

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ADO-EKITI JUDICIAL DIVISION
HOLDEN AT ADO-EKITI

ON WEDNESDAY THE 28TH DAY OF JUNE 2017
BEFORE HIS LORDSHIP HON. JUSTICE D. U. OKOWOWO
(JUDGE)

CHARGE NO: FHC/AD/61^C/2012

BETWEEN:

INSPECTOR GENERAL OF POLICE COMPLAINANT

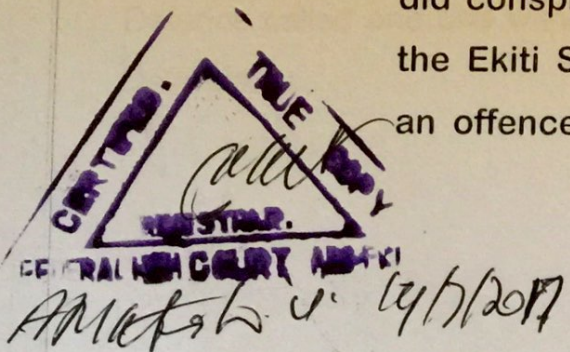
VS

1. TUNDE FRANCIS ADEBAYO
2. HOLLY VIEW INVESTMENT INT. LTD DEFENDANTS

J U D G M E N T

The Defendants were arraigned in this court on two counts charges filed on 28th November 2012. The two counts charges which are here reproduced reads as follows:

Count I: That you Tunde Francis Adebayo 'M' and others now at large, on or before the 18th day of March, 2009 at Ekiti State Multipurpose Credit Agency office Ado Ekiti, in the Ado Ekiti Judicial Division, did conspire with others now at large to defraud the Ekiti State Government. Thereby committed an offence punishable under Section 8(a) of the

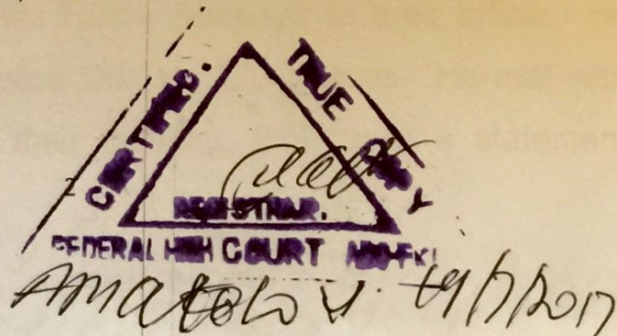

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Advance Fee Fraud and Other Fraud Related
Offences Act, 2006

Count II: That you Tunde Francis Adebayo, Holly View Investment Int. Ltd and others now at large, on or before the 18th day of March, 2009 at Ekiti State Multipurpose Credit Agency Office Ado Ekiti, in the Ado Ekiti Judicial Division, on the above date and place in the aforesaid Judicial Division did obtain the sum of Seventy Two Million, Two Hundred and Twenty Thousand, Thirty Two Naira (N72,220,032.00k) from the Ekiti State Multipurpose Credit Agency with the pretence that you will supply Four Hundred and Fifty (450) Laptops Computers for Four Hundred and Fifty Senior Police Officers in the Ekiti State Police Command but you supplied only two hundred and seventy laptops, therefore committed an offence punishable under Section 1(1)(c) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

The Defendants were arraigned before me on 2nd day of February 2016 during which they took their plea and pleaded NOT GUILTY on the two counts. Hearing commenced on 7th day of March 2016. The prosecution called two witnesses and closed its case whereas the Defence called one one witness, the 1st Defendant who testified for the Defendants.


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PW1 is Chief B.I. Ogunseni of Gbemisola Close, Ado Road, Ikere Ekiti, a retiree and retired as the General Manager of Ekiti State Multipurpose Agency in April, 2013. As at 2009, he was a Director in the Agency and became the General Manager in September, 2010. He said he knows the defendant. That sometime in March 2009, they saw a proposal and letter from the Police command Ekiti State requesting for the supply of 450 laptops Computers for the Command at the cost of N72,220,032:00k (Seventy Two Million, Two Hundred and Twenty-Two Thousand and Thirty –Two Naira) only requesting the Governor for approval and to be finance by the agency. The laptops are to be supplied to the officers of Police Command and to be repaid in 24 instalments by each beneficiary. These computers were to be supplied by Holy view Investment Ltd, whose chief executive is the 1st Defendant. The proposal was approved by Mr. Governor and the job order was given to the company for supply in March 2009. The job order was given to Holy view Investment Ltd. He accepted the offer and was given a cheque for N72,000,000:00 the cost of the computers.

That Apart from the cheque issued, there were other documents signed by the Defendant acknowledging payment for the laptops. There was the payment voucher (PV) which was issued which the Defendant signed with the acknowledgment of the receipt for the money for the computers. That after payment there was a job order where he was given 4 weeks to supply the computers. Sometimes in 2010 they were expecting returns from the Police Officers if actually they were supplied with the computers. They now invited the supplier Holy view Investment Ltd whose Chief Executive is Mr. Tunde Adebayo to their office. He claimed to have supplied the Police Officers 270 laptops. He met with the Chairman Chief Ojo. After their meeting, there was a statement

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written by Mr. Adebayo that he was going to supply 180 computers (laptops). But as regards the supplies to the Police command, no further information from Mr. Adebayo. And money was not coming from the Police command to the agency as expected. They then petitioned the Commissioner of Police, Ekiti State. The petition was written 2012 and that is what led to this charge.

That within the period there was communication from the agency to Mr. Adebayo requesting him to supply the laptop computers. There was no response from him except when he came to the office. It was when he had conversation with the Chairman Chief Abiodun Ojo. There was a written commitment between the Defendant and the Chairman. There was a job order between agency and the Defendant. Witness identified the job order issued to the Defendant. And stated that the Defendant acknowledged payment via a voucher

In the course of movement from their former office to the present office, the original got missing but the counterpart or photocopy certified he can recognise the identified copy of the voucher.

The following documents were tendered through the witness:

1. Certified copy of job order ref MCA/A/063T/10 of 18th March, 2009, Exhibit A.
2. Certified copy of payment voucher Exhibit B.
3. Certified copy of letter of Demand Exhibit C.
4. Certified copy of Commitment to supply Exhibit D

PW1 stated that between 2009 and 2012 the Defendants have not Supplied the items to the Police Command. But after the conversation and a commitment to supply 180 laptops, he brought 10 laptops to the Agency and that was all. That the total he had supplied is 280 pieces out

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of the 450 pieces. Up to date he has supplied 280 remaining 170 laptops.

Under cross examination, witness stated that he is no longer in the service of Ekiti State Government since 1st April 2013. That it was Ekiti State Police Command that took proposal for the supply of computer laptops with accessory from the defendant. That the Agency merely sponsored the finance thereof

That the recovery of the money from Police were agreed to be credited from the salaries of the Police Officers who benefited from the said laptops. That the Agency indeed recovered some check-offs from some police Officers and they received some payments but could not remember whether it was in 2009. That by the contract the defendants were mandated to supply the item to the Ekiti State Police Command. That the Agency was not privy to the term of the agreement between the Defendant and the Ekiti State Police Command as regard the specifications and configurations of the computer laptops and accessories.

That even after they had agreed to finance the supplies to be made by the defendant to the Police they were not also aware of the agreed specification and configurations of the laptops. That the only one they were aware of was the accessories and configurations attached to the proposals sent to their office. That they don't know what was the agreement between the Defendant and the Police. That when they made enquiries from the polices as to whether the Defendant have supplied the said items, there was no response from the police.

The response they got was the list of the few people that made payment. There was no official response to the letter.

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That he will be surprised if as regards the supply of the items, he finds out that the police actually endorsed the defendant delivery notes of the items as at May 2009. Because when they wrote to Police, there was no response on the delivery of the computers.

That he is not aware that the police varied the specification and configuration of laptops and accessories to be delivered by the Defendant. That the only variation he could remember took place even before the supply took place.

That on 28th May, 2009, when the Defendant brought the computer items to their office, they directed him to go and deliver it to the police. The Agency directed the defendant to supply to the beneficiaries.

That he is aware that that very day that some of the accessories which the police had no space to keep in their police command were returned to the agency which agency received the same after the store officer had cited the delivery note of the items.

That he does not know O/C Finance and Communication of the Ekiti State Police Command as at that time. That as at the time the agency released contract sum of N72,220,032:00 they did not inform the Ekiti State Police Command. There was no official communication but he knew money had been approved.

He said that he was not aware of variation of the instant contract of supply by the police for which they release a cheque to the defendant. That it was part of the proposal that the defendant should train police officers with respect to the operation of the laptops and also to make regular presentation to the police in its monthly meeting. But it is not to

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his knowledge that the defendant actually carried out this for over 12 months after May 2009 when the said items were delivered to the police. (Applies for Exhibit to be shown to the witness) when the witness was shown and asked whether Exhibit A contain training and presentation of papers to the police on operation of laptops he said it was not part of Exhibit A. He responded that from this job offer, they did not refer to the training of police officers. That the training is in the proposal. The job order is just detailing the accessories and laptops to be supplied. That he will be surprised to know that by the aforesaid variation to the contract for supply of laptops that the police still have an outstanding sum of N3,375,000:00 to pay the Defendants.

When shown Exhibit C PW1 stated he will be surprised to know that Exhibit C was never delivered to the defendant because it ought to have been delivered to him. He stated that he is not the despatch officer of the agency. He stated further that it was because the agency was not carried along by the police that was why they misrepresented the items written to be supplied by the defendant in May 2009 as having not been supplied at all vide Exhibit C made a year and one month after.

That they wrote them and there was no official communication as to how many laptops computers that were supplied.

That as at the time the Chairman Chief Abiodun Ojo had an interface with the 1st defendant in 2011 he was not present there. That he will be surprised to know that Chief Abiodun Ojo discussed with the defendant about the possibility of supplying some unit of computer laptops about 140 for the use of Civil servant in Ekiti State which payment will also be redeemed from check-off from the salaries of those

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civil servant beneficiary. That he will not be surprised because they heard that proposal with the agency. But he will not know whether he (the Chairman) discussed the proposal with the Defendant. But he was are aware that ten units of those computer laptops were delivered to the agency by the defendant as sample.

That he knew that the agency did not give the defendant offer letter in respect thereof as requested by him for any offer as regards civil servants computer. That since he did not know the details of discussion between Abiodun Ojo and the Defendant, that he would not know that Exhibit D was in respect of that discussion. That they thought that the letter was written in respect of supply of computer to police officers. That he wouldn't know that the defendant fully supplied the agreed items to the State Police Command and that was the reason for the non-formal response of the police to their request.

That there was no contract between the agency and the Ekiti State Police Command. It was from their proposal letter from police to office that they said the repayment will be made through deduction from officers' salaries. There was no time they sat with the police to discuss any agreement. That the contract he met, was that repayment of the money which was supposed to be through check-off.

Under the re-examination PW1 stated that they wrote a letter to the police to let them know the position of the supply and the payment. That was when they sent them the list of those who were making payment but there was no official response. That was not a petition. That in response to their letter the police sent them a letter informing them of those that collected the laptops. And it was subsequent to that, that they wrote the petition.

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PW2 is ASP Kirinne Deebare, working with the Nigeria Police Force, State Criminal Investigation Department CID, Ado Ekiti. The officer in charge of the Anti-Fraud Section of the State CID. He stated that in November, 2012, the case of fraud involving about N72,000,000;00 was referred to him for investigation through a letter of petition written by the Ekiti State Micro-Credit agency and addressed to the COP Ekiti State Command. He assigned the case to his investigators which he directly supervised; he accompanied the Investigators to Akure to monitor the Defendant. He was invited to Ekiti State CID, Ado Ekiti and was interrogated. The outcome and proceeding during investigation were also brought to his notice. In course of this interrogation, they made statement to the police. The other witnesses also made their own statement too. With the statement recorded from the defendant they progressed on the investigation and the petitions therein. Though he cannot remember the content of the petition letter but it bothered on the supply of computers to the Police Ekiti State command. That agreement was reached by the then Governor, the Micro-credit Agency, the Police Authority and the Defendant. The Defendant recorded statement by his hand writing.

The statement of Accused made on 15/11/12 admitted in evidence and marked Exhibit E. Certified copy of petition to COP Ekiti State command dated 30th October, 2012 admitted and marked Exhibit F.

Under cross examination he stated that Officer Ojo Oke was a beneficiary of unit of the computer out of the computer supplied to the police by the Defendant. That Ojo Oke was part of the state CID Ekiti Investigation Team. He said he did not confirm from him that the computer laptops subject of contract were fully supplied to the police by

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the defendant That he came to him having the defendant brought to the state CID. And he confronted the defendant in his office, that the accessories of the computer were not given to him the day he supplied the computer. The Defendant promised to give him one of the accessories. That is the printer and the camera. But he does not know how they concluded. That was as between him in person and the 1st Defendant. That as a matter of facts, he was to be given that during distribution by the Police Authority. That Ojo Oke told him that computer laptops with accessories supplied by the Defendant were actually distributed to the police officers. And that he was one of the beneficiaries.

That he extended his investigation to the Ekiti State Micro-Credit Agency. They were invited to the Station and they had several interviews at the police station from where they proceeded to their office. That they found some computer accessories supplied by the defendant in their custody. Some of the accessories were sub-woofers and 2 speakers, sound disc, 2 gigabyte flash. They were packed in cartoons. He only opened and saw some speakers and other parts but cannot name them.

That as at the time the items were supplied, he cannot remember who was O/C Finance and O/C Communication. But he can recollect that A/C at that time was A.C. Ibine, now a Commissioner of Police. And the items to be supplied were closely under his supervision at that time. That he did not extend investigation to him because he had been transferred out of the Command by then. He is a very Senior Officer and he cannot invite him for interview. That to that extent, he could not know that the supplies made by the defendant were confirmed by the police

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designated officer pursuant to the directive to A/C Ibine on 28th May, 2009.

That At the time of his investigation, the defendant confirmed that the items are fully supplied between them and the police but it was not fully supplied to completion.

The Defence opened on 19th January 2017. **DW1** is Babatunde Francis Adebayo, the 1st Defendant. He is the Managing Director of Holy View Investment, the 2nd Defendant. That the Company is into ICT Business. He stated that in 2009, they wrote a proposal for the supply of computers and accessories to the Ekiti State Police Command for the benefit of their members. The proposal was received and he was directed to meet with the Assistant Commissioner of Police Admin, AC'A' Ibine who gave him an appointment for the presentation and demonstration of the equipment at the police mess before the Honourable Commissioner of Police and other Principal Officers in the police Force in Ekiti State which they did. After acknowledging and applauding the proposal made to them they were asked to go and expect the reply. The proposal includes supply of computer Laptop, flash drive, computer laptop bag, all in one Printer with feature of printing both in coloured and black and white, scanner, blue tooth, CD labelling and copier (as the features of the printer) and lastly subwoofer speakers. They were demonstrated, acknowledged and applauded.

In March, 2009, he received a call from the Ekiti State Micro Credit Agency to report at the Agency. When he got there he was given a cheque of N72 Million plus with an award letter. They told him that they received a letter from Ekiti State Police Command requesting to finance the proposal he made to the police command hence the cheques

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released to him. Thereafter, he went to Ekiti State Police Command to inform the authority about the cheques he received from the Micro Credit with the Letter of Award attached. And the Officer AC'A' Ibine asked if he made any proposal to the Agency. He answered no. He said the reason for the question was that it is the Ekiti State Police Command that requested for assistance to such a computer acquisition scheme to His Excellency the Governor of Ekiti State. And that if any approval or approvals was to be made, His Excellency suggested to communicate the Police Command. That up to the time he came to greet them, that the Command had no information either in writing or verbal from the Office of His Excellency. So the gesture of his coming was appreciated. And items presented to the Mess were insisted to be supplied, as against items listed in the offer letter. The implication in price was made known to the Authority, over N9 Million only on subwoofer that is not included in the offer. He went to inform the Officer in Charge of the Micro Credit on the development concerning variation in proposed item. The Credit Officer appreciated him. They said they are not going to entertain, that it is a business between his Company and the Police Command. That his Company should resolve it with the Police Command. The Police Command said that he should go ahead and do the supply. That they would communicate him when the Command is officially notified as regards the approval. And that was what led to the delay in the supply till May. Supply was made in May 2009. They arrived at Ekiti State Micro Credit office to deliver the items. The Officer in Charge directed that they should take it to the Police Command. On getting to the Police Command, only the laptops and few items like bags could be accommodated as there was no enough room to discharge the rest. They then went back to the Micro Credit where all other items like

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subwoofers, printers, laptops bags and flash drives (all in boxes) were opened, checked and offloaded to their store. Two rooms were filled up with the promise of releasing it to the Police Office on request as they all belong to the Police Command Ekiti State. The delivery note he signed was given to the Store Officer which he personally witnessed and released to the Store Keeper. There were 2 of the delivery notes. After the transaction, there was no request until around 2011, when he was invited to the Agency, the Micro Credit and ushered into office of one Mr. Ojo, The Chairman of the Agency. He welcomed him and said he heard about the scheme executed with Ekiti State Police Command. That he saw many computer items in the store when he came in as Chairman of the Agency. That he would love the same scheme to be replicated for the civil servants in Ekiti State. That going through the items he found out that the list of the accessories is 190 units. And that he should supply 190 computers to the Agency to flag off the scheme.

Secondly, that he should write a proposal on the scheme for the Civil Servant for His Excellency and come with a copy of the proposal to the Agency as he did to the Ekiti State Police Command so that they can from there go with their memo to His Excellency for approval. He supplied ten computers as requested for demonstration, he also dropped a copy of the proposal addressed to His Excellency Governor of Ekiti State dated 2012. And that he said that he should write down that balance of 180 to be delivered. He left the office until about a month after, he went to the office to request for approval and offer letter for the 190 computer before he will deliver the remaining 180. He was told that the Agency is yet to get the approval from His Excellency. He then at that point requested the return of the 10 he supplied for presentation. It

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was declined. That it should be taken out of the 190 he is to supply for the civil servants scheme.

That in respect of the contract between him and the Ekiti State Police Command, 450 units of laptops were supplied. 450 units of accessories each of flash drive, laptop bags; subwoofer, speakers and all in one printer, were supplied. That the items were delivered to Ekiti State Police Command and Ekiti Micro Credit as directed. That there is a document to show that he delivered these items to the Agencies. That there is delivery note in duplicate and a copy is with them. They were three copies. One to the Police Command, one to Micro Credit Agency and a copy of this was also taken by the team that took him to his house from the detention at the Ekiti State Police Command CID Department when he was asked to present these to support the statement which he made, that he supplied 450 computers. Deliver Note dated 28/5/09 from Holy View Investment Ltd was admitted provisionally and marked Exhibit G

That the beneficiary of the delivery he talked about were Police Officers and not the Micro Credits Finance Company. That the beneficiary never complained that the items were not supplied fully. That he was called once by Mr. Samuel and Mr. Isakano the Assistant Commissioner of Police Finance. They are the 2 officers in charge that the Micro Credit Agency is not releasing accessories delivered to their office to the Police Command. He went there himself and the Micro Credit Agency said it is their property. That they are no longer releasing. And the day he was arrested and taken to the State CID, one Officer Oke, also challenged and attacked him for having a computer

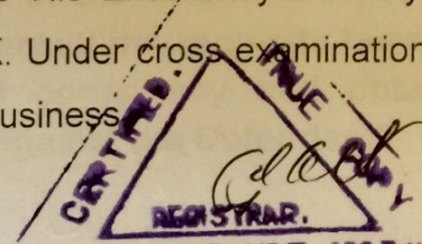
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without accessories which confirm truly that the Micro Credit failed to release the rest of the accessories.

When asked the charge against him is failure to supply 450 laptops and that he only supplied 270 out of 450 to clear that area for the Court. He said that the delivery note issued and signed by the officers that received it which was taken to Micro Credit agency, the officer in charge of records made a copy and their copy which was taken by the police officer issued as he said in his narration that 2 delivery notes were issued. The second which has no alteration of figure as in this will confirm that.

That there are 2 transactions one with the Ekiti State Police Command and the other with Ekiti State Civil Servant. That of the proposed scheme for the State Civil Servants, 180 units is left out to be supplied because the Agency failed to do the needful by issuing award letter in that respect and still kept the ten collected out of the 190.

That they did not issue any cheque in respect of that contract with Ekiti State Civil Service. That no cheque or cash or letter of commitment was issued. And they are still keeping the company's 10 laptops which made them to decline the supply for the rest of the 180. That to the best of his knowledge he believes that he is standing trial for the 180 computers in which the Agency collected 10 to make 190 units but failed to back their request with letter of award and agreement and a copy of the proposal. They were asked to write to His Excellency and this was given to the Agency. And also copy of his proposal to the Police Command. The document was identified by the witness and tendered in Court. Letter dated May 25, 2012 addressed to His Excellency Dr. Kayode Fayemi, Re: proposal to partner, Exhibit K. Under cross examination he stated he has over 9 years experience in business.



That letter of offer always proceeds supply. He denied that when they were to supply the 450 laptops, the supplies were part to the police and part to the micro credits. That the supply was taken to the Police Command as directed by the Micro Credit Agency. That the police took all the delivery of only laptops. And the rest accessories were taken to the Agency.

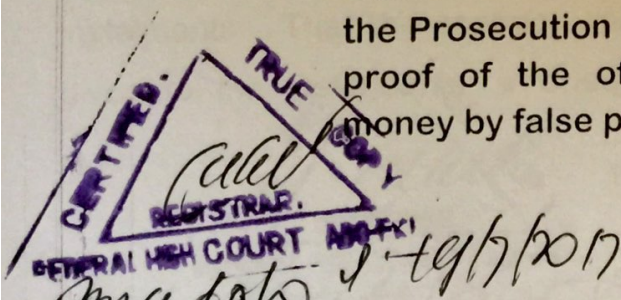
On the question - You want the Court to accept that your extra judicial statement and the one in court are the same. He responded that he was in incarceration for at least 2 weeks. He did not read the statement of Exhibit E. He wrote that he supplied 450 computers and accessories.

Under re-examination he told the Court the computers were supplied in 2 names because he said earlier, only the accessories that could not be accommodated by the police was delivered to the agency as agreed and accepted by the 2 institutions and during his detention at the Police CID he was invited by the AC CID.

At the close of the case for the defence the Court ordered filing of final addresses by the parties. The Defendants filed a Written Address dated 20th day of March and filed on 24th day of March, 2017. The Prosecution filed no address. Parties addressed the Court on 4th day of May 2017. The Defence adopted its final address as filed. The Prosecution on the other had stated that they rest their case on the evidence before the Court.

The lone issue for determination formulated by the Defence is:

“Whether from the totality of the evidence on record, the Prosecution has discharged the requisite burden of proof of the offences of conspiracy and obtaining money by false pretences against the Defendant?”



It was submitted by the defence that from the totality of evidence on record, the Prosecution has failed to discharge the burden of proof in the charge against the Defendants.

On the charge on false pretence the defence submitted that for the prosecution to succeed, it must prove with credible evidence the following ingredients of the offence namely;

- a. That there was pretence.
- b. That the pretence emanated from the accused persons;
- c. That the accuse knew of its falsity;
- d. There was an intention to defraud;
- e. The thing is capable of being stolen;
- f. The Accused induced the owner to transfer his interest in the property.

I was referred to the cases of **STATE V. AJULUCHUKWU (20120 ALL FWLR (PT. 605) 362 AT 373, C-D; ALAKE V. STATE (1991) 7 NWLR (PT. 205) 567 AT 591, C-H; STATE V. OSLER (1991) 6 NWLR (PT. 19910 AT 590, B-D.** It was submitted that these ingredients has to be proved beyond reasonable doubt and any doubt in the mind of the court has to be resolved in favour of the accused. See **BAKARE V. THE STATE (1987) 1 NWLR (PT. 52) 579.**

It was submitted that Prosecution called PW1 Mr. Mr. B. I. Ogunseni who in his testimony stated that there was a contract between the Defendants and the Ekiti State Government to supply 450 laptops to officers of the police Command to be paid by the beneficiaries in 24 instalments. That the contract was made in March 2009, Job Order given to the Defendants, a Cheque of N72,000,000.00 the cost of

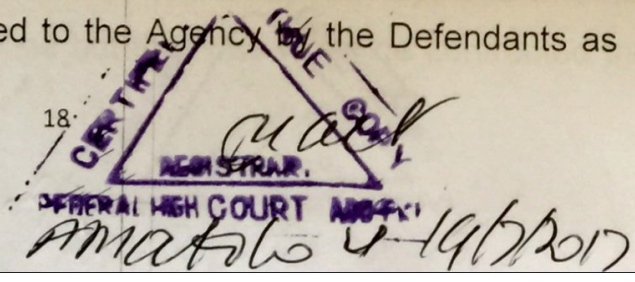
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contract and Payment Voucher signed by the first Defendant. That PW1 alleged that the Defendants supplied 270 laptops and the 1st Defendant wrote statement with Mr. Ojo that he would supply 180 computers for civil servants in Ekiti State and when the Agency saw that money was not coming from the beneficiaries (police officers) who were to pay back the contract sum in 24 instalment, they petitioned the police against the Defendants'.

That the said PW1 further testified that there was a discussion between the 1st Defendant and the Agency Chairman (Chief Abiodun Ojo) which gave rise to written commitment signed by the first Defendant. The witness alleged that up till 2012; the Defendants had not supplied the laptops except 10 making a total of 280 laptops out of 450.

That it was testified by PW1 under cross examination that the Micro Credit was not privy to the contract between Ekiti State Police Command and the Defendant, and the Micro Credit Agency made enquiry from the police as to the supply of items but there was no response from police except the list of few people (less than thirty) who had collected their laptops out of the purported 270. That the witness said he would be surprised to know that the items were supplied on 2009 but admitted that the Agency diverted the delivery of the items to the beneficiaries in 2009. That he was aware of the items delivered to the agency for safekeeping that he was also aware of the variation of the contract by police to train its officers for operation of computers for one year. That he was aware of the supply of the 190 computers for the Civil Servant in Ekiti State and was equally aware that ten units of those laptops computers were delivered to the Agency by the Defendants as

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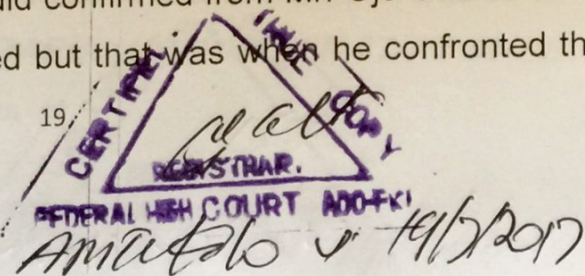
samples and the Agency did not give offer letter in respect of the Civil Servants contract. And that the police refuse updates as to the supply of the laptops despite their request to do so.

That PW1 further stated that he did not know the details of the discussions between the boss (Aboidu Ojo) and the Defendants. And he did not know the purpose of Exhibit "D" which he thought was written in respect of supply of computers to the police. That further under re-examination, PW1 testified that the Agency petitioned against the Defendants following the police response to the Agency letter informing them that the number of police officers who collected their laptops, that is few (less than thirty) beneficiaries.

It was submitted that from the evidence on record, that it is obvious that there was never a time the Defendants had any contractual relationship with the complainant as the complainant was a mere financier of the police in the entire transaction, that this fact was admitted by the complainants when they stated that Micro Credit was not privy to the contract between the Ekiti State Police Command and the Defendants and that they made enquiry from the police on the supply but there was no response.

That PW2, ASP Kirinne Deebare testified that he is the Investigating Police Officer. That in November, 2012, the petition by the Micro Credit Agency was referred to him for investigation and he personally supervised the investigation team. That the Defendants were invited and they made statement in Exhibit E. Under cross examination, he testified that he knew one of the beneficiaries of the computer supplied Mr. Ojo Oke. That he did confirmed from Mr. Ojo Oke whether the computers were fully supplied but that was when he confronted the

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1st Defendant telling him that accessories were not given to him the day the computer were supplied and the 1st Defendant promised to give him.

PW2 stated that he extended his investigation to the Micro Credit Agency and found some accessories in their custody in carton. That he did not know the number because he did not confirm. That he did know O/C but A.C. Ibine under whose supervisions the items were. That he did not extend investigation to him as a result he did not know whether the items supplied were confirmed by the police. The Defence maintained that even though PW2 concluded his evidence that the items were not fully supplied, Exhibit endorsed by AC Ibine showed that the Defendant fully supplied the goods contrary to viva voca evidence of PW2.

That to corroborate this fact, the police never complained that the goods were not supplied until the Micro Credit Agency admitted not having update from the police regarding the supply of goods but recklessly and maliciously lodged such complaint on the Defendants. That it is apparent that from the forgoing the Defendant never made any representation to the Complainant at all time material to the contract. That the representation to supply computer laptops and accessories was made to the police which authority never complained that the subject of the contract were not supplied. That by Exhibit G, it is apparent that the designated officer of the police (AC Ibine) took delivery of the goods and duly acknowledged the invoice evidencing such delivery.

It was submitted that the Prosecution failed to establish beyond reasonable doubt that the defendants made representation to the complainant which turned out to be false and are therefore entitled to discharge and acquittal. See *R V. ZARIA* (1959) 11 MLR 67 AT 69-70,

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STATE V. NWOKEDI (1977) 3 SC 25 AT 39; STATE V. OSLER (SUPRA).

That from the evidence on record, the Prosecution admitted that contract was between Ekiti State Police Command and the Defendants; and that the police did not respond to the Agency's enquiry about supply of the items. That the complainants knew that the goods were supplied to the police in 2009 afterwards the police did not update them about the transaction. That the admission on the part of the Prosecution that there was a contract the performance or non performance of which the complainant was not abreast with, that an action cannot be against the Defendants in a criminal charge of obtaining by false pretence. That the Defendants did not supply the goods that the remedy available to the complainant would have been in a civil action for money had and received for lack of consideration and not criminal charge of obtaining by false pretence. **SEE STATE V. OSLER (SUPRA). 597 AT PARA D.**

It was submitted that the charge laid against the Defendants is incompetent, and void in the face of clear admission of existence of a contract between the Defendants and the police none of which person have complained against the other on the contract.

On the count of conspiracy, the defence submitted that conspiracy is an agreement of 2 or more persons to do an unlawful act or to do a lawful act in unlawful way, the essential ingredients of which lies in agreement to do an unlawful act which is contrary to law. **SEE USOJI V. THE STATE 92016) 9 SCM, 98 AT 107 – 108, D-I, A-B.** That to succeed in establishing the offence of conspiracy, the prosecution must prove by credible evidence that there was a meeting of minds of the conspirators to do something unlawful. That evidence is usually

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obtained from one of the conspirators or form inferences. **SEE OLASEGUN V. STATE(2013) ALL FWLR 9.PT. 670) 157 AT 1381 A-B.**

It was submitted that there is no evidence on record to support the charge of conspiracy, that the Prosecution has failed to prove conspiracy among the 2 Defendants. That the Court should discharge the Defendants on the charge of conspiracy in count I.

The forgoing are the evidence of the parties and the submissions of the Learned Counsel for the Defence in this charge. I shall treat the evidence of the Prosecution but they urged nothing on the court shoe testimonies of the 2 witnesses.

The Defendants were arraigned in this court on allegation of conspiracy to defraud Ekiti State Government (Ekiti State Multipurpose Credit Agency) and obtaining the sum of Seventy Two Million, Two Hundred And Twenty Thousand , Thirty Two Naira (N72,220,032.00k) from the Ekiti State Multipurpose Credit Agency with the pretence to purchase Four Hundred and Fifty (450) Laptops Computers for Four Hundred And Fifty Senior Police Officers In The Ekiti State Police Command but supplied only 270, offence contrary and punishable under **Section 8(a) and 1(i)(c) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.**

The question before me is whether the Prosecution has proved the charges against the accused persons. In criminal trial the standard of proof where there is commission of crime is set out in **Section 135 of the Evidence Act 2011.**

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- (1) "If the commission of a crime by a party to any proceedings is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt."
- (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to Section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action".

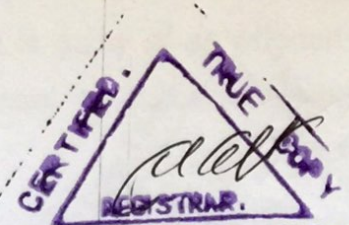
The burden of proof in this case is on the Prosecution who asserts that the Defendants are breach of **Section 8(a) and 1(i)(c) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.** The lone question for determination for this court which is in line with requirements of the law and the question formulated by the Deface is

"Whether from the totality of the evidence on record the Prosecution has discharged the requisite burden of proof of the offence of conspiracy and obtaining money by false pretences against the Defendants"

The 1st count in the charge against the Defendants is conspiracy. In **OKEMEFUNA NDOZIE V. THE STATE (2013) LPELR CA/B/339CB/2012**, the Court of Appeal per M. Ogunwumiju JCA stated thus:

"LORD JUSTICE UDO UDOMA; JSC IN DABOH V. THE STATE 1977) ALL NLR 146; (1977) SC 122 held as follows on proof of criminal conspiracy

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“It may be stated that where persons are charged with criminal conspiracy it is usually required that the conspiracy as laid in the charge be proved, and that the person be also proved to have been engaged in it . On the other hand, as it is not always easy to prove the actual agreement, Courts usually consider it sufficient be established by evidence of circumstances from which the court would consider it safe and reasonable to infer and presume conspiracy.”

Since conspiracy is seldom proved without considering the circumstance, it follows that it will be more appropriate to consider the main court alleged against the Defendants upon which the allegation of conspiracy arose. I shall therefore consider count 2 brought under Section 1(i)(c) of the Act”

Section 1(i)(c) of the Act provides thus:

- 1(i) notwithstanding, anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud-
- (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.”

The provision is to the effect that any person who induces another to part with his finances, property through false pretence whether or not it is through medium of contract is guilty of an offence. The argument canvassed by the Defence Counsel, to successfully establish a charge

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of obtaining money under false pretence against the Defendant, the Prosecution must prove by credible evidence the following ingredient of the offence namely:

- a. There was a pretence.
- b. That the pretence emanated from the Accused Persons
- c. That the Accused knew of its falsity.
- d. The thing is capable of being stolen.
- e. The Accused induced the owner to transfer his interest in the property.”

See STATE V. AJULUCHUKWU (20120 ALL FWLR (PT. 6050 362 AT 373, C-D; ALAKE V. STATE (1991) 7 NWLR (PT. 205) 567 AT 591 G-H; STATE V. OSLER (1991)6 NWLR (PT 199) 576 AT 590, B-D

Following from the issue for determination formulated by the court, to succeed, the Prosecution has to prove these essential ingredients beyond reasonable doubt.

The facts of the case or otherwise in proof of the elements can be gleaned from the sum total of evidence presented by the parties.

PW1 Chief B. I. Ogunseni, a retired General Manager of ten Ekiti state Multipurpose Purpose Credit Agency told the Court that sometimes in March 2009, they saw a proposal and a request letter from the Ekiti state |Police Command fir supply of 450 laptops and accessories for the Command at the cost of N72,220,032:00 that there was approval from the Governor that for the supply to be by Holy View Investment Ltd, the Defendants. On this basis that there was a contract between the Defendants and Ekiti State Government to supply the laptops and

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accessories. Exhibit A, which is a Job Order was issued to the Defendants titled "JOB ORDER-PURCHASE OF 450 LAPTOPS". The Agency stated as follows:

I am directed to inform you that Agency have considered our proposal in respect of the above as forwarded to the Office by the Ekiti State Commissioner of Police

Signed
RSA Aluko
For: Director General"

PW1 alleged that 1st Defendant accepted the offer and was given a cheque for N72,000,000;00 cost of the computers. Exhibit B, is the payment voucher, wherein the 1st Defendant signed and collected the cost of supply on 18/3/2009.

PW1 alleged that after payment the Defendant supposed to supply the laptop computers to the police (the beneficiaries) who in turn were supposed to make returns on 24 monthly instalments. And it was discovered that monies were not coming from the police officers (beneficiaries of the project) who were to pay back. PW1 stated that;

"They now invited the supplier Holy View Investment Ltd whose Chief Executive is Mr. Tunde Adebayo to their office. He claimed to have supplied the police officers 270 laptops. He met with chairman, Chief Ojo after their meeting there was a statement written by Mr. Adebayo that he was going to supply 180 computers (laptops) but as regards supplies to the police command, no further information from Mr. Adebayo"

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PW1 further testified that money was not coming from the police to the Agency as expected and they petitioned the commissioner of police in Exhibit F. The Complainant alleged in Exhibit F that Defendants supplied 270 laptops to officers out of the 450 to be supplied before many officers were transferred. That the Defendant made an undertaking in Exhibit D to supply the balance of 180 computers. That after conversation with the chairman of the Agency Chief Abiodun Ojo and a commitment to supply 180 laptops the 1st Defendant brought 10 laptops to the Agency. That he had supplied 280 remaining 170 laptops.

Under cross examination, PW1 stated that it was Ekiti State Police Command that took the proposal for supply of computer laptops with accessories from the Defendants. That the Agency merely sponsored the finance. That by the contract the Defendants were mandated to supply the items to Ekiti state Police Command. That the Agency was not privy to the terms of agreement between the Defendants and the Ektii State Police command as regards specifications and configurations of the computer laptops and accessories even after agreeing to finance the supplies. That when the enquired from the police whether the Defendants had supplied the items, there was no response from the police except the list of people that made payments.

PW1 also stated under cross examination that when they wrote the police, they did not respond on the delivery of the items. That he would therefore be surprised to later find out that the police actually endorsed the Defendants delivery note on the items as at 2009. That on 28th May 2009, when the Defendants brought the computer items to their office, they directed him to go and deliver it to the police. PW1 also admitted that he was aware that that very day that some of the accessories which

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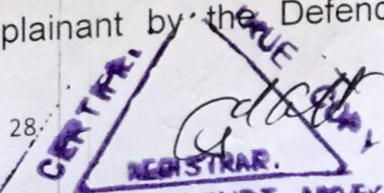
the police had no space to keep in their police command were returned to the Agency and received after the store officer had signed the delivery note of the items.

PW1 further testified that police did not know that funds were released to the Defendant and the police was not informed. PW1 also stated that he was not aware that there was variation in the contract and that training of the police officers on the operation of the laptops was part of the contract but retorted that this was not part of the contract when he was shown Exhibit A. And further stated the he was not aware that the Defendants actually carried out training of the officers for over 12 months after the items were delivered in May 2009.

PW1 stated that it was because the agency was not carried along by the police that they (the Agency) misrepresented that the items written to be supplied by the Defendants since May 2009, as having not been supplied as in Exhibit C, a year and one month after. That when they wrote the police there was no official communication from them on the supply.

The witness further stated under cross examination there was no contract between them and the Ekiti State Police Command. That it was from the proposal that they said repayment will be made through deduction from the salary of the officers. And there was no time they sat with the police to discuss any agreement.

Various admissions made by the PW1 under cross examination clearly relieve the Defendants of the charge of false pretence before the Court. As canvassed by the Defence there was no evidence that proposal was made to the complainant by the Defendants as the

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complainant was brought in to finance the supply after the Defendants and the Police had reach terms on the contract. I agree with the contention of the Defence also that the complainant understood this much and stated in evidence that they were not privy to the contract between the police and the Defendants. Moreover, when they made enquiry from the police, it was declined.

PW2, further in his evidence confirmed that he knew OC Administration, Ibine (Assistant Commissioner of Police) under whose supervision the items were delivered but did not extend investigation to him and as such could not ascertain whether the items supplied were confirmed by the police. Moreover, same PW2 stated that during investigation they went to the Micro Credit Agency and found some accessories in their cartons but took no time to confirm the number.

DW1 who testified for himself and the Defendants, (the 1st Defendant) stated that in 2009, they wrote a proposal for the supply of computer and accessories to Ekiti State Police Command for the benefit of their members. The proposal was received and he was directed to meet with Assistant Commissioner of Police Admin, (AC Admin) Ibine who gave him appointment for presentation and demonstration of the equipment before the Commissioner and Principal Officers in the Police Force in Ekiti State. That after acknowledging the proposal as laid applauded the proposal, he was asked to go and expect a reply. Thereafter, the Complainant invited him and informed him that they received a letter from the Ekliti State Police Command requesting them to finance the proposal he made to the police and released a cheque for the contract to him. He returned to inform the police and they urged him to go ahead with the supply but insisted on the list presented to them

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during the demonstration which created a variation of N9 million naira on subwoofers not included in the offer and this caused a delay till May 2009 when the items were supplied.

DW1 stated that the supply was made in May 2009. That when they arrived Ekiti State Micro Credit office to deliver the items at the Command, due to insufficient accommodation, only a few items could be accommodated. And they went back to the Micro Credit office where all other items were opened, checked and off loaded in their store. Two rooms were filled up with the promise to release them to the police as they belong to the police. The delivery note was signed personally was given to the Store Officer which he personally witnessed and released to the Store Keeper.

DW1 stated that 450 laptops were supplied with 450 units of each accessory, flash drives, laptop bags, subwoofers, speakers and all in one printer. The items were delivered to the Ekiti State Police Command and Micro Credit Agency as directed. The delivery note dated 28/5/2009 from Holy View Investment Ltd, was admitted in evidence and marked Exhibit G. DW1 stated that Exhibit G was acknowledged by the Police. I observe in Exhibit G before me that it was signed by AC'A' (Assistant Commissioner of Police Administration) Ibine (Receiver's Name) as having received the following items:

- "450 lap top bags
- 450 sound disk, 2 GB Flash Drive
- 450 Subwoofers x 2 speakers
- 450 All-in-one Printers
- 450 Units of laptop computers,

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3 GB memory, 250 GB HDD webcam R/S".

From the evidence before the Court, the Defendant made and demonstrated proposal to the Police which crystallized to the payment received. Upon receipt of the cheque from the financier, the Police insisted in the terms of the proposal. The Defendants did not make any representation to the Agency on the supply of laptop computers. There was a proposal to the State Police Command financed by the Micro Credit Agency by the Defendant. The representation was for supply of laptop computers and accessories which by Exhibit G was duly supplied and acknowledged by AC Admin. Ibire, the designated Officer.

It is my finding and I agree with the submission by the Defence that the Prosecution have failed to prove beyond reasonable doubt that there was representation to the Complainant which turned out to be false

I now return to Count 1 of the charge brought under **Section 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006**, the Section provides thus

"8(a) Any person who conspires with, aids, abets or counsels any other person to commit an offence under this Act, is guilty of this offence and liable on conviction to the same punishment as is prescribed for that offence under this Act",

In count 1 of the charge the Defendants were alleged to have conspired with others at large to defraud Ekiti State Government an offence contrary to **Section 8(a) of the Act**. Conspiracy is an agreement between 2 or more persons to do an unlawful act or to do a lawful act through an unlawful means. **SEE AJULUCHUKWU V. THE STATE (2014) 10 SCM 43**, where as in this case the Court from the

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records it is shown that the Prosecution has not established that the alleged false pretence in this case there is no unlawful act alleged against the Defendants. The findings of this Court is that as there was no false representation to the complainant by the Defendants there is also no evidence on record to support the charge of conspiracy under Section 8(a) of the Act as alleged in Count I.

On the whole, it is my findings that the Prosecution failed to discharge the burden of proof on the two count charge against the Defendants as required by the law. The two Defendants are accordingly discharged and acquitted of the two counts against them.

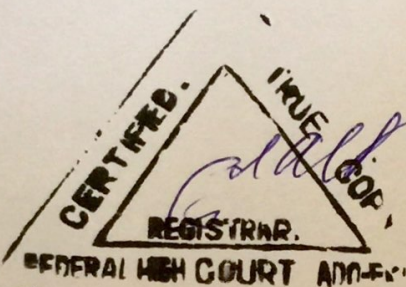
This is the judgement of this Court

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HON. JUSTICE D.U. OKOROWO
JUDGE
28/06/2017

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19/7/2017

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