

MUDASIRU ADEKUNLE ACCUSED PERSON

The accused is present.

J U D G M E N T

The accused person is charged as follows:

Count 1

That you Mudasiru Adekunle aged 46 years and two others at large between the 5th of February 2007 and the 4th of July 2007 at Dugbe, Agodi Gate Spare Parts market and challenge area in the Ibadan Judicial Division did conspire together to commit felony to wit: Obtaining money under false pretences and thereby committed

an offence contrary to and punishable under S. 516 of the Criminal Code Cap. Laws of Oyo State of Nigeria 2000.

Count 2

That you Mudasiru Adekunle and two others at large at the same date, time and place in the Ibadan Judicial Division did obtain the sum of ₦4.5 Million under false pretences from one Yusuf Yakub with intention to defraud him and thereby committed an offence contrary to and punishable under Section 419 of the Criminal Code Cap. 38 Laws of Oyo State of Nigeria 2000.

At the trial, the prosecution called two witnesses. The accused person gave evidence in his own defence and called no witness.

At the close of the trial the learned counsel for the parties filed written addresses.

I will now state the evidence given by the witnesses at the trial.

P.W.1 was one Yusuf Yakub. He testified that in early 2007 around February he had recently retired from the University of Ibadan and his name had appeared on the notice board of the University as one of those who were to receive their gratuity. He had a shop at the University premises. He was in the said shop when one Tunde

Babalola approached him and told him that there was a business Promotion going on that the company he worked for would supply him with a container and plastic wares like chairs and buckets on credit. P.W.1 was interested in the business proposal so he followed Mr. Babalola to a place he called his office somewhere between U.I and Bodija market Ibadan. At the said office P.W.1 was introduced to two other men, one Olanrewaju and the accused person Adekunle Mudasiru also known as Dr. Surajudeen. The three men told P.W. 1 that they had a portmanteau full of stained dollars. That they needed money to remove the stains on the dollars. That Arisekola would charge them a huge amount as commission to remove the stains. They convinced P.W.1 to give them the money they would need to remove the stains in return for a commission. They then requested for one Million Naira. P.W.1 withdrew the money from his bank and gave it to the accused person. However P.W.1 was informed that more money to the tune of ₦2 Million was needed to complete the job. Two days later P.W.1 withdrew the sum of ₦2 Million naira from his bank and handed it over to the accused person and one Olanrewaju.

The two men left with the money and promised that they would contact P.W.1. However P.W.1 did not hear from them for quite sometime. Then Olanrewaju showed up at his U.I shop and asked P.W.1 for more money. P.W.1 said he had to sell his property at Mokola in order to meet up with the incessant monetary demands. According to P.W.1, the accused person and his cohorts collected the total sum of ₦4.5 Million from him. After that P.W.1 did not see or hear from the accused person and his cohorts again. He then went to their purported office only to discover that they had vacated the place to an unknown destination. The matter was reported to the police but there was no more development until over a year later precisely on the 11th of August 2008 when P.W.1 spotted the accused person by chance at U.I. gate. He immediately raised an alarm by shouting thief, thief! which alerted members of the public. Some plain clothes detectives who happened to be around apprehended the accused person and took him to Sango Police Station. The matter was later transferred to Eleyele Police head quarters. One Inspector Aderibighe was put in charge of the case.

P.W.1 testified further that he wrote a petition to the Commissioner of Police. He tendered a copy of same and it was admitted in evidence and marked Exhibit 'A'.

At the police station, the accused person wrote an undertaking and pledged to give P.W.1 the sum of ₦400,000.

The I.P.O arranged a meeting between P.W.1, the accused person, his wife and one other person. At the meeting P.W.1 was promised ₦1 Million.

Under cross examination by the learned counsel to the accused person, P.W.1 stated that from the time he got to the office of the accused person no one made mention again of plastic chairs and buckets again. He stated that the accused person personally collected the sum of ₦3 Million from him. That the case was transferred from Sango Police Station to the Monitoring Unit of the Nigeria Police at Eleyele Ibadan.

P.W.2 was Inspector Aliyu Aderibigbe, the I.P.O in this case. He testified that at the time of this incident he was attached to Y squad Nigeria Police Eleiyele Ibadan. That on the 14th of August 2008 a petition written by P.W.1 was referred to him for

investigation. The accused person was arrested by Sango Police Station Officers and later transferred to Eleiyele Y squad of the Nigeria Police.

P.W.2 stated further that on 25/8/2008, the accused person was formally arrested, charged and cautioned the accused person in English language. The accused person made confessional statements which were signed by the accused himself and countersigned by the I.P.O.

The statements were tendered and after a trial within trial were admitted in evidence and marked Exhibits C₁ and C₂ respectively.

According to P.W.2 his investigation revealed that the accused person bought a Mercedes benz jeep after collecting money from P.W.1. He tendered the particulars of the vehicle and its key and they were admitted in evidence and marked Exhibits D and E respectively.

P.W.2 testified further that he obtained the statement of account of P.W.1, this was also admitted as Exhibit F. Continuing with his evidence P.W.2 stated that the accused person promised to be paying back the money which was obtained from P.W.1 installmentally and he wrote an undertaking to that effect. Same was tendered and

admitted in evidence as Exhibit G. The accused person also pledged in a written undertaking to help the police to arrest his accomplices. Same was admitted in evidence as Exhibit H.

The witness stated that, so far, the accused had only paid back the sum of ₦160,000 to P.W.1 as part of the money obtained from him. The receipts of payment were admitted in evidence as Exhibits J and J₁ respectively.

The accused person was granted police bail but he jumped bail. His surety was arrested and charged to court. It was after the surety was granted bail that he produced the accused person.

Under cross-examination, P.W.2 stated that the accused person was supposed to pay back the sum of ₦400,000 he promised in 8 installments of ₦50,000.

On this note the prosecution closed its case.

Defence opened with the evidence of the accused person, Mudasiru Adekunle. He testified that he is in the business of buying and selling cars. He also rents out plastic chairs and tables which he got from a plastic company in Lagos. His contact in the company was the brother of one Tunde Babalola a friend of his. The said

Tunde Babalola introduced P.W.1 to him at his office as one who desired to deal in plastics. According to the accused P.W.1 paid the total sum of ₦400,000 to him for the plastics which he paid to the dealer in Lagos but he could not deliver the plastics to P.W.1 because his contact at the plastics company disappeared.

Sometime after that he was arrested in front of U.I and accused of taking money from P.W.1 for dollars.

The accused stated that he was forced to make his statement at the police station.

Under cross-examination, he stated that the name of the Plastics Company in Lagos which he dealt with is Tamolino at Ilupeju. He said that he was not given a receipt or invoice when he paid for the plastics meant for P.W.1, that his contact at the Company was a staff named Johnson Aremu and with this piece of evidence the accused person closed his case.

As I stated earlier, Counsel for both parties filed written addresses.

In his address, O. Uwawah for the accused person submitted that, in order to establish the offence of conspiracy the prosecution

must prove that (a) the accused acted in concert with others in pursuance of common intention and (b) he had a dishonest intention to defraud or cause wrongful gain to himself.

Counsel submitted that the element of agreement is missing from the evidence proffered by the prosecution therefore the offence of conspiracy must fail.

On the 2nd count of obtaining money under false pretences, counsel stated the ingredients which must be proved and submitted that the pretence made was not contained on the face of the charge.

He contended that no pretence was reported to the police and it has not been shown that the accused made a false statement or pretence, that the prosecution failed to show whether there was any marked dollar note in the portmanteau. That the authenticity of Exhibit F is in doubt. That the evidence of P.W.1 that he withdrew N1 Million is not borne out by the statement of account Exhibit F.

Counsel stated that the amount obtained by the accused from P.W.1 was N400,000 and not N4.5 Million which the accused was charged with. He said that no investigation was carried out to verify facts from the bank.

Counsel stated that the accused denied obtaining N4.5 Million.

That Exhibit 'C' i.e. the statement of the accused person is not an admission of the crime or the offence he is charged with.

Counsel finally urged the court to discharge and acquit the accused person.

In her own address, the learned Principal State Counsel Mrs. Gade submitted that in regards the offence of conspiracy the confessional statement of the accused person shows that the accused and his co-conspirators shared the money obtained under false pretences from the complainant therefore the offence of conspiracy is consummated. See – cited the case of –

Ubierho v. State

(2005)5 NWLR Part 919 644

Ikemson v. State

(1989) 4 NWLR Part 110 at 455

On the offence of obtaining money by false pretences counsel stated the ingredients which must be proved. She further referred copiously to the statement of the accused person and stated that the

false pretence emanating from the accused had been established by the prosecution.

She urged the Court to order that the vehicle of the accused be sold and the proceeds given to the complainant pursuant to S. 269(b) of the Criminal Procedure Law of Oyo State 2000.

Counsel finally urged the Court to convict the accused person as charged.

As I stated earlier, the accused person is facing a two count charge of conspiracy (count 1) and obtaining money by false pretences contrary to and punishable under S.419 of the Criminal Code (count 2).

I will first deal with count 2. Section 419 of the criminal code states as follows:

"Any person who by any false pretence and with intent to defraud obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen is guilty of a felony and is liable to imprisonment for three years."

If the thing is of the value of one thousand naira or upwards, he is liable to imprisonment for seven years.

It is immaterial that the thing obtained or is delivered is induced through the medium of a contract induced by the false pretence."

For the offence of obtaining by false pretences to be established the prosecution must prove the following essential ingredients:

- (1) That there is a pretence
- (2) That the pretence emanated from the accused person
- (3) That the pretence was false
- (4) That the accused person knew of its falsity.
- (5) That the accused person had an intention to defraud
- (6) That the accused obtained a thing that is capable of being stolen.
- (7) That the accused induced the victim to transfer his whole interest in the thing.

See - (1) *Alake v. The State*

(1991) 7 NWLR (Part 205) 567 at 591

(2) Onwudiwe v. F.R.N

(2006) 26 NSCQR 257

(3) Smart v. The State

(1974) 11 SC 130

The evidence given by P.W.1 who is the victim of this offence shows that he was lured to the office of the accused person and his cohorts by one Tunde Babalola with the juicy story that they were having promotional sales of plastic chairs and buckets and they would let him have the products on credit together with a metal container.

But when P.W.1 got to their office things changed, the accused person and his cohorts deceived P.W.1 into believing that they had lots of stained U.S. dollars in a portmanteau which they showed to P.W.1. They told him that Arisekola would charge them a heavy commission to remove the stains from that dollars. They told P.W.1 that if he could produce the money needed for the removal of the stains he would get his big commission. They convinced P.W.1 to hand over to them his hard earned gratuity which was paid to him after several years of service in the U.I. After they got P.W.1's money the accused person and his cohorts literally vanished into thin

air. It was the chance sighting of the accused person at U.I. gate that led to his arrest.

After his arrest, the accused person confessed in his statements to the Police Exhibits C₁ and C₂ that he is a fraudster who dupes people. He then gave details of how he duped P.W.1.

I will read out a portion of his statement --

"I know one Mr. Yakubu Yusuff through one Tunde Babalola in February 2006 ---- as one of our agent to be our distributor of our goods like plastic products. Later we told Mr. Yacubu that we are doing promo that we want to share Umbrella, T Shirts and Cap -----.

Thereafter we introduced stamped U.S. dollars to Mr. Yakubu which he showed interest in and first paid ₦150,000.00 to purchase cleaning solution to clean the stamp on the dollars ----. Another ₦200,000 was paid to us by Mr. Yakubu. The second day or the third day Mr. Yakubu brought ₦50,000.00 to me at Green Springs Hotel. ---we are three in number --- I am a fraudster and to dupe people is my business. The total amount we

collected from Mr. Yakubu Yusuff is ₦400,000. I didn't collect N4.5 Million. I didn't know whether Olanrewaju has collected any money from Mr. Yakubu Yusuff again."

From the foregoing i.e. the evidence of P.W.1 who is the victim of this offence and the confession of the accused person there is no doubt in my mind that the gang of three comprising of the accused person and two others made a false representation to P.W.1 with intention to defraud to him.

The false representation was that they had a portmanteau full of stained dollars which when cleaned with the money to be produced by P.W. 1 would earn P.W.1 a commission. This false story induced P.W. 1 to hand over his hard earned money to them at their bidding. The confession of the accused person reveals clearly that he is a fraudster who is in the business of duping people. He succeeded in duping P.W.1 but fortunately for P.W.1 the long arms of the law caught up with the accused person who thought he had gotten away with the crime.

It is trite law that an accused person can be convicted solely on his confession without the prosecution going further to proffer more evidence. See –

Saburi Adebayo v. A.L. Ogun State

(2008) 33 NSCQLR

But in this case there are other pieces of evidence to buttress or confirm the confession of the accused person.

For instance, at the police station, the accused person wrote an undertaking which was admitted in evidence as Exhibit 'G'

It states inter alia as follow:

"I Adekunle Muchasiru hereby promised to pay the sum of N400,000 which I obtained from Mr Yakubu Yusuff sometime in February 2006."

By Exhibit J, which is a receipt of payment, the accused person paid the sum of N100,000 on 4/11/2008 to the I.P.O. By Exhibit J₂ another receipt, he paid another sum of N25,000,00 on 27/1/2009 to the I.P.O.

He further wrote another undertaking which was admitted in evidence as Exhibit 'H' that he would assist the police to arrest his colleagues in crime who were at large.

It states as follows:

"With due respect I Adekunle Mudasiru promised to assist Police to arrest my colleagues in crime on or before March 25th 2009: -----."

In the light of the above, there is no doubt that the prosecution has established the essential ingredients of the offence of obtaining under false pretence contrary to S. 419 of the Criminal Code against the accused person.

The mere fact that the accused person admitted obtaining a smaller amount of N400,000 from P.W.1 rather than what is contained in the Charge is immaterial.

Whether it is N400,000 or N4.5 Million that he took the punishment is the same under the law.

Furthermore, by virtue of S.166 of the Criminal Procedure Law of Oyo State 2000 any omission in stating the particulars required to

be stated in a charge shall not be regarded material unless the accused was misled by such omission.

In the instant case, there is no evidence that the accused person was misled by the particulars in the charge sheet. He knew exactly what he was accused of and he put up his defence before the Court.

Having said that, I have no hesitation in finding the accused person guilty as charged in Count 2. He is accordingly convicted.

In count one, the accused person is charged with conspiring with two others to commit a felony to wit; Obtaining money under false pretence.

Conspiracy is defined as the agreement of two or more persons to commit an unlawful act. The offence of conspiracy is completely committed the moment the persons have formed an agreement to do the unlawful act.

See - Gbadamosi v. The State
(1991) 6 NWLR (Part 196) 182 at 186.
Oduneye v. The State
(2001) 2 SCM 81 at 83

Abacha v. The State

(2002) 4 MJSC 1 at 4

The evidence of P.W.1 is that Kunle Babalola led him to their office where the accused and one Olanrewaju told him about the stained U.S. dollars and convinced him to give them money in return for a commission.

Eventually he withdrew various sum of money which he gave to them.

But after collecting the money the accused and his colleagues absconded and could no longer be traced.

The accused person confessed in his statement to the police Exhibits C₁ and C₂ that he acted in concert with two others Kunle Babalola and Olanrewaju.

He described how they shared the money they collected from P.W.1. The accused stated inter alia as follows:

"We are three in number transacted business with Mr. Yakubu. One Tunde Babalola, Alhaji Olanrewaju and Myself. The first N150,000 was shared between me and

Tunde Babalola while the N250,000 was shared between three of us."


From all the above there is no doubt that the three accused persons had a common intention to prosecute the unlawful purpose of obtaining money from P.W.1 under false pretences.

The prosecution has in my view proved count 1 beyond reasonable doubt.

The accused person is found guilty in count 1.

He is accordingly convicted.

Order as to Exhibits: The Mercedes Benz Jeep model 280 with Registration No. AQ 6241 NRK belonging to the accused person shall be sold and the proceeds shall be given to P.W. 1, Yusuf Yakub who is the victim of the offences which the accused person committed.


E. ESAN
JUDGE
6/1/2012