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IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ADO EKITI JUDICIAL DIVISION
HOLDEN AT ADO EKITI
ON TUESDAY THE 17TH DAY OF OCTOBER, 2017
BEFORE HIS LORDSHIP, HON. JUSTICE TAIWO O. TAIWO
JUDGE

SUIT NO: FHC/AD/26C/2015

BETWEEN:

INSPECTOR GENERAL OF POLICE..... COMPLAINANT

VS

AJAYI OLUSOLA BABATOLA ..... Accused person

JUDGMENT

The defendant herein **Ajayi Olusola Babatola** was arraigned in this court by an amended charge dated the 19th day of October 2015. The charge is a one (1) count charge to wit:

> **That you Ajayi Olusola Babatola Male between 2011 and 2014 at Oye Ekiti within Ado Ekiti Judicial Division, under false pretence and with intent to defraud, did obtain sum of one million five hundred and fifty thousand naira (N1, 550,000.00) from one Dr. Ojo Emmanuel and thereby committed an offence punishable under section 1(3) and 11 of the Advance Fee Fraud and other related offences Act 2006.**

The charge was signed by F.D Falade Esq the O/C legal, Nigeria Police, State C.I.D Ado Ekiti, who also appeared throughout the proceedings which commenced upon the arraignment of the defendant on the 10th of February 2016. The

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defendant, who was represented by his learned counsel from the inception of this case till final conclusion, Busayo Sule Esq pleaded not guilty to the charge.

It is important to note that there was a charge dated 3rd day of June 2015 which was withdrawn by the prosecution and rightly so as it is within the power of the prosecution to do so. I digressed to mention this as it was came up during the proceedings and I am of the view and so hold that as far as that charge is concerned, it is dead and that what is alive before the court is the amended charge referred to above.

The defendant was granted bail by the court which he perfected and thus participated fully in the conduct of his case without let or hindrance in any way. He was given all opportunity to present his case fully and there was no complaint from him as defendant, of any interference with his defence nor was there any complaint either from the prosecution of any interference. Both parties were afforded the opportunity to prepare and ventilate their views of the subject matter of this case leading to the preferment of the one (1) count charge against the defendant, pursuant to section 1(3) and 11 Advance Fee Fraud and other Related offences Act 2006.

The prosecution called four (4) witnesses. These are **OJO EMMANUEL OLORUNDAR**E, the nominal complaint as PW1**, TUNDE OGUNMOLA** as PW2, **KEHINDE OLUWATOBA AJIBOYE** as PW3, and the IPO of the case Sergeant **ADEJARE OLAIYA** as PW4. The defence had only one witness and it was the defendant as DW1 who gave evidence for himself. Suffice to say that after the evidence of DW1 i.e the defendant, the court adjourned at the request of the defence to enable it bring another witness but this was not to be, as the defence closed its case without calling any other person. I will come to this later.

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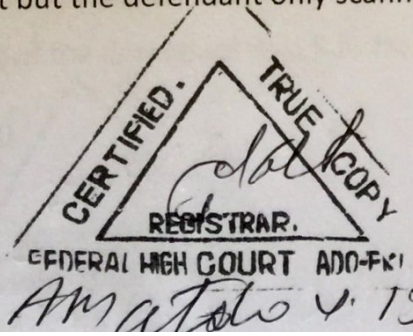
The addresses of the parties filed in this court on the 12th of September 2017, for the prosecution and on the 18th day of September 2017 for the defence contain salient points from the perspective of the counsels of the facts of this case. These addresses though, forms part of the records of this court, will not debar this court from recapping the salient points borne out of the records of the evidence duly taken as the evidence of the parties before the court. The court must consider the facts as presented before it and not rely solely on the addresses of the counsels for the facts and the evidence of the witnesses.

Trial commenced on the 24th of February 2017. PW1 who is a medical practitioner and a consultant surgeon with University of Jos Teaching Hospital, under examination in chief gave evidence of how he was introduced to the defendant sometime in 2011 and early 2012. He stated that the defendant introduced himself as a land agent. He stated how the defendant took him to somewhere around the University in Oye Ekiti where he claimed there was land to be sold free from any encumbrance. PW1 agreed to buy ten (10) plots of the rate of N150,000(One hundred and fifty thousand naira) per plot.

PW1 stated how he paid a total sum of N1, 550,000.00 (One million, Five Hundred and Fifty Thousand Naira) into the account of the defendant. He stated that up till date, he was yet to get the land and the defendant issued him a receipt. He stated how he reported to the Criminal Investigation Department of the Police and how the defendant who was invited by the police refunded only N550, 000.00 (five hundred and fifty thousand naira only). PW1 stated that the defendant as at January 2016 failed to pay the balance. PW1 further stated that the defendant never gave him the original receipt but the defendant only scanned a receipt to him which he gave to the police.



The scanned receipt was tendered and received in evidence without any objection by the defence as exhibit **"A".** The receipt from the face of it was issued by one BEJIDE ABAGUN family, Egbe Street, Oye Ekiti, Ekiti State. PW1 further gave evidence of how the defendant took him to a landed property but failed to show him the demarcation. He gave evidence further that he started being suspicious, when he noticed that his agreement that five plots of the land should face the road was not what he saw. He told the court that he was not given the original receipt when he asked the defendant and that his sister who lives in Oye Ekiti was also denied access to the defendant for the purpose of sighting the original receipt.

Under cross examination, PW1 Stated that although the defendant showed him land that he claimed he had bought for people, he did not show him any clarification that he is an agent. PW1 stated further that he believed that the defendant could not dupe him. He paid the money to the defendant for this reason. He stated that when he visited the land nobody disturbed him, but he was alone with the defendant on the land. PW1 stated that he asked the defendant to take him to the family who he claimed owned and sold the land but the defendant never did. Other persons whom he asked to meet with the defendant to take them to the family never met the family because the defendant failed to take them to the family in Oye Ekiti.PW1 claimed that his cousin confirmed that there is actually an ABAGUN family in Oye Ekiti. PW1 further stated that his cousin who made enquiries told him that the receipt i.e exhibit **"A"** was not issued by the family. On being asked if he has anything to show the court that he paid money to the defendant, PW1 referred to exhibit **"A"** and that he paid money directly and through his wife into the account of the defendant in U.B.A. He stated that his

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cousin also paid money to the defendant. On being asked if there was land transaction between him and the defendant, PW1 answered that it was part of what transpired. There was no re-examination of PW1 by the prosecution.

PW2 who is a civil servant with the Local Government Commission stated that he is a cousin to PW1. He confirmed that he knows the defendant in the dock. He informed the court that PW1 told him that he purchased 10 plots of land in Oye-Ekiti through the defendant. He stated that the defendant took him to the land but that the survey plan was not ready. He informed the court that his cousin PW1 asked him to collect the original receipt from the defendant but the defendant did not give him and that the defendant informed him that he has scanned the receipt to his cousin PW1. PW2 stated that when he suggested clearing the land, the defendant said there were other things to be done before clearing.

PW2 stated further that PW1 scanned the receipt to him and he took it to the family whose name appeared on the receipt in Oye-Ekiti. The family according to him denied making the receipt and that they did not transfer any land to PW1. When he confronted the defendant, PW2 informed the court that the defendant told him to hold on awhile as there is something happening on the land.

PW2 further stated that when he prompted the defendant to tell him the truth, the defendant informed him that he used the money for other things. PW2 identified exhibit **"A"** as the receipt scanned to him by PW1 and confirmed that it is the receipt rejected by the family.

Under cross examination by the defence, PW2 confirmed that he met the defendant sometime in 2014 after PW1 had bought the land in question. He confirmed that he was not a party to the transaction. He confirmed that he went

to authenticate the scanned receipt i.e exhibit **"A"** with the family. He confirmed the name of the family that he approached in Oye Ekiti as the ABAGUN family. He stated still under cross examination, that he saw one Toba who claimed to be the Assistant Secretary of the family in Oye Ekiti but that he did not meet the Head of the family. PW2 confirmed that he knows the land the defendant took him to very well in Oye Ekiti. PW2 confirmed the sum of N1, 500,000 as the amount PW1 paid and that it was for ten (10) plots of land. PW2 stated that the transaction between PW1 and the defendant was pure land transaction. PW2 was there after discharge. There was no re-examination.

PW3 was Kehinde Oluwatoba Ajiboye of Egbe Quarters, Oye Ekiti. In his evidence in chief he confirmed he knows the defendant in the dock and PW2. PW3 stated that he met the defendant sometime in 2011 when he came to their family to purchase land, six plots precisely for one Hon. Duro Faseyi, now a Senator of the Federal Republic of Nigeria. He said since then the defendant never came back to purchase any plot of land for PW2. He stated that he met him when he came to verify if PW1 bought 10 plots of land from the family. PW3 stated further that PW2 came with a photocopy of a receipt issued to his brother for the 10 plots but he told him that the name of PW1 never appeared in their family record, and that in their family, they don't sell more than six (6) plots to a single person. He stated that he took PW2 to his brother since the head of the family then was not around. He gave the name of his family as Bejide Abagun Family and that he is the Assistant Secretary while his brother Kehinde Oluwaseun is the Secretary of the family.

PW3 identified exhibits **"A"** as the document PW2 brought to his family. When asked how the receipt i.e exhibit **"A"** did not originate from his family, he stated

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that the hand writing is not his nor that of his brother and that the signature is not that of the head of the family, whom he informed the court is his uncle and also a father. He gave his name as Chief Bejide Sunday Olanrewaju. Under cross examination, PW3 stated that only the Head of their family sign receipt of land purchased from the family. He stated that though he is not the head of the family but he is a principal member of the family. He stated that he cannot sign the signature of the head of the family but he can recognize it. He stated under cross examination when asked if he is hand writing expert, that he is not, but he can recognize his writing, that of his brother and the head of the family.

Still under cross examination, PW3 stated that he did not know what transpired between the defendant and PW1 but will know if the Head of the family Chief Sunday Bejide does anything pertaining to the land of the family when asked if Chief Sunday Bejide knew about any transaction between the defendant and PW1. He stated in closing that the head of the family would have told the whole family. There was no re-examination.

PW4 was the IPO. On the 17th of January 2017, when the case was called the defendant was present but his counsel was not. The court however, went on with the case, but I must state that the court adjourned at the close of the examination in chief of PW4 for the defence to cross examine PW4 after being permitted to go through the records of the court if he so wished. Be that as if may, I now recap the evidence of PW4. PW4 confirmed knowing the defendant when sometime in May 2015, PW1 reported a case of fraud and forgery against him. He stated that PW1 made a statement. He effected the arrest of the defendant who he said made a confessional statement. He stated how a counsel appeared for the defendant and how a written undertaken was made for the defendant to pay

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back some money to PW1 and that the failure of the defendant to pay led to his arraignment.

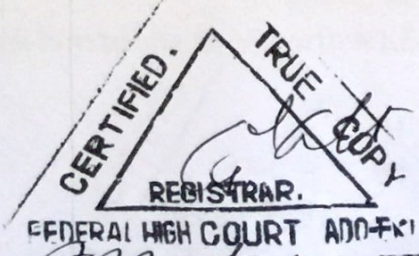
On the receipt, PW4 stated that he went to Oye Ekiti to investigate the genuiness of the receipt. He obtained the statement of the head of the family Chief Sunday Bejide Olanrewaju, the only signatory to the family receipt which he obtained in English but translated into Yoruba. He gave the age of the man as 95 years as at 2015 and that this was why he went to OyeEkiti to take his statement. PW4 identified the statement of the defendant, the statement of the head of the family and the undertaken and all these were tendered in evidence. However, the court in the interest of justice because the defence counsel was not in court did not admit the document but adjourned so that the defence counsel could react to the documents one way or the other.

On the 2nd of February, 2017 when the case came up, the defence counsel who was in court did not object to the tendering of the documents by the prosecution. The court admitted them as exhibits **"B","B1"** and **"B3"** respectively.

PW4 further identified exhibit **"A"**. Cross examination of PW4 commenced on the 16th of March, 2017, because when the matter was called on the 23rd of February 2017, the defence counsel sought for an adjournment on the ground of ill health and same was granted. Under cross examination, when asked if he was privy to what transpired between the defendant and PW1, PW4 stated that he was privy because he investigated the complaint of fraud and forgery reported by PW1. PW4 stated that his evidence in chief is what is contained in the statement of PW1, but he denied that what he investigated was land transaction between PW1 and the defendant. PW4 admitted that PW1 made a statement which was not tendered by the prosecution. The defence asked for it in open court,

prosecutor gave him and he tendered same without objection and same was marked as exhibit **"C"**. Under cross examination PW4 confirmed that PW1 asked the defendant to get 10 plots of land for him but that the defendant fraudulently obtained from PW1 and that led to the charge against him. At the suggestion of the defence that PW1 demanded a refund because the defendant did not get him five (5) plots on the road as agreed, PW4 said this was not so, that it was because PW1 did not get the land at all or his money back from the defendant. He confirmed that he took his investigation to the family and that he was not interested in any misunderstanding or disunity in the Bejide Abagun family. PW4 stated that no one had come forward to claim to be the head of the family apart from Chief Bejide Sunday. PW4 further stated, still under cross examination that he did not know if the family had agents and that he only took down the statement made in English as English is the official language in Nigeria. When asked why he did not tender the Yoruba version, he stated that English Language is our official language and being a police man he recorded the statement of the family man in English which was interpreted to the family head in Yoruba before he countersigned it.

When the defence counsel put it to PW4 that the defendant collected N1.5 million from PW1, PW4 stated that the defendant confessed that he fraudulently took the sum of N1.5 million from PW1. Under cross examination, PW4 also stated that despite the fact that the defendant made an agreement to refund the money, he, the defendant was charged to court because investigation revealed that he defrauded PW1 and also that there was forgery. PW4 also stated that even if the defendant had paid the money, he would still have been charged to



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court because part of the money was recovered from the defendant during the course of investigation.

PW4 admitted under cross examination that one Olanike Olajide who refunded the sum of N500, 000 was the one who introduced the defendant to PW1 and that the money she refunded was not fraudulently obtained from PW1. PW4 stated that he was aware of the agreement to settle but that the money was fraudulently obtained from PW1 by the defendant.

PW4 stated that Olanike Olajide was not arrested but invited to the police station.

PW4 stated still under cross examination that though the said MrsOlajide was charged along with the defendant, but the charge was withdrawn because the said Mrs Olajide returned the sum of N500, 000 given to her by PW1 and that the defendant was charged to court not because he did not return the money he collected from PW1 but because he fraudulently obtained money from the PW1.

PW4 insisted that no money was recovered but that the defendant brought part of the money to the police station which was recorded as an exhibit. PW4 denied that what transpired between the defendant and PW1 was contractual. He stated that the defendant obtained money under false pretences. The learned prosecutor re-examined PW4 only to the extent that the money recovered from Mrs Olanike is not part of the N1.5 million for which the defendant was arraigned. PW4 answered that it is not.

On the 21st of June, 2017, the defendant opened his case as DW1. He admitted knowing one Dr. Emmanuel Ojoi.e PW1, Tunde Ogunmola(PW2) and Kehinde Oluwatobi (PW3). He stated that contrary to his arraignment, he did not defraud PW1. DW1 stated that he bought the 10 plots of land for PW1 as requested by him. He took him to the land worth N1.5 million. He said PW1 paid N1, 000,000

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into his account and he issued him a receipt. He stated further that he took Tunde Ogunmola, PW2 to the land. He stated that he knew Kehinde Oluwatobi in OyeEkiti but did not have any business with him. He confirmed exhibit "**A**" as the receipt issued to PW1 and that he made an agreement at the police station. He stated further that PW1 rejected the land because it was not up to 5 plots in front and that he, DW1 should refund him the money he paid.

DW1 confirmed Abagun Abejide family as the family he bought the land from but the family was represented by their agent one Sumonu Aremu alias K.K.K. DW1 named those he had bought land for through the agent of the family and that there was no issue or problem with those persons. DW1 claimed to have paid N550, 000 after he was arrested. When he was asked if he had anything else to add, DW1 stated that he had nothing to add.

Under cross examination by the learned counsel for the prosecution, DW1 confirmed that the surveyor Aremu alias KKK is still alive. He confirmed that the agreement he made was drawn up by his lawyer. There was no re-examination.

The defence as aforesaid, did not call any other witness despite securing an adjournment to bring further witness. I must state that the attempt by the learned prosecutor to tender documents to show PW1 got land from other sources was rejected by the court. On the 7th of July 2017, the defence closed its case and the court adjourned for adoption of written addresses.

The prosecutor's final written address is dated the 12th of September, 2017 and filed the same date while that of the defence was filed on the 18th day of September but dated the 6th day of September 2017. The learned prosecutor proffered two "(2) questions for determination by the court. These are "(1) whether the prosecution has proved the case beyond reasonable doubt to

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warrant conviction of the defendant" "(2)" Whether the defendant has raised sufficient defence to warrant his discharge and acquittal".

For the defence, the learned counsel for the defendant proffered two (2) issues too. These are (1)" whether the prosecution has proved his case beyond reasonable doubt". (2) "Whether in view of the exhibits so tendered by the prosecution the court can convict the defendant on the alleged offence". I must say that looking at the two issues proffered by the counsels for the prosecution and the defence, they are not entirely at cross opposite. It must be pointed out that unless there are other issues, thrown up in a case and I say there "in criminal matters the bottom line is this question ***"Has the prosecution proved its case beyond reasonable doubt in view of the evidence both oral and documentary before the court to warrant the court in finding the defendant guilty and convicting him".***

This question which the court has postulated from the issues before the court will be the basis for this court in coming to a conclusion in this matter, one way or the other. As stated earlier, there are some issues thrown up in the proceedings before this court. Although I have addressed the issue of the withdrawal of the charge dated the 3rd of June 2015 earlier on in this judgment, I must state that I am constrained to come back to it because of the heavy weather the learned defence counsel made of the issue when PW4 was under cross examination. PW4 stated that the name of Olajide Adenike was withdrawn because she refunded the sum of N500, 000 which she took from PW1 and that it was not part of the money given to the defendant.

I must state and I so hold, backed by judicial authorities that there is nothing untowards in the police either withdrawing a charge or deciding on who to charge

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to court or whom not to charge. The police under section 4 police Act has a discretion whether or not to investigate an allegation of crime. Criminal proceedings do not include police investigation of a crime. See the case of **FAWEHNMI VS I.G.P (2002) 8 MJSC. 1.**

In the case of Fawehinmi vs I.G.P (supra) the Supreme Court per UWAFO JSC at page 19 paragraphs A-C, stated as follows and with due respect and humbly, being an adherent of judicial precedent quote him when he said ***"The police are the outward civil authority of the power and might of a civilized society....."***

I therefore hold that the issue of Mrs Olajide Adenike has nothing whatsoever to do with the case against the defendant as far as it is evident that there is no charge before this court against her either personally or jointly with the defendant.

Before I look at another issue thrown up before this court in the proceedings leading to the adoption of the written addresses, I must state that the law is settled that, no matter the brilliant submission of counsel, it cannot be a substitute for pleadings or hard evidence. See **OYEYEMI & ORS V OWOEYE & ANOR (2017) 2-3SC. (ptiv) 117**. I say this in view of the submission of the learned counsel for the defendant with regards to exhibit **"A",** which is a scanned copy of the receipt which the defendant scanned to PW1, which in turn was scanned according to PW2, by PW1,when PW2 went to verify it's authenticity from the BEJIDE ABAGUN FAMILY.

I must state that it was held in the case of **ABUBAKAR DAN SHALLA & ORS V THE STATE (2005)1NCL 24** at page 46 per ADAMU.D JCA, that the defence available or open to the accused person in a criminal trial which the trial court is bound to

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consider must be based or founded on material pieces of evidence from the record rather than one being formulated in the counsel's address.

Now coming down to exhibit **"A"** which is the receipt scanned to PW1, who in turn scanned same to PW2 by the defendant, it is on record that exhibit **"A"** was admitted without objection from the defence. The law is clear as to the attitude of the court to a document admitted without objection. Once admitted, the court is bound to rely on that particular exhibit. See **ADAMU V STATE (2017), 1 S.C (pt 1)84.** it must however be pointed out that, it is trite law that once an exhibit is relevant, it is admissible, except there are instances when it is not admissible, whether in law or in fact and where at the earliest opportunity the defence raise an objection, which if sustained, will end the usefulness of that exhibit.

The law is also clear and well stated that an exhibit, if admitted wrongly cannot be used by the court and in fact the court will attach no weight to such exhibit. See TORTI VS UKPABI ..... Exhibit **"A"**: is an electronically generated exhibit which was admitted without objection as aforesaid. The said document was thus admitted pursuant to section 84 Evidence Act 2011.

As aforesaid, the court cannot consider whether the conditions for it's admissibility was complied with, because I have no choice, as I see nothing to the contrary in the file to presume that the defence had objection to the admissibility of exhibit **"A".** it can be presumed, that the defence agreed that the conditions for the admissibility of the said document was met by the prosecution. The court is prohibited from embarking on an inquisitorial examination of documents outside the court room. A fortiari, it is anathema for a judge to act on what he discovered from such a document in relation to an issue, when that was not

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supported by evidence. See the case of **DICKSON VS SILVA & 3ORS (2016) 7 SC (pt.iv) 165.**

I called in aid of my position in holding that exhibit **"A"** is properly before the court sections 84 (2) and 34 (1) (b) (i) (ii) Evidence Act 2011. Furthermore, I cannot for the failure of the defence to cross examine PW1, PW2 and PW4 on exhibit **"A"**. The position of the law is that where an adversary fails to cross examine a witness upon a particular matter, the implication is that he accepts the truth of that matter, as led in evidence and that it is the trial court that decide the effect of failure to cross examine a witness on a particular matter. See the case of **IGHALO VS STATE (2016) 7 S.C (pt 111) 140.**

I cannot conclude on this issue concerning exhibit **"A"** without stating that although the defence made an attempt, the attempt with all due respect to the defence is feeble. Under cross examination the defence asked PW3 as to the signature on exhibit **"A"** which PW3 confirmed that it does not belong to the Head of Abagun Bejide family or his brother.

The law is that expert opinion on handwriting is essential when there is disputation as to the authoring of a document or when a signature is disputed. The court can even on it's own compare signatures to determine due execution by examining documents. See **Ize-Iyamu Vs Alonge (2007) ALL FWLR (pt 371) 1570, Oluwu Vs Bukding Stock Ltd (2011) ALL FWLR (pt 560) 1336 CA.**

Now coming to PW3, he established his relationship with the family, the Abagun Bejide family, which was confirmed by the defendant himself. Furthermore, PW3 stated and it was not debunked in anyway by the defence, that he knows the signature of the head of the family who made a statement which I will address later and that of his brother one Kehinde Oluwaseun who is the secretary of their

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family. PW3 stated that the signatures on exhibit **"A"** do not belong to either his brother or the Head of the family. I have no choice than to accept the testimony of PW3 as the truth in line with section 75 Evidence Act 2011.

As aforesaid, PW3 did not give evidence as an expert. He gave evidence as a member of the family with filial relationship and affinity to the head of the family and the secretary, his brother. I do not and will not dissipate my energy on the issue of forgery which is not the case before the court as per the charge upon which the defendant was arraigned. It therefore means that the issue of whether the defendant forged exhibit **"A"** or not is really irrelevant. What is relevant is that it was tendered, without objection. The defendant did not tender or give evidence as to the genuiness of the said document vis a vis the charge before the court only. The defendant did not also tender the original which was said to be in his possession and which he did not deny.

Another issue which I will touch on has to do with exhibit **"B^1"**, that is the statement said to have been made by Chief Sunday Abejide Olarenwaju in English Language but tendered by the prosecution through PW4. Although this piece of evidence was admitted without objection by the defence, the court will attach no weight to it in the course of the decision of this court for the reasons which I hereby highlight.

First of all, the maker was not called as a witness. Although PW4 as the IPO can tender it, he cannot answer any question on it.

The maker of the document was not called. It remains a documentary hearsay.

Another very important point which makes exhibit **"B^1"** unreliable is that the Yoruba version was not tendered and I have gone through the exhibit, I cannot see any illiterate jurat on the face of the exhibit. In the case of **Otitoju vs**

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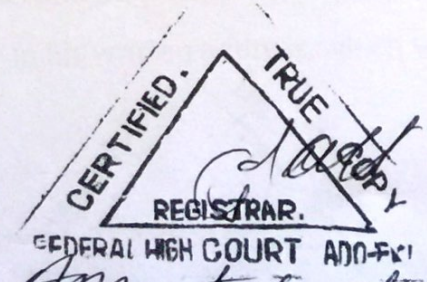
Governor of Ondo State (1994) 4 NWLR (pt 340) 5 18 SC, the Supreme Court laid down principles with respect to documents executed by illiterates. I am afraid this exhibit does not fall within that ambit. More importantly is the fact that PW4 failed to tender the Yoruba version.

I cannot accept his explanation that because English is the official language, he as a police officer has a duty to write the statement of the head of the family in English. In actual fact, going by the decision of the Supreme Court in **Ifaramoye vs State (2017) 1 – 2 SC. (pt 111) 1** both the English and Yoruba versions must be tendered and admitted in evidence. The interpreter too must be in court to give evidence. If the policeman PW4 doubled as the interpreter, where is the Yoruba version? I will therefore attach no weight at all to exhibit "**B**[1]" and I also hold that exhibit "**B**[1]" is nothing but a documentary hearsay .It is elementary to restate that by section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, any person charged with a criminal offence is presumed innocent until proved guilty. The law places the burden of proving the guilt of the accused on the prosecution. Both statute and case laws are settled that the burden of proof placed on the prosecution is not discharged until the guilt of the accused is established beyond reasonable doubt. Furthermore, by virtue of the provisions of section 135(1) (2) and (3) of the Evidence Act 2011, the standard of the burden of proof required in criminal matters is proof beyond reasonable doubt. See **Idemudia vs State (1999) 7 NWLR (pt 601) 2002 at 215; Esangbedo vs State (1989) 4 NWLR (pt 113) 57; Nwosu vs State (1998) 8 NWLR (pt 562) 433; Igbikis vs State (2017) 2 -3 S.C (pt 1) and Esene vs State (2017) 2-3 S.C (pt 111) 101** to mention just a few from the plethora of cases.



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Now the defendant was charged by the complainant herein i.e the Inspector General of Police under section 1 (3) and 11 of the Advance Free Fraud and other related Offences Act 2006. I must point out that I do not see the relevance of the defendant being charged under section 11 of the Advance Free Fraud and other related Offences Act because this has to do with the issue of restitution which is also a penalty that the court can order as regards a person convicted of an offence under this act. I have looked at the addresses of the counsels in this case and I cannot see any where the court was addressed on section 11 of the Act. Be that as it may section 1 (3) of the Act states as follows and I reproduce same here under.

"**Section (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 in any other country, for himself or any other person;

(b) induces any other persons, in Nigeria or in any other 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,

(2) A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for is guilty of an offence under this Act.

(3) A person who is guilty of an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not less than ten years without the option of a fine.

In the case of **Ede & Anor vs FRN (2001) 1 NWLR (pt 675) 502 at 510** cited by the learned prosecutor in his written address, which was cited by my learned brother

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Okorowo J in the unreported case of **F.R N vs Abdulraiman Muazu FHC/AD/26^{C}/2016**, the Court of Appeal listed the ingredients that the prosecution must prove to secure conviction for obtaining false pretence. These are:

(i) That the representation made by the defendant is false

(ii) The representation operated in the mind of the person from whom the money was obtained

(iii) That the pretence or representation was false to the knowledge of the accused or that the accused did not know the representation as true and

(iv) That the representation was made with intent to defraud.

The facts of the case or otherwise in proof of the elements has been painstakingly recapped by the count above. I will not go into details but state that there is no controversy that the defendant took money from PW1 to purchase 10 plots of land from Begunde A. Abagun Family of Oye Ekiti.

He, the defendant scanned a receipt to PW1 as the receipt issued by the family, PW2. A cousin to PW1 went to Oye Ekiti to confirm the authenticity of the receipt i.e exhibit **"A"** and he found out through PW3 a member of the family that the receipt did not emanate from the family; that the head of the family did not sign such receipt and that the family don't sell more than 6 plots to one person.

In his defence in court the defendant denied that he defrauded PW1 who had earlier, under cross examination, given evidence that he did not believe that the defendant could defraud him. He stated in open court that he trusted the defendant and for this reason he parted with his money. Two vital issues were not explained away by the defendant. The first is that PW1 did not take possession of any plot of land not to talk of 10 plots of land and the defendant did not tender the original receipt.

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Equally important is the failure of the defendant to call the surveyor whom he said acted as the agent of the family to give evidence to corroborate his oral evidence in court. This court cannot overlook exhibits **"B"** and **"B²"**. Exhibit **"B²"** is an agreement made on the 10th of June 2015 between PW1 and the defendant wherein the defendant agreed to refund the sum of N1, 050,000.00 by the 31st of January 2016. I will come back to exhibit **"B²"** later in this judgment. I must state however that the defendant has thrown up two issues which this court must resolve one way or the other. The first is the issue of the statement made by the defendant i.e exhibit **"B"** dated the 21st of May, 2015. In that statement, it is stated that PW1 paid the money to the defendant sometime in 2013. The defendant stated in exhibit **"B"** and I quote him "**I did not pay the one million Naira to the land owners. I used it for personal use. In last year January 2014 the issue of the receipt got the rough the secretary of Abagun family. I have spent the money and I approach the secretary to issue receipt so that I can give to Dr. Ojo and agree that I will be paying in instalmentally for ten plot of land. Later discovered that the land was disputed. I sent it through mail that is the receipt for the land bearing Abagun family name. The receipt was later found to be forge. The original forge receipt was with me at home. We later confessed to Dr.Ojo Emmanuel that the money was spent. In 2014 I collected also the sum of N400, 000 for payment of another land in Oye Ekiti that Mr Kayode who happened to be the surveyor of another land was paid N300, 000 by Dr.Ojo Emmanuel through me but I did not deliver the money. For the purpose it was meant.**

He has not taken possession of the first land and the money has not yet refunded by me and Mrs Olajide. The allegation of fraud made against me is

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true. The whole money I defrauded Dr. Ojo amounted to One million Naira, the N400,000 was paid as agreement fees between me and the second land owner whose name is unknown now. That is all I know".

From the reproduced segment of exhibit **"B"**, it appears that the exhibit is confessional in nature. From the totality of the evidence in chief of the defendant during trial, there is no doubt that he retracted from his extra judicial statement i.e exhibit **"B"**. It must be pointed out that exhibit **"B"** was admitted without objection. The defendant did not deny that he did not make it, neither did he state that it was not made voluntarily. The statement remain admissible. The retraction of a voluntary confessional statement by an accused person does not render it inadmissible or worthless and untrue in considering his guilt. See **Imoh vs State (2016) 7 SC (pt v) 82**. It is also the position of the law that a defendant can be convicted if a confessional statement is satisfactorily proved.

While the law is to the effect that it is desirable for a court to base it's conviction on evidence outside an accused persons confessional statement, it is not the principle that where the court is satisfied that the confessional statement is direct, positive and probable it cannot convict the accused on the confessional statement alone. See the case of **Imoh vs State** (supra). It is also the position of the law that once an accused person makes a statement under caution, saying or admitting the charge or creating the impression that he committed the offence charged, the statement becomes confessional See **Isong vs State (2016) 67 SC 1**

In the case of **Akinrinlola vs State (2016) 6 – 7 SC 105**, the Supreme Court held that by virtue of section 28 Evidence Act 2011, a confession is an admission made at any time by a person charged with a crime stating or suggesting inference that he committed the offence. The Supreme Court went further that a voluntary

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confession of guilt, if fully consistent and probable and is coupled with clear proof that a crime has been committed by some persons, is usually accepted as satisfactory evidence on which the court can convict.

There is no doubt as to ways of proving a crime as laid down in a plethora of cases. Apart from the ingredients of proof of section (1) (3) of the Advanced Fee Fraud which I had enumerated earlier, there are four ways to prove a crime.

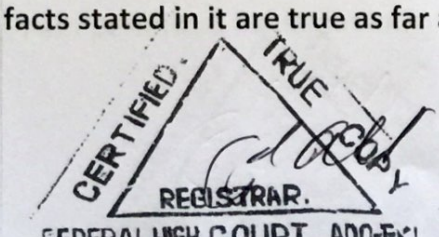
1. By evidence of eye witness.
2. By confessional statement
3. By circumstantial evidence where direct or confessional statements are lacking.
4. Admission by conduct of the accused person. See Ogogovie vs State (2016) 6 SC (pt 1) 1.

In the interest of justice, the courts, before deciding a matter on a confessional statement where the accused retracts his or her statement in open court is expected as the judex, to evaluate the confession and the testimony of the accused and all the evidence available. A court can convict on the retracted confessional statement of an accused person. However, before that is properly done, the trial court must evaluate the statement and the testimony of the accused and evidence available. The court must examine the new version of events presented by the accused which is different from his retracted confession. The court must apply what is called the six (6) way test by asking itself the following questions.

(a)Is there anything outside it to show that it is true?

(b)Is it corroborated?

© Are the facts stated in it are true as far as can be tested;



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(d) Does the accused person have the opportunity of committing the offence

(e) Is the accused person's confession possible;

(f) Is the confession consistent with the other facts as contained and proved at the trial

See **Ogudovs State (2011) 18 NWLR (pt 1278) SC 1; Dibiavs State (2017) 2 SC (pt 1) 1 and Akinrinolavs State (supra).**

I have carefully perused the evidence of the defendant during the trial. I can say without any doubt in my mind that the defendant has not offered any meaningful explanation in contrast to his statement i.e exhibit **"B"**. In fact, he did not deny collecting money from PW1. He did not convince the court that he actually bought land from the family and that same was handed to PW1. The defendant had no explanation to discredit exhibit **"A"** as he admitted that he gave it to PW1. From the totality of the evidence before me, I have no option than to answer the six questions enumerated above against the defendant. There is really nothing outside the confession to show that the evidence of the defendant in court is not true. His testimony was not in anyway corroborated. He even failed to call the surveyor whom he said is the agent to the family from whom he said he bought the land. I have no reason not to conclude that exhibit **"B"** is true and that the defendant had the opportunity of committing the crime. The statement i.e exhibit **"B"** is possible having been made voluntarily by the defendant. Lastly the statement i.e exhibit **"B"** is consistent with the oral evidence of PW1 and his statement i.e exhibit "**C**", and that of the oral evidence of PW2 and PW3.

I must state that I have closely looked at all the facts before me and I have evaluated same. I am permitted as the judex to infer from the facts proved and

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other facts necessary to complete the element of guilt or establish the innocence of the accused person. I have closely examined these facts and I am certain that there are no other coexisting circumstances which may weaken or destroy the inference. I adopt the reasoning of the learned Justices of the Supreme Court in the case of **KOLADE VS STATE (2017) 2 SC (pt 111) 106**, when they held that since the devil does not know the state of mind of a man's heart, a confessional statement made by an accused person is always rated as the best form of evidence.

I have to also consider the defence of the defendant that the transaction between him and PW1 was purely contractual and as such it was not criminal. He posited through his counsel that it was purely a land matter. On this issue, I call into play the evidence given and the allegation made against the defendant which I have set out above. I refer specifically to the evidence of PW1, PW2, PW3 and the IPO, PW4 wherein I see no fact suggesting any purely contractual matter between the defendant and PW1. PW4, the I.P.O. stated in court and convincingly too that they did not investigate issue of purchase of land but fraud and forgery. There are no facts before the court that the defendant was charged to court for recovery of money.

This takes me to the consideration of the ingredients of the offence which the prosecution must prove to secure conviction for obtaining under false pretence. It is therefore my findings from the records before the court that the defendant made a false presentation that he had 10 plots of land to sell and from the Bejide Abagun Family of Oye-Ekiti. This representation operated in the mind of PW1 and thus he parted with money which the defendant received. I find too and hold that the defendant knew that the pretence was false and that the defendant knew

that the presentation was false. The defendant made the representation with intent to defraud. He did not pay money to anybody or family for the land. He did not give the PW1 a survey plan of this land, he gave the defendant a receipt not emanating from the family and he also confessed in his statement that he used the money for his personal use.

I therefore find and I hold that the prosecution has proved its case beyond reasonable doubt and I therefore find the defendant guilty as charged. The prosecution has led sufficient evidence to prove the offence. The defendant is therefore convicted of the one count charge proffered against him pursuant to section (3) and 11 of the Advanced Fee Fraud and Other Related Offences Act 2006.

The convict is hereby called upon to plead his allocutus if any.

This is the judgment of the court.

***ALLOCUTUS BY*: SULE:-**

May I with respect announce my appearance for the defendant. I am sorry for coming late to Court. We want to commend the industry put in by my lord in writing the judgment as the profession demands sir. On allocutus, we urge the court to be lenient with the defendant in sentencing the defendant. Looking at the defendant, he is still young and agile. He can still be useful to the society. He is a family man with wife, Children and aged Mother. All of them depend on the defendant for livelihood. For these, I urge the court to temper justice with mercy in sentencing the defendant. He is a first offender my lord. He has not been convicted of any offence before. The idea of punishment in our criminal justice is not to destroy or condemn the convict sir but to reform the convict.

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FALADE:-

Under the Advance Fee and Other Related Offence Act, the punishment is 7 years and restitution. We urge the court the court to operate in the spirit of this special legislation considering the rampant nature of these types of case in our society. We also urge the court to order restitution as provided under section 11.

COURT:-

I have carefully listened to what was urged on the court by the defence counsel by way of allocutus. I take it that he is a first offender as there is no counter to this claim by the prosecution who ought to furnish the court with evidence of previous conviction. I am of the view and rightly so that even on the issue of sentencing the court can exercise a discretion despite any written law as to the years to be meted on a convict upon conviction. As a judicial officer, I am guided by the law. But I am not meant to be a slave to the law. The law keeps changing with the change in society and as such I cannot shut my eyes to the provisions of section 46(i) (a) i.e the objective of sentencing including the principles of reformation that should be borne in mind in sentencing a convict. Section 416(1) (d) states strictly that a trial court shall not pass the maximum sentence on a first offender. Haven stated these amongst other provisions, ***I hereby sentence the convict to two (2) years imprisonment with hard labour on the one (1)count charge. In view of the fact that the convict has always been on bail and as such not in detention, I hereby order that his sentence shall commence from today the 17th day of October, 2017. An order of restitution is hereby made in accordance with provision of section 11 Advance Fee Fraud and other Related Offences Act 2006. This is the final judgment of the court.***

Dated this 17th day of October, 2017.

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FEDERAL HIGH COURT OF NIGERIA
JUDGE
Hon. Justice Taiwo O. Taiwo
17th October, 2017
SIGNATURE

F. D. Falade for the prosecution. Busayo Sule for the defendant.

FEDERAL HIGH COURT OF NIGERIA
Hon. Justice Taiwo O. Taiwo
17th October, 2017
SIGNATURE

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