

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE A.S UMAR

DELIVERED ON 3RD DAY OF JULY, 2017

CHARGE NO: FCT/HC/CR/40/2005

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

1. SIR LEVY O. UNAM
2. ALHAJI R.O. ILIASU
3. NATIONAL COOPERATIVE
INSURANCE OF NIGERIA

DEFENDANTS

JUDGMENT

The defendants were arraigned in this court on two (2) Counts Charge filed on the 29th April, 2005. The charge against the Defendants reads as follows:

COUNT ONE

That you Sir Levi O. Unam, Alhaji R.O. Iliasu and National Co-operative Insurance Federation on or about 24th April 2002 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire among yourselves to commit felony to wit: obtaining property from Dan-Hydro Co. Limited by false pretences and thereby committed an offence contrary to Section (8)(a) of the Advance Fee Fraud and other Related Offences Decree No13 of 1995 and punishable under section 1(3) of the same Decree as

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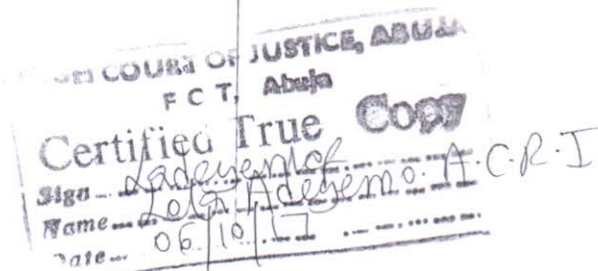
amended by the Tribunals (Certain Consequential Amendments e.t.c) Decree No.62 Of 1999.

COUNT TWO

That you Sir Levi O. Unam, Alhaji R.O. Iliasu and National Co-operative Insurance Federation on or about 24th April 2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud, obtain 2,235 metric tons of fertilizer products worth **N63,814,500.00 (Sixty Three Million, Eight Hundred and Fourteen Thousand, Five Hundred Naira)** from Dan-Hydro Co. Limited after entering a contract for the supply of 7,000 metric tons of fertilizer under the false pretences that (NCIF) is an investment division of the Federal Ministry of Agriculture and Rural Development and hereby committed an offence contrary to Section 1 (1)(a) of the Advance Fee Fraud and Other Related Offences Decree No 13 of 1995 and punishable under section 1 (3) of the same Decree as amended by the Tribunals (Certain Consequential Amendments e.t.c) Decree No. 62 of 1999.

The Defendants pleaded not guilty to the charge. The prosecution called four (4) witnesses and tendered four (4) exhibits:

- i. Tijani Baba(PW1), the Financial Controller of the Nominal Complainant, he tendered exhibits 1 & 2 being the Contract Agreement and Insurance Bond with the Defendants.



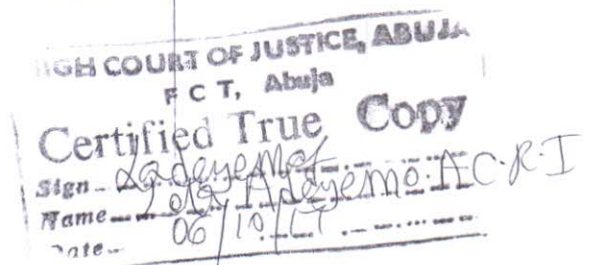
- ii. Inspector Yakubu Bala (PW2), A Police Officer with the Economic and Financial Crimes Commission (EFCC), he tendered exhibit 3 being the Extra-Judicial Statement of the 1st Defendant.
- iii. Elleman Adamu Abdullahi (PW3), A Police Officer with EFCC.
- iv. Yusuf Dauda (PW4) also a Police Officer with EFCC, he tendered exhibit 4, the Extra-judicial Statement of the 2nd Defendant.

All the prosecution witnesses were examined and duly cross examined. The prosecution closed its case on the 8th of May, 2007.

The Defendants opened their defence on the 27th of February, 2017 and closed their case on the 14th of March, 2017 with the 2nd Defendant giving evidence for himself and the remaining Defendants. He was duly cross examined by the Prosecution. In the course of trial, the 2nd Defendant, Alhaji R. O. Iliasu (DW1) tendered twelve (12) exhibits. That is, Exhibit 5 through to 16 while a copy of the letter from Federal Ministry of Agriculture and Rural Development to the Controller, Federal Road Safety Corps dated 1st June, 2001 being application to register a new Registration number for one Peugeot 504 Salon Car SR, colour sky blue belonging to the National Cooperative Insurance Society of Nigeria Ltd was marked rejected.

The exhibits 5 through to 16 which the Defendants tendered are as follows:

- i. Exhibit 5 - The Publication in the Punch Newspaper of Monday 3rd June, 2002.



- ii. Exhibit 6A - The Certificate of Registration with the Federal Registrar of Cooperative Society dated the 16th February, 1977.
- iii. Exhibit 6B - The Certificate of Registration as an Insurer with the National Insurance Commission dated the 9th July, 1980 again with the Coat of Arms Logo on the Certificate.
- iv. Exhibit 7 - The Report of the Officials to the Conference of Honourable Ministers and Commissioners.
- v. Exhibit 8A - The Letter written by the 1st Defendant to the General Manager of Dan-Hydro Company Ltd, the nominal complainant dated 4th July, 2002.
- vi. Exhibit 8B - The Letter written by the 2nd Defendant to the General Manager of Dan-Hydro Company Ltd, the nominal complainant dated 4th July, 2002 informing Dan-hydro Company Ltd of the dropping of word 'Federation' and returning to its original name on the Certificate of Registration and also reassuring that their liabilities remained.
- vii. Exhibit 9 The Letter of Dan-Hydro Company Ltd confirming correspondence with the Defendants on the subject of this case.
- viii. Exhibit 10 - The Certified True Copy of the Ruling of the civil suit earlier instituted by Dan-Hydro Company Ltd.
- ix. Exhibit 11 - Letter of appointment of the National Co-operative Insurance Society (Nig) Ltd as an agent of the National Insurance Commission.

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- x. Exhibit 12 - The Certified True Copy of the Publication made by the National Insurance Commission itself in the Daily Champion Newspaper of Tuesday, 13th April, 1999 appointing the National Co-operative Insurance Society (Nig) Ltd as its agent.
- xi. Exhibit 13 - Letter of appointment of the 2nd Defendant dated 18th August, 2000 as Assistant General Manager Production of National Co-operative Insurance Society of Nigeria Ltd.
- xii. Exhibit 14 - The Letter of Federal Ministry of Agriculture and Rural Development dated 4th April, 2001 allocating office space at NAIC Building to NCIS.
- xiii. Exhibit 15 - The Audit Report of assets and liabilities of NCIS authorized by the Board upon the dethronement of the 1st & 2nd Defendant from NCIS.
- xiv. Exhibit 16 - Minutes of Ministerial Anti-Corruption Unit Fact Finding Meeting with Alhaji Sani Abdallah, Federal Director of Co-operatives, Federal Ministry of Agriculture and Rural Development held on 21st November, 2002.

At the close of trial, the Court ordered Parties to file their respective final Written Addresses. The defendant submitted issues for determination as thus:

1. Whether or not the prosecution has established the requisite mens rea and actus reus on the part of the Defendants to defraud Dan-Hydro Company Ltd when the Defendants received supply of fertilizer to justify conviction on obtaining under false pretenses contrary to Sections 1(1)(a) and 8(a) of the Advance

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Fee Fraud and Other Fraud Related Offences Act from the facts and evidence before the Honourable Court.

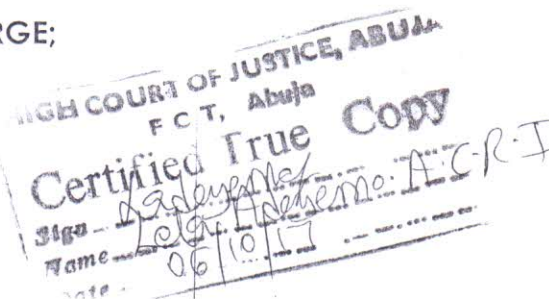
2. Whether or not there was evidence of conspiracy among the Defendants to obtain property from Dan-Hydro Company Ltd by false pretenses in the course of trial.
3. Whether or not the 1st Defendant is bound to give evidence personally in this case in the absence of a need for an innocent explanation to prove facts especially within his knowledge.

Whilst the Prosecution on their own submitted the following issues for determination as thus:

- i. Whether the prosecution by the quantum of evidence adduced has proved the essential ingredients of the offences alleged against the defendants beyond reasonable doubt as required by the provision of section 135 of the Evidence Act 2011.
- ii. Whether by not giving evidence during his trial the 1st defendant has chosen to rest his case on that of the prosecution.

After due consideration of all the issues formulated by counsel for the parties across the divide, the documents tendered in evidence by the parties and having observed the demeanor of witnesses, this court hereby considers a lone issue for determination in this case to wit:

WHETHER THE PROSECUTION HAS PROVED ITS CASE BEYOND REASONABLE DOUBT TO SECURE THE CONVICTION OF THE DEFENDANTS ON THE 2 COUNT CHARGE;



It is pertinent to start by addressing the 2nd issue formulated by the prosecution, that is; whether by not giving evidence during his trial the 1st defendant has chosen to rest his case on that of the prosecution.

Learned counsel for the prosecution submitted that the 1st defendant was charged along with the 2nd defendant who testified as DW1 and 3rd defendant in counts 1 and 2 respectively and while DW1 testified and called no other witness, the 1st defendant neither testified for himself nor called any witness at the trial. Counsel contended that the position of the law is clear for a defendant who failed to testify during his trial. He relied on the case of **ADEKUNLE V STATE (2006) ALL FWLR PT 332 @ PAGE 1453** where the court held:

"an accused has the right to remain silent throughout the trial, leaving the burden of proof of his guilt beyond reasonable doubt, to the prosecution. In other words, an accused person is presumed innocent until he is proved guilty. He does not have to prove his innocence, and as such he is not a compellable witness".

On the strength of this authority I need not to say much on this point, but only to add that where a defendant opts or elects not to testify and rests his case on that of the prosecution, he cannot be heard to complain that he was not accorded fair hearing. What it portends is that whatever the prosecution lays before the court remains unchallenged and the court is bound to act on it. From the

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"For the duration of a trial, an accused person, may not utter a word. He is not bound to say anything. It is his constitutional right to remain silent. The duty is on the prosecution to prove the charge against him as I had said, beyond reasonable doubt. See *Uche Williams v. The State* (1992) 8 NWLR (Pt.261) 515, (1992) 10 SCNJ 74 at 80. Afterwards, an accused person, is not a compellable witness. See the case of *Sugh v. The State* (1988) 2 NWLR (Pt. 77) 475; (1988) 1 NSCC 852; (1988) 5 SCNJ 58." Per Ogbuagu, J.S.C. (P.26, Paras.C-E).

The bottom line of the foregoing position is that the prosecution whether the defendant leads evidence or not is duty bound to prove the case against the defendant beyond every reasonable

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doubt; therefore, it is inconsequential whether the defendant led evidence or not.

Delving into the substantive charge; Section 1 (1) of the Advanced Fee Fraud and Other Fraud Related Offences Act, 1995 states that:

(1) "Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud

(a) Obtains, from any other person, in Nigeria or any other 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 induced by the false pretence is guilty of an offence under this Act."

For the prosecution to succeed in proof of the commission of the offence against the defendants, he must establish the guilty minds of the defendants coupled with the acts and to sustain the offence of obtaining property by false pretense the defendant must be seen to have appeared to misrepresent facts to his victim with sole aim of inducing them to believe in the misstatement, false pretense and by so doing caused his victim to part with his property.

Narrowing it down to the instant case, the court was obliged to look into the circumstances of the case to ascertain whether the

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defendants were out to fraudulently obtain the property from the nominal complainant through false means. To achieve this end, it becomes very vital to first analyse the status of the defendants' vis-à-vis the office they occupied to know their real identity. This is imperative because if the defendants were men of means and were carrying out lawful activities, they cannot be seen to have obtained the property in issue by false pretense. Likewise, if the defendants had no such relationship, it means they were out to defraud and the inescapable conclusion is that they actually obtained the goods by false pretense and liable to face the legal consequences of their actions.

First test therefore is to find out whether the defendants had any affinity or affiliation with the Federal Ministry of Agriculture, National Insurance Commission and other Government Agencies. Exhibit No.11 is a document from National Insurance Commission to the defendants titled:

NCIS/ACISON TASKFORCE ON SANITIZING THE COOPERATIVE INDUSTRY; it partly states thus:

"In the spirit of the memorandum of understanding signed between NCIS, ACISON Federal Department of Cooperatives and National Insurance Commission on the 3rd of March, 1999, you may proceed to check the excesses of all Cooperatives engaged in Cooperative Insurance whether they are members of the ACISON or otherwise".

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It is evident that National Insurance Commission recognized and acknowledged the existence of the 3rd defendant. Exhibit No. 14 is a letter of allocation by the Ministry of Agriculture and Rural Development to the 3rd defendant. For the purpose of clarity, I wish to reproduce the content of Exhibit No. 14, thus:

"I am directed to inform you that the Federal Director of Cooperatives, Federation Ministry of Agriculture and Rural Development had noted with delight and happiness your efforts towards enlightening farmers about the activities of your Society. You should please keep it up. The FDC had also directed that appropriate office space be allocated to you when we moved to our newly acquired office at NAIC building to serve as your Abuja Liaison office.

The FDC is also looking at the possibilities of paying all your outstanding dues as requested....."

In the light of the contents of this document, it is clear that the activities of the 3rd defendant were known to these Federal government agencies and having determined that, the next judicial responsibility on the court; is to find whether the acts of the defendants in relation to the nominal complainant amounts to obtaining property by false pretense as alleged by the prosecution.

To this argument, I have carefully taken a close reading of Exhibit No. 1 which is the Sales Agreement between the National Cooperative Insurance Federation and Dan-Hydro Company Limited, Abuja is a

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transaction involving purchase of 7000 Metric Tons of assorted fertilizers; made of 2000mt N.P.K 15.15.15 and 5000mt Urea 46%N. The document is the fulcrum of the present charge.

I have read through the contents of the document, apart from being duly stamped it appears the document stipulates terms and conditions of its enforceability. The elements of a valid contract are all present therein. The agreement made provision for alternative dispute settlement mechanism in article 6.0.0. which states that "Parties hereto shall at all times endeavour to resolve or settle amicably any dispute or matter in difference between them. In the event of failure so to do, they will submit the matter for resolution under the provisions of the Arbitration Act cap 19 Laws of the Federation of Nigeria, 1990". Aside this document, I have read in between the line exhibit No. 2 which is Co-operative Credit Guarantee Bond issued by the 3rd defendant in favour of the nominal complainant Dan-hydro Co. Ltd.

These documents to my mind evidence civil transaction between the parties. However, that does not imply that a civil transaction cannot drift to criminal.

A civil transaction can at the same time connote or give rise to criminal liability where the fraud is perpetrated through the medium of civil transaction.

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For these reasons, the prosecution argued that 3rd defendant approached Dan-Hydro Co. Nig. Ltd in Kano and enquired about the supply of fertilizer. That the 1st defendant and DW1 gave out themselves and said they came from the Federal Ministry of Agriculture and further said they were involved in the Federal Ministry of Agriculture fertilizer intervention programme, for which the sum of N5 Billion had been set aside to purchase fertilizer; and intention to defraud can be deduced from the action of the defendants

Counsel for the prosecution contended that the claim by the 1st defendant and DW1 was not true and constitutes pretense; thus satisfies ingredient one; as they were neither staff of FMA nor was there any Federal Government Fertilizer intervention.

I have given considered thought to this argument and I asked; can oral testimony of PW1 displace the content of Exhibits 1 and 2; the Sales Agreement and the Guaranty Bond?

I think not; the documents stated the terms and conditions of the transaction and the nominal complainant were not reasonably expected to believe anything outside the agreement she duly entered with the defendants. These statements were not contained in the agreement executed by parties. For contents of a document to amount to an admission of guilt, the statement therein must be direct, positive, clear and unequivocal.

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It is a settled principle of interpretation of documents that where the language used by parties in couching the terms or provisions of a document are clear and unambiguous, the Court must give the operative words in the document their simple, ordinary and actual grammatical meaning. See *Union Bank of Nigeria Plc v. Ozigi* (1994) 3 NWLR (Pt 333) 385, *Isulight (Nig) Ltd v. Jackson* (2005) 11 NWLR (Pt 937) 631, *Egwunewu v. Egeagwu* (2007) 6 NWLR (Pt 1031) 431. It is not the duty of the Court and neither is it right for a party to ascribe meaning to the clear, plain and unambiguous provisions of a statute or contents of a document in order to give them a slant which accords with a perceived view - *Izedonmwem v. Union Bank of Nigeria Plc* (2012) 6 NWLR (Pt 1295) 1." Per ABIRU, J.C.A. (Pp. 11-12, Paras. F-C)

On the 3rd ingredient of the offence that the representation is false: Prosecution argued vigorously that DW1 and 3rd defendant are neither part and parcel of the FMA or a parastatal in the Ministry nor was there any Federal Government fertilizer intervention programme which they are involved. He further argued that if the 1st defendant and DW1 are not staff of the Ministry of agriculture and have not been Civil Servants; why did the bond, Exhibit 2 issued to Dan Hydro Co. Nig. Ltd bear the Nigerian Coat of Arms as part of its logo to indicate that it is owned by the Federal Government.

I think the relevant questions should have been;

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1. Why did the Federal Ministry of Agriculture accord much recognition to the 3rd defendant to the extent of allowing her to use and enjoy its patronage?
2. Why was National Co-operative Insurance Federation recognized under section 1(b) of the Co-operative Insurance and Social Development (Transfer of functions) Decree No. 28 of 1976 and issued a certificate of registration?

The answers to these questions would logically put the issue of whether there was fraudulent representation by the defendants to rest.

While testifying in defense DW1 said:

"Where the problem emerged is that when the legal officer of Dan-Hydro sent a letter to CAC erroneously to confirm the registration of National Cooperative Insurance Federation and NICS of Nigeria and CAC replied that neither the Cooperative Society or Federation has obligation for registration under CAC Act. Instead, the registration of anything Cooperative has to do with Decree 90 of 1993 but now Act of 2004. The name of Act is National Cooperative Development Act of Nigeria. Before the Legal Adviser of Dan-Hydro got reply from CAC, he started causing trouble that National Cooperative Society and Federation is fraudulent. Then the Minister of Agric called for meeting of Dan-Hydro and management of National Cooperative Insurance Federation. The Minister of Agric

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explained at the meeting that this office is under his supervision and not the CAC. And that the issue of Federation was a result of congress of cooperative societies meeting in Kaduna. And the management explained that the fertilizer was distributed to states across the country; and remittance has started coming to the account of National Cooperative Insurance of Nigeria. The sum of N3 million has started coming. The MD and Legal Adviser left the meeting in annoyance and went to Federal High Court and filed an action. We appeared before the court to defend the action brought under the Undefended List. The Judge ruled that the matter be transferred to general cause list and we started appearing. Subsequently Dan-Hydro abandoned the case and the case was struck out. Then Dan-hydro ran to EFCC. At EFCC we were granted bail".

As can be gleaned from Exhibit Nos. 5 and 6 (a-b) the 3rd defendant not being an entity registered under the Companies and Allied Matters Act but under a decree in force as at the time could presumably and rightly enjoy the patronage and certain privileges of the government in line with her alliance with the relevant government agencies. I think it is rather a policy issue that cannot input criminal liability.

Later again in his testimony DW1 said as thus:

"Chairman of EFCC called myself and Dan-hydro and advised us to start getting payment from states and pay the people

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instead of dragging the case. We continued paying Dan-Hydro in draft. Then Mr. Abdullahi El-lewa told us that this case is civil but since we refused to pay there is a criminal intention. After six months, one Mr. Okorie a member of Cooperative Insurance Practitioners' who testified in this court, he told me that the current Board of Cooperative of National Insurance Cooperative of Nigeria will be expiring, he needs our support. He returned to the EFCC and EFCC called us back. Efcc interviewed us more. Then we were charged to Lugbe High Court".

Under cross examination of PW1 by the defense counsel on 15th of December, 2005 he stated as thus:

"They share the same building with Federal Ministry of Agriculture. When we went to their company, we discovered it is locked and nobody to attend to us. We didn't make any efforts to refer the matter to arbitration. The company has never denied us. I am aware there is a Director under Agric Ministry who supervises the Cooperatives in Nigeria. They claimed to be an agent of Federal Government and they presented documents to that effect"

From the testimony elicited under cross examination of this witness, I believe the identity of the 3rd defendant was clear as this prosecution witness admitted that the defendants shared a building with Agriculture Ministry. Though PW1 stated that they were

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deceived by the documents presented to them by the defendants bearing Nigeria coat of arms in the defendant's logo, like I said before, there is nothing wrong with an entity created under a Decree then in force and which enjoys affiliation with government agency to use the Nigerian Coat of Arm in its logo, since same was created by the law making body at the time. As such there was intention by then military government that the Cooperative enjoys affiliation with the Federal Government, otherwise the Cooperative would have been registered under Nigeria company laws otherwise CAMA. Most of the material assertions made by PW1 were not impugned or punched during cross-examination. For instance that the Minister of Agriculture summoned a meeting towards resolving the issue and other claims made by the witness were not rebutted. The prosecution has not proved that the defendant's use of Nigerian Coat of Arms in its logo was deliberately fashioned to carry out criminal act considering the relationship between the 3rd defendant and these government agencies.

Again, evidence led at the trial by defendants indicates that the defendants were given cars duly registered by the Ministry of Agriculture as shown in Exhibit 16.

In the extra judicial statement of the 2nd defendant he stated thus:

"the general manager of Dan-hydro Ltd came to the Headquarters of NCIS to solicit for business. I was not around but the staff called me from Lagos and I told the GM of Dan Hydro that he should go back to Kano, that I and Sir Levi Unam

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executive chairman would be coming to our Kano office at No. 1 Zaria Road and we would use the opportunity to branch at Dan-Hydro office to finalize the transaction. The transaction was concluded and it was agreed that they would import fertilizer at a very considerable price to NCIS but they also agreed that they would supply us local fertilizer to the tune of N178M. but later they supplied only N63M worth of fertilizer before the crisis. It the crisis that made it impossible to pay Dan-hydro money"

Corroborating this testimony, 1st defendant stated in his extra judicial statement as thus:

"I was introduced to Dan-hydro by Alhaji Iliyasu when he was the Managing Director while I was the chairman/chief executive. At that time NCIS was going by the name NCIF but when the Director Cooperatives directed that NCIF should revert to the old name of National Cooperative Insurance Society, this was in writing and the letter is endorsed. This transaction was purely a business transaction and we collected the fertilizer on the agreement that Dan-hydro would help us to import our own from Europe. The contract was for a total of N177, 000, 000 and they breached the contract by supplying to the value of N63, 000, 000 and insisted that full payment must be made while our understanding is for payment to be made through the supply which they were going to deduct from the imported consignment. There is no question about NCIS being a fake organization as it was established by the Ministry of

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Agriculture and National Resources. It is one of the five National Apex Cooperative Society and owned by the 36 States of the Federation. The use of Federal Government Agency in our Headed paper was because in 1999, the National Insurance Commission NAICOM under a Memorandum of Understanding appointed NCIS to supervise all the small Cooperative Societies engaged in Insurance and there are more than 100 spread all over the Federation... If not for NCIS crisis Dan-hydro would have been paid by now"

This testimony highlighted herein when placed side by side with that of PW3 would reveal the crux of this case and leads the court to the logical conclusion;

PW3 Elleman Adamu Abdullahi said:

"the allegation against them is that they represented themselves as agent of Federal Government and went to Dan-hydro to enter into contract with them with a view of Dan-hydro to supply them with fertilizer valued N63.8 million. The representation is that they are using Fed Government Coat of arms and letter head paper. They went to Dan-hydro and told them they are agent of Federal Government. Our investigation reveals the conspiracy against them; and obtaining under false pretense. The findings are that the fertilizer was actually supplied and they failed to remit the money to Dan-Hydro.

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Furthermore, they have received the fertilizer and sold out and failed to remit back the money.

From this testimony it does suggest that the defendants received the goods and misappropriated the fund which on the face of it is criminal. Ordinarily that indicates inducement with intention to defraud. But I cannot find anything evidence either by oral or documentary to establish that the defendants realized the proceed and diverted same without paying back to Dan-hydro ltd. The prosecution did not invite the beneficiaries/recipients of the fertilizers in the state to support the allegation. The allegation too is wild and speculative. I have read a-z the testimony of the nominal complainant through PW1 and there was allusion to the fact that the fertilizers were supplied and the proceeds realized without same being remitted back to the suppliers.

Having read the statements above, it does appear that the transaction between the Nominal Complainant, Dan-hydro ltd and defendants fell within the authorized aims and objectives of the Cooperative. From facts and circumstances leading to this charge, it is obvious that it is a pure civil transaction that got sour. I am not able to decipher any criminal intentions by the defendants. There is no evidence to establish that the fertilizers were sold and the proceeds diverted by the defendants to prove criminal intent. The fact that there was crisis in the management of the 3rd defendant that

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frustrated the 1st and 2nd defendants out of office at the time was not rebutted at the trial by the prosecution.

Counsel for the defendants, B.J Akomolafe Esq. submitted that the evidence adduced by the prosecution in the course of this trial did not in any way reveal any intention by the Defendants to defraud Dan-Hydro Company Ltd and it is the law that a prima facie case will be made out when the evidence adduced by the prosecution if believed by the court will be sufficient to prove the case against the defendants. In this sense the evidence has to cover all necessary elements of an alleged offence. He cited the case of *Ajuluchukwu v. State*[2014] 13NWLR (Pt. 1425) 641 (p. 657, para. C).

I have given due consideration to the arguments of counsel on this point. I wish to state that it is the evidence led at the trial that the court considers paramount. Therefore, in determination of the culpability or innocence of the defendants, I have dutifully studied the evidence of the prosecution and that of the defense alike. The law is that the prosecution at all times had the burden of proving the essential ingredients of the offence for which the defendant is charged coupled with intention.

Thus; intention is the purpose or design with which an act is performed. It is the foreknowledge of the act coupled with the desire to do the act. The foreknowledge and desire form the cause of the act in so far as they fulfill themselves through the operation of the will", see *Nwokearu v. State* (2013) 16 NWLR (pt. 1380) 207 at 235,

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per Ngwuta, JSC. A defendant, the prosecution must prove, must have the criminal intent to do an unlawful act of obtaining property by false pretense. It is said that even the devil himself does not know the intention of man. Intention is subjective in nature and can only be inferred from a man's act or conduct and thus necessitating the consideration of certain salient features depending on the nature of the offence committed.

The 3rd defendant, being a creation of Decree, the Nominal complainant had window of opportunities of taking up civil action against it to recover the debt in line with Exhibits 1 and 2 which made provision as to mode of dispute resolution. This right was taken but not followed and it is more encouraging to exploit that path towards resolving the issue.

Exhibit NO 10 is a certified true copy of ruling in a civil case in Suit No. FCT/HC/CV/809/12, wherein the Nominal Complainant instituted an action against the defendants herein to recover the contract sum and it suggests that the transaction is purely civil with no criminal intent on the part of the defendants.

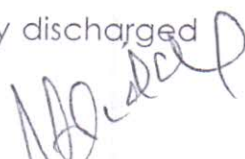
Therefore, from the totality of evidence led by the prosecution and that of the defense, it is my finding that the criminal liability of the defendants have not been established; thus there is no evidence that the defendants obtained property from the nominal complainant by false pretense as the defendants had not at any

HIGH COURT OF JUSTICE, ABUJA
F C T, Abuja
Certified True Copy
Sign - *Ladeyemi*
Name - *Ladeyemi*
Date - *06/10/11* A.C.R.-I

point claimed or masqueraded their identity in order to deceive the nominal complainant to part with the goods.

Having said the forgoing, I am the view that the defendants are not guilty of obtaining property from Dan-Hydro Ltd by false pretenses and I so hold.

Consequently the 1st, 2nd and 3rd Defendants are hereby discharged and acquitted on all count charges. I so hold.

Signed: 

Judge: 03/07/17

Appearances: Ashibi Amechi for the Prosecution.

B.J. Akomolafe with C.A. Matoro and F. Nwachukwu for the Defendants.

Akomolafe: We apply that the 2 Million deposited by the 1st & 2nd Defendants be paid back.

Prosecution: I don't have the record, it is Uket who has the record.

Court: The 2 Million deposited in fulfillment of the defendants bail condition be release to them if it has not been released earlier on.

Signed: 

Judge: 03/07/17

