

IN THE HIGH COURT OF LAGOS STATE  
HOLDEN AT IKEJA JUDICIAL DIVISION  
SITTING AT HIGH COURT NO. 11, SPECIAL OFFENCES COURT I,  
BEFORE THE HON. JUSTICE M.A. DADA (MRS.)  
TODAY WEDNESDAY THE 11<sup>TH</sup> DAY OF SEPTEMBER, 2019

BETWEEN  
FEDERAL REPUBLIC OF NIGERIA

SUIT NO.: ID6508C/17

COMPLAINANT

AND  
LAWRENCE MADUAGWU

DEFENDANT

JUDGMENT

The Defendant was on February 28, 2018 arraigned on a 2 Counts-Information dated November 22, 2017 for Obtaining by False Pretence contrary to Section 1 (2) and (3) of the Advance Fee Fraud and Other Related Offences Act, No 14 of 2006 and Stealing contrary to Section 285 (1) of the Criminal Law of Lagos State of Nigeria 2011.

The Defendant is alleged to have sometimes in 2013 at Lagos within the Ikeja Judicial Division with intent to defraud, induced PMC Industry Limited, China to confer a benefit on him by supplying him 500 metric tonnes of calcium chloride powder valued at \$179,000 USD on the understanding that he would pay for the goods but never did.

He pleaded not guilty to the 2 counts and the Prosecution called 5 witnesses while the defence called 3.

PW1 was one Ohio Ileogben, the Cooperative Manager of Tombo Industries Nigeria, a subsidiary of PMC Industries Ltd. China. He gave his oral evidence-in-chief thus:-  
I know the Defendant in the dock. Sometime in 2013, one Mr. Thomas Ukoji brought the Defendant to my office that he can do business with us. We trade in Industrial chemical. We did a business of calcium carbide and later one of Calcium chloride of 500 metric tonnes valued at \$179,000. Mr Ukoji offered an LPO to deposit 30% of the money before shipment. After then he, the Defendant called me that he needed money for clearing that we should make the shipment that as soon as the goods were cleared, he would make the payment, which we did and shipped the goods from China to him in Port-Harcourt and handed over the documents to him through his Bank, Diamond Bank which he confirmed as received.

*M.A. Dada*

The 2<sup>nd</sup> shipment was on its way when he called me that he had more customers that I should not worry and pleaded with me that I should make a 3<sup>rd</sup> shipment which we did without any deposit made and we shipped the 3<sup>rd</sup> one too not knowing that he had an ulterior motive. As soon as we made the 3 shipments, I travelled to Port Harcourt where they offloaded all the goods. The 3<sup>rd</sup> shipment was also at \$179,000. The Manager, Samuel, who is his first son, took me to the warehouse and what I saw was that about 95% of the goods had been sold. I asked the son-Manager why his father had not remitted the money to me and he said I should ask his father. When I came back to Lagos and confronted the Defendant and he said he was believing God that he would be able to pay the money, I knew I was in a big trouble. I was going to his office twice a week, then he now paid on the 2<sup>nd</sup> Invoice in 2015 since 2013. Then he did not pay anything again. His office is at Iyana-Isole, Lagos. I was pleading with him twice a week but he did not budge till I had to write this Petition.

Under Cross-examination, he testified thus:-

My full name is Ohio Ileogben. My middle name is Izeigbe, only my grandmother calls me that.

I knew the Defendant around 2013. We supplied him goods from China 3 times. Only the last consignment has not been paid for. No he did not deny that he is owing for it. I've been exposed to International transactions since 2010. I'm not aware the 3<sup>rd</sup> consignment had problems. Yes, I went to Port Harcourt either in early 2014. These goods were shipped in 2013 but I can't remember when precisely in 2013 and when I went.

Before I went to Port Harcourt, I was asking him for the payments and he kept promising and when he failed, this prompted me to go to Port Harcourt. We were communicating every time. The documents of shipping were sent directly to his Bank and he confirmed receipt of them including the LPOs, Invoices, Import analysis.

Yes, it is a business transaction. He is indebted to PMC Industries. Yes I wrote a Petition to EFCC that we supplied him with goods and he refused to pay. Yes I mentioned that he conspired with the person who introduced him not to pay the money.

Yes it is the Defendant that is owing PMC. LPO originated from the Defendant. Yes the transaction was between PMC and Midas Laboratories Ltd. Yes in Nigeria there are always inflations. The Defendant is the owner of Midas Laboratories. The documents specify the Parties thereto. Midas or not, I relate to the Defendant and he has been promising that he is going to pay. It has been with EFCC for more than a year now.

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There was no re-examination.

PW2 was Mr Sidi Uwais, an Operative of the EFCC attached to the Advance Fee Fraud Team C. He testified thus;

I know the Defendant. We received a Petition from PW1 in November 2016 which was referred to my Team. It alleged that in 2013 the Defendant obtained 500 metric tonnes of calcium chloride powder under false pretence. We commenced investigation and invited the complainant who came and adopted his Petition. We wrote letters to Zenith, First and Eco Banks as well as Corporate Affairs Commission. Then the Defendant was invited and he came in company of his counsel. The Petition was shown to the Defendant and he agreed to write a statement responding to the allegation sequel to which he was cautioned. He signed and dated the cautionary words. We asked him if he received the goods supplied worth \$179,000 of calcium chloride and he answered in the affirmative. We asked him about the whereabouts of the goods he received from the complainant, he said he took them to his warehouse and carried out laboratory tests and claimed the goods are not in good conditions. We asked him to take us to the warehouse and also show us a copy of the test carried out but he responded that he cannot disclose such information to us. Our investigation concluded that the Defendant received the goods, sold them and diverted the money for his personal use. Investigation revealed so since he could not show us the goods and take us to the people he sold the goods to claiming he was protecting the integrity of his clients and he willingly refused to disclose such information. We asked about the Lab test he claimed to have carried out that the goods were not in good condition and he couldn't provide the result or the name of the company who carried out the test of the calcium chloride sold to him. Based on this the goods have not till this moment been paid for.

(The Petition dated 11/11/16 with 5 attachments and the Defendant's 8 statements are Exhibits 1 (a-c)-9 respectively).

The first attachment to Exhibit 1 is the evidence of delivery of the goods; the 2<sup>nd</sup> is the commercial Invoice from PMC Industries Ltd stating the goods and the price as supplied from China. The 3<sup>rd</sup> is the LPO from Midas Laboratories Ltd to PMC Industries Ltd China.

Under cross-examination, he testified further thus:-

The Petition is from PW1. Exhibit 1a is between Pacific International and Midas Laboratories. Exhibit 1b is between PMC Industries Ltd and Midas Laboratories Ltd. Exhibit 1c originated from Midas Laboratories Ltd to PMC Industries Ltd. The transaction is between PMC and Midas while the Bill of Lading, Exhibit 1a is the Issuing Bank. The documents depict there was a business transaction.



The Defendant made 8 statements. The matter started in November 2016 but I don't know when it was filed in court or how long the Legal Advice, vetting and filing took. Yes while the matter was pending the Defendant's lawyer wrote 3 letters to EFCC. Yes, we asked him to pay the debt to EFCC. This is not a debt but a clear case of obtaining by false pretence and we gave him the option to pay even though the offence had already been committed. The Defendant has no intention whatsoever to refund the money or return the goods from our investigation. The goods were supplied in 2013 and the Petition was written in 2016 while the Defendant was charged in 2017. For a period of one year that the case was on-going at EFCC, no payment was made to the complainant or to the company that supplied the goods in China. He refused to show us the address where the goods were supplied or the result of the lab test he said was done. The Defendant started writing statements on 19/11/2016 and his failure to produce a reliable surety to take him on bail after he was served bail condition. We released him only when he was able to meet the bail condition. Then when we were bringing him to court we served him with the Charge for arraignment. The Petition is from PW1. It is not from PMC. The Defendant obtained the goods under false pretence because he never had any intention to pay.

There was no re-examination.

PW3 was Mr Danladi Yusuf, another Operative of the Advance Fee Fraud Unit of the EFCC with PW2. His evidence is pretty much the same with PW2's. (The Reply of Corporate Affairs Commission to the EFCC's letter was admitted as Exhibit 10. He stated further thus:

2 people were mentioned in the Petition in Exhibit 1. The 2<sup>nd</sup> person is Thomas who introduced the Defendant. Exhibits 2-9 are the Defendant's statements. I supervised all of them.

Under cross-examination, his evidence is thus:-

I have been in EFCC for the past 8 years. The investigation lingered for about a year. I can't remember how many times in a week he was reporting. The Defendant and his company did not at any time deny receiving these goods. The goods were shipped in by PMC Industries Ltd. We have some documents attached to the Petition we received. Yes the transaction was voluntarily entered into by the Parties. The Defendant and his company never denied being indebted to the company. Yes it translates to indebtedness. We don't observe what is irrelevant. What we observed is that goods that were shipped and received were unpaid for. I can't remember how many years it took for the goods to be shipped. Yes I'm aware there were the Bill of Lading documents, the commercial invoice etc. backing up the shipment. It was valued at \$179,000. Exhibit 1a is the Bill of

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Lading. The date of manufacture is 2/04/13 and the date of expiry is 2/04/15. It depicts a business transaction.

There was no re-examination.

PW4 was Ukoji Ndubuisi Thomas. His evidence-in-chief is thus:-

I know the Defendant very well. We are in the same Shopping Complex, I introduced him to Tombo Industries. In November 2016 when EFCC invited me, I was at Abeokuta when Mr Dickson from EFCC called me with Mr Ohio, PW1's number that there was an allegation against me with the Defendant, that I should report on Monday by 10 am. I got there at 10.10am and met Mr Dickson. He brought out the charge of fraud against me with the Defendant. I said yes I introduced the Defendant to Tombo Industries in Ohio's office. They agreed to do business but Ohio said he wanted to see the Defendant's office and I was there. Then the Defendant went to Ohio's office to do business. That is what I explained to EFCC. They brought containers of calcium carbide in Lagos. They brought 500 metric tonnes of calcium chloride in Port Harcourt and another 500 metric tonnes to Port Harcourt, making 1,000 tonnes. The allegation was against me that I conspired with the Defendant to defraud Tombo Industries but I told them I introduced him but I never benefitted or involved in any transaction.

Under cross-examination, he stated thus:-

I took the Defendant to Tombo Industries and met Ohio and from there they took over the business. No, I never received any complaint from PW1 that the Defendant forced or coerced them to ship the goods to him. Yes, it was voluntarily entered into by the Parties. I was aware they executed documents thereto. There were 4 Containers of calcium carbide before this transaction. There was first 1 container and then 3 came in. The first was 500 metric tonnes of calcium. Then within 2 months the 3<sup>rd</sup> one came. I'm aware PW1 went to Port Harcourt. The 1<sup>st</sup> and 2<sup>nd</sup> shipments were paid for but the 3<sup>rd</sup> was not paid. The Defendant called me that there was a problem on the 3<sup>rd</sup> shipment and I told him to call the attention of PW1 or write directly to PMC. I don't know if he did.

PW5 was Li Ming, a Chinese who spoke in Chinese and was interpreted by a sworn Interpreter, Adegoke Okiki. He testified in chief thus:-

I am into business. I work at PMC Company, a Chinese company. I am the Managing Director. We have branches in Nigeria called Tombo Industries.

I certainly know the Defendant. In year 2013, the Defendant came to our company, he said he wanted to do business with us and told my companion that he has a market for our goods. He guaranteed that the market and the customers were available and that he would not be dishonest or deceitful. In 2013 he gave us an LPO for calcium chloride and

I wrote him an invoice. Then I transported 500 metric tonnes of calcium chloride to him. After the first shipment of 500 metric tonnes arrived in Port Harcourt, he called me after it that there were so many customers interested in our goods and told me to ship another 500 metric tonnes costing \$179,000 to him. At this time, I didn't know he was deceiving me. After making sales, he refused to pay me for the 1<sup>st</sup> and 2<sup>nd</sup> shipments. I called him several times pleading for payment. I decided to go to his office and after much pleas, he paid for the 1<sup>st</sup> shipment promising to pay for the 2<sup>nd</sup> shipment. He has since 2013 been giving me series of excuses for failing to pay till today. Due to his deceit my Chinese company has been in a mess. I have lost my job and my family has abandoned me thinking I am a liar and a fraudster. My Bank account has been frozen all because of the fraud of the Defendant. My health too has been adversely affected. I plead for justice (weeping). The LPO was handled by my business partner, Mr Ohio with the Commercial Invoice sent from China to Nigeria. The Defendant has not returned the goods and has not paid for the goods.

Under cross-examination, he testified further thus:-

I wrote my Statement at EFCC both in English and Chinese. I can recognize it. I wrote it in Chinese but it was translated to English. My English is bad so it was interpreted for me. Yes I signed it. Everything is what I told EFCC. I have been in Nigeria for about 9 years but not living here throughout the period. Yes, I have since been doing business in Nigeria. Yes, I have been coming to Nigeria. I met the Defendant in 2013 for the first time. Basically it is my Partner that had been doing business with the Defendant. Yes I am the Managing Director. I am conversant with what happens but I have a lot of customers and it is not possible to know every detail. I'm not sure the transactions were up to 4 with the Defendant. All I know is that he cheated us. He defrauded us on the calcium chloride on the 2<sup>nd</sup> shipment.

The Defendant confirmed that he has not paid. He did not deny. Yes the Defendant is indebted to us. He never mentioned that he had any problem with the goods. There couldn't have been any problem. I'm aware I am under oath to speak the truth. Yes I wrote him an invoice and Bill of Lading. Shipment documents were complete, if not he would not have received the shipment.

Yes, he paid for the first shipment but the 2<sup>nd</sup> one is what he has refused to pay for. He has given different reasons why he has not paid. I had called him and spoke with him on phone and I met him in his office. My English is not fluent and I always go with my partner. I can put words together to make statements. The money is often paid in dollars.

There was no re-examination and this closed the Prosecution's case.  
The defence eventually opened after a failed No Case Submission.

DW1 was the Defendant himself, Lawrence Onwubiko Maduagwu. His evidence in chief is this:

I am the Managing Director of Midas Laboratories Ltd. registered at the Corporate Affairs Commission. It is a going concern. It is still alive and doing business. There is a confirmation of this position by the Corporate Affairs Commission via EPCC's investigation. It has a Memorandum and Articles Association with objects of operation. (It was admitted as Exhibit D and Article 2 was read out).

Yes, I am the MD. As MD, I take decisions on behalf of the company such as sourcing for business and execute them for the company. The issue in this case falls within the objects of the company because it is a chemical product. Before we are allowed to import chemicals to Nigeria we must get NAFDAC Permit. Yes we had NAFDAC-approval which enabled us to place the Order that year.

Yes, I know PW1 and PW5. I met them sometimes in 2012 through one Mr. Ndubuisi Thomas Ukoji (PW4) for business relationship. We prepared to do business with them on Industrial chemicals. The 1<sup>st</sup> transaction Midas had with the first company they introduced to me was highest chemicals Ltd. The 2<sup>nd</sup> was PMC Industry Ltd, both China based companies. There was no transaction in 2012 and the relationship was on-going till June 2013 when we had a business deal. I had one transaction with Highest Chemicals in early 2013. Then we had 3 transactions with PMC Industry Ltd; total 4 transactions. The 1<sup>st</sup> transaction was between Midas and Highest Ltd. We were introduced to Highest Chemicals by PW1 and PW5. This transaction was successfully executed, they sent me the chemicals and I paid. The Pro-forma Invoice, Form 'M', Bill of Lading, Commercial Invoice and Packing List were complete. This particular transaction was calcium carbide.

The 2<sup>nd</sup> was with PMC Industry Ltd China introduced by PW1 and PW5. The product was a 3 x 20ft container of calcium carbide. There was no defect whatsoever with the 2<sup>nd</sup> consignment. Indeed it was quite a successful transaction. The 3<sup>rd</sup> and 4<sup>th</sup> transactions were also between Midas and PMC. The 3<sup>rd</sup> transaction was to some extent successful. The 500 metric tonnes of calcium chloride this time was sent to me/Midas at Port Harcourt Sea Port. It was cleared into a warehouse called Ports Terminal Operational Limited, PTOL. We observed that the product had some issues.

Before it landed in 2013, having successfully done 2 previous transactions with Highest Chemicals and PMC, PW1 and PW5 approached me as the MD of Midas to import calcium chloride which they had in stock back in China. At this time, the 3<sup>rd</sup> consignment was still in transit and they said they would want Midas to buy the 4<sup>th</sup> consignment so that they can close their books for the year.

MD

We accepted and they issued a Pro-Forma Invoice (PFI) and we commenced importation by the establishment of Form 'M' through the Bank. They received a copy and sent us the Bill of Lading, Commercial Invoice, Packing List. Midas issued an LPO to PMC on the 3<sup>rd</sup> consignment which also includes a certificate of Analysis. There was no LPO issued by Midas on the 4<sup>th</sup> consignment. PMC came to us that they needed to clear the remaining products in China and that we should clear them and so they issued us a Pro-Forma Invoice which enabled us to establish Form 'M' for the importation. Commercial Invoice was sent to Midas. It shows there was a valid business transaction between Midas and PMC. Page 4 of **Exhibit 1** is the Commercial Invoice in respect of the 4<sup>th</sup> transaction. From the Bill of Lading, payment was to be within 90 days of receipt. Midas has been in chemical business for close to 20 years. We have been seeing the mode of payment that we are to pay within 90 days before. It is called Bills of Collection to pay after supply. It is giving the Importing Company a credit facility. What plays out is that the 90 days is never followed because of other factors in the course of the transportation. The 4<sup>th</sup> consignment was also shipped from China. If the goods are not paid within 90 days, I will not be able to pay. The attachment to **Exhibit 1** is the Bill of Lading with which it was shipped to Port-Harcourt. The date of Manufacture was April, 2 2013 and the expiry date was 14/03/2014 from the Bill of Lading.

The 3<sup>rd</sup> transaction arrived in December, 2013. I went to Port-Harcourt on 22/12/13 after it had been cleared and stored in PTOL Warehouse. I saw it where it was. We observed that the product was substandard because it was emitting fluid contrary to our expectation. It couldn't have emitted fluid at that time given the expiry date on it. The emission of fluid means that the product was defective and substandard. The product is in a powder form packed in 1,000kg jumbo bags. It was still in powder form but the emission of fluid was continuous. It is the nutrient of the product that was emitting off and so it cannot have the same quality as it ought to. It reduces its quality. The effect is that prospective buyers were no longer interested in buying it. It can only be sold at a give-away price. This product is an Industrial chemical. It is used by Oil Companies for use in drilling oil fields but it could be used in other applications. If the good was standard I wouldn't have had issues with selling them. The 3<sup>rd</sup> and 4<sup>th</sup> consignments had the same substandard behaviour. Yes it affected its marketability. The 2 consignments met themselves in the warehouse. The emission was continuous in the warehouse. As the emission was taking place, some bags turned to stones/cakes. We had to hire forklift to grind the stony part of the chemicals and mix it with some of the powders which resulted to a great loss of 4 bags giving 1 bag. At the end of the calculation, we had lost 200,000 kg or 200 bags of the chemicals valued at about N12M. The Supplier PMC deliberately shipped a substandard product to us. Because of the corrosive nature of the emission, the PTOL

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components, theoretical, objective and practical. I have practical experience from my industrial training at Romaco Industries Ltd in Lagos in 2011.

The Defendant is my biological father and the Managing Director of Midas Laboratories Ltd. I did my Youth Service in November 2014. Between October 2013 and November 2014, as a graduate in Port Harcourt, while waiting for my Call-up, I became an Auxiliary staff of Midas Laboratories Ltd. The M.D informed me of a set of Industrial Chemicals, Calcium Chloride that would arrive in Port Harcourt. I coordinated 2 activities/consignments. The first consignment is 500 metric tonnes of calcium chloride and the second too is 500 metric tonnes with 94% purity. The first consignment arrived in December 2013 and the 2<sup>nd</sup> arrived at the end of March and beginning of April 2014. The 2 consignments arrived in Port Harcourt. The clearing Agent cleared them and on arriving there to see the goods for myself at the Port and Terminal operations Ltd Warehouse, I observed that these goods came in with holes on them dripping fluid which ordinarily shouldn't be so considering the lifespan of this calcium chloride. They are from PMC Industries in China. It is written on the sac-bags of the chemicals. The manufacturing and expiry dates and the percentage purity of 94% were also written on the bags. The manufacturing and expiry dates are a lifespan of 2 years.

The 1<sup>st</sup> consignment came in 2013 to expire in 2015. The 2<sup>nd</sup> consignment was also warehoused at Ports and Terminal Warehouse and stayed there for 6 months. It was dripping liquid and fluid which damaged the floor of the PTOL Warehouse. The burn has made it to lose its strength and value which made it substandard. The marketing and monetary value were lost. The PTOL officials insisted that we evacuated them from their warehouse due to the damage to their floors. Before evacuation, we had to re-bag them because the bags were burnt. We had to get fresh bags and re-bag 4 to 1. We got a forklift and its Operator's services to help break the blocked chemicals into pieces so as to fit into the bags which also came with labour. We had to get sawdust and employed labourers to clean up the damaged floors of P&TOL. Then we contacted a Transport company through the help of P&TOL officials and we got about 35 trucks to convey the bags to a new warehouse, each of which carried about 20 metric tonnes, about 700 bags or 700 metric tonnes. It was moved end of May 2014 to Goddy Nwolu Warehouse.

Yes, I know Mr. Ohio as the representative of PMC Industries through the Defendant, the MD of Midas Laboratory. I met him when he visited Port Harcourt at our new warehouse in January 2015. We informed him of the poor state of the chemicals and he decided to come and see it for himself. At first he expressed sadness on his face. Thereafter he linked us with a prospective buyer, Fajec Industries. The quantity he met was still 700 metric tonnes. He took me personally to Fajec Industries and introduced me. The Managing

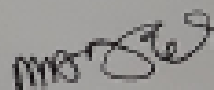
The offence of Stealing in Count 2 under Section 285 of the Criminal Law of Lagos State, No.11 of 2011 is also clearly proved against the Defendant beyond reasonable doubt. It has been established that he obtained the goods subject matter of this suit on the understanding that same would be paid for after being disposed of. The goods were disposed of by the Defendant at least as far back as 2015 but have remained unpaid for till date or in accordance with the terms on which they were received.

The Defendant is also hereby convicted on this Count 2.

The minimum punishment under Count 1 is 7 years while the mandatory punishment for Stealing under Section 285 of the Criminal Law of Lagos State *supra* is 3 years. The Defendant is hereby sentenced to 7 years imprisonment on Count 1 and 3 years imprisonment on Count 2. Both sentences shall however run concurrently commencing from the date of his remand by this court, to wit, 28<sup>th</sup> February 2018.

The Defendant is also hereby ordered to make full restitution of the sum of \$179,000 (One Hundred and Seventy Nine Thousand Dollars) for which the Economic and Financial Crimes Commission is hereby ordered to employ all legal means to ensure compliance.

This is the Judgment of the Court.



HON. JUSTICE M.A. DADA (MRS.)  
JUDGE  
(11/09/19)

Defendant present.

S.O. Daji for the Prosecution.

C. Ogbonnaya for the Defendant.

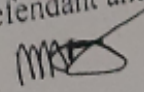


consignment... When we sold the goods that brought us to court, we have not remitted the money to the Supplier... I didn't anticipate that I would have these challenges and I don't have anything to show now the quality of the goods I complained about. It is the duty of Midas to pay for the haulage but the challenges that we had... We have never denied that we are indebted to PMC Industry \$179,000 (One Hundred and Seventy Nine Thousand Dollars)". The defendant admitted further that this 3<sup>rd</sup> consignment which he paid for with proceeds from the 4<sup>th</sup> consignment, subject matter of this suit took almost 2 years before it was paid for.

He however failed to tell the court what happened to the proceeds of the 3<sup>rd</sup> consignment in particular. Although he tried to impress upon the court with the aid of his counsel that a quarter of the goods was bad, what was left and sold had not been fully paid for, yet failed to support this with any shred of evidence. He admitted that his company, Midas Laboratory did not carry out any test on the disputed goods or any test at all. He who asserts has the burden of proof which burden remains fixed on the Defendant without shifting as required by **Sections 135-140 of the Evidence Act.**

The foregoing therefore transcends "ordinary commercial transaction" as posited by the learned defence counsel. The act of the Defendant using the proceeds of this transaction to pay for the previous transaction is what transforms into a criminal intent of what is otherwise glamourized as "round tripping". This 4<sup>th</sup> consignment was obviously obtained by the Defendant and his company, Midas Laboratories Limited under the pretence that it would be paid for while still owing for the 3<sup>rd</sup> consignment and eventually using the proceeds derived from it to pay for the previous one after much pressure as testified by PW1. From the evidence of PW1 and the admission of the Defendant himself, it can be deduced that but for the personal efforts of PW1, even the 3<sup>rd</sup> consignment would not have been paid for. This is where the "intent to defraud" comes in. The acts of the Defendant cannot be justified and are particularly captured by Sections 1c and 2 of the Act. He obtained the goods through the medium of a contract induced by false pretence and on the understanding that goods would be paid for but never paid for till now. The defence counsel's submission that the Defendant in spite of the alleged defects was still willing to pay PMC in the interest of maintaining business relationship but demanded for rebate and good understanding in the circumstances and the other defences put forward are bare assertions and mere ipse dixit which cannot debunk the legally admissible evidence of the Prosecution. See **AGWUNA VS. A. G. FEDERATION 1995 5 NWLR PT. 396 418 @ 438 PARAS F-G** and **STATE VS. OLADIMEJI 2003, 14 NWLR PT. 839, 57.**

This Count 1 is therefore proved beyond reasonable doubt against the Defendant and he is hereby convicted as charged.





On whether there was a contract between the parties, learned counsel submitted that the issue before the court is only a commercial transaction because both oral and written documents were issued between PMC Industries Limited and Midas Laboratories Limited. He further submitted that it is trite in law of contract that when goods are dispatched to the consignee, the property/title is transferred to the receiver of the goods. This is the only part of this 2<sup>nd</sup> Address that can be viewed as a Reply on Point of Law. The rest is not.

The only issue is whether the Prosecution has been able to prove the allegations or either of them beyond reasonable doubt as required by law to justify this trial at all or not.

The 1<sup>st</sup> count alleged against the Defendant is Obtaining Goods by False Pretences contrary to **Section 1 (1) and (2) of the Advance Fee Fraud and Other Fraud Related Offences Act, No. 14 of 2006**. It states thus:-

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; or

B induces any other person, in Nigeria or in any other country, to deliver to any person; or

C obtains any property whether or not the property is induced through the medium of a contract induced by false pretence;

Commits an offence under this Act.

2. A person who by false pretence, and with 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 commits an offence under this Act.

Subsection 3 is the Punishment provision stating that, "A person who commits an offence under **subsection (1) or (2) of this Section** is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option of a fine". The defence counsel has harped on the meaning of the words, "with intent to defraud" on his submission that the transaction under consideration is a commercial/business transaction voluntarily entered into by two Parties, PMC Industry and Midas Laboratory Limited.

The law is trite that what is admitted needs no further proof. By **Section 20 of the Evidence Act 2011**, "An admission is a statement, oral or documentary, or conduct which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances mentioned in this Act".

The Defendant clearly admitted inter alia under cross-examination thus, "...We never disputed we sold the products and from its proceeds we were able to pay for the 3<sup>rd</sup>

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- (X) Liability of companies/Application of doctrine of Privity of Contract.  
X) Whether EFCC is a debt recovery agency.

I must point out that this Address is not only verbose, it is unwieldy. Reference will therefore be made to it as the need arises in this Judgment. In his conclusion however he urged the court to discharge and acquit the Defendant and order for the immediate reopening of Midas Laboratories Bank Account No. 0024695454 and the Defendant's Savings Account No. 0043303675 with the then Diamond Bank Plc. now Access Bank Plc. as well as all their other Bank Accounts in Zenith Bank, First Bank, Eco Bank, Union Bank and others not mentioned frozen and/or placed on "Post No Debit" on the instruction of EFCC.

The Prosecution's Address by S. O. Daji is dated 15<sup>th</sup> June, 2019 where he also submitted a sole issue for resolution, namely, whether the prosecution has proved its case against the Defendant beyond reasonable doubt. Reference will also be made to this Address as the need arises.

His response however, to what he described as the Defendant's main defences that the goods was bad, the case is civil and legal personality of Midas Laboratory Limited is worth some space in this Judgment. He submitted that where money or goods is received from a person with a specific direction to the user or the purpose thereof, until compliance with such directives, ownership remains with the original giver. He referred to **AJIBOYE VS. STATE 1994 8 NWLR PT. 364, 587 @ 602.**

He submitted that against the Defendant's contention that the transaction was purely civil that it is a contract tainted by elements of fraud and stealing and obtaining by false pretence. On the argument that the Defendant is different from Midas Laboratory Limited, he submitted that by the doctrine of lifting the veil of incorporation, the Defendant who is the Managing Director and who runs the company alone can be held liable. He urged the court to hold that the Defendant is liable for the action of his company and dismiss the defence.

He concluded that proof beyond reasonable doubt does not mean proof beyond any shadow of doubt. That once proof drowns the presumption of innocence of the Defendant, the court is entitled to convict him, although there could exist shadows of doubt. He relied on **Section 138 (1) of the Evidence Act, Cap. 112, Laws of the Federation and ISMAIL VS. STATE 2008 15 NWLR PT. 1111, 593.**

The Defendant filed what counsel titled further arguments and submission dated 11<sup>th</sup> June, 2019.



Director of Fajec Industries came to see the goods and on seeing them, he bargained for a lower price of what we offered. Yes he eventually purchased at a give-away price. He purchased 200 metric tonnes. It took a week to agree on his price. He brought his truck and we had to hire a Forklift to load the truck. He made a part-payment with an outstanding of about N1.3M. As a chemical Engineer myself, I did not need to take it to the laboratory to conduct a test. I was initially posted to Taraba State for my NYSC. In November I was redeployed to Akwa Ibom State and on my way back I was involved in a terrible accident that left me with scars and I was hospitalised in Port Harcourt. The NYSC officials then gave me some time off and in January 2015, I was fully on ground in Port Harcourt. The loss runs into millions. Ever since this whole issue started, Midas has remained dormant temporarily coupled with the accounts frozen. The family has experienced untold hardship. It has not been easy.

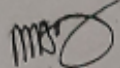
Under cross-examination, he stated thus:-

I don't have anything to show that these goods were burnt or emitting fluid or that they were re-bagged. Yes all the goods have been sold. Yes, I confirm that the 500 metric tonnes have not been paid for by Midas to PMC. No, I did not carry out evaluation of the goods. I think the Defendant complained about the goods in writing and mails. I am not aware the Defendant could not produce the said complaint. I am not aware he could not take the Investigators to the people he said he sold the goods to at a give-away price. I did not conduct any scientific test on the goods. I could test by seeing and touching them. Ohio met the goods in the Warehouse. It is not true I want my father to escape justice by my evidence.

There was no re-examination and this closed the defence and trial.

The Defendant's Final Address by his Counsel, C Ogbonnaya is dated 6<sup>th</sup> June, 2019. After a review of the evidence of the witnesses for both Parties, he submitted a general issue as to whether the Prosecution has established the essential elements of the 2-Counts offences preferred against the Defendant in proving his guilt beyond reasonable doubt. He argued on the following sub-issues:-

- I) What the legal personality of a company is.
- II) The Legal capacity of companies to own property.
- III) Whether breach of contractual relationship is criminally enforceable.
- IV) Who the directing mind and will of a company are.
- V) Onus and standard of proof in criminal cases.
- VI) Whether courts are allowed to make or re-write agreements between Parties.
- VII) Legal status of incorporated companies.
- VIII) What Agreements are binding on companies/Bindingness and construction of agreements.





been paid till today. I sold the goods at a give-away price. I didn't bring the Sales Invoice EFCC requested for because the goods were not stolen goods. We had a good business relationship with PMC all the while so there was no need to plead for the release of the goods documents by the Bank before payment. PMC issued all the documents for clearing goods. All the goods have been disposed of. The goods were emitting fluid but I don't have anything to show it.

Under re-examination, he stated thus:

The 3<sup>rd</sup> transaction with PMC is what is in issue.

DW2 was Abisoye Bamigboye, a Banker with former Diamond Bank now Access Bank as a relationship Manager. His evidence-in-chief is thus:-

Yes, I know the Defendant and Midas Laboratories Ltd. It is a Banking relationship we have with them. Midas Laboratories operates an account which was opened on 9/02/2012. It is a corporate Current Account. The Defendant operated a Savings Account which he opened in 2014. They use the corporate account for business transaction with some trade transactions. Both Accounts are on restrictions by EFCC with "No credit" status. The originals are in the Legal department. (2 copies of letters from EFCC to Diamond Bank dated 16/12/2016 and 23/03/17 on the Accounts of Midas Laboratory and the Defendant are **Exhibits D4 and D5 respectively**).

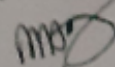
His further evidence under cross-examination is thus:-

I have an idea about the case. I don't know when the Parties entered into the transaction that led to this case. I was not the officer at the time. I have been with the Bank since 2013. Yes, I'm aware that "Post No Debit" (PND) lasts for 72 hours. It depends on where the Notice comes from. If it is from EFCC we will not lift unless EFCC states or advises otherwise.

There was no re-examination.

DW3 was Maduagwu Onyekachi Samuel. His evidence is thus:-

I am currently an Applicant, a graduate of Chemical Engineering from University of Port Harcourt, Rivers State, Nigeria. I graduated in 2013 September. My Course is about the field of Engineering generally majoring on chemical usage, handling Industrial, edible agricultural chemicals and installation of machineries. In Industrial chemicals, calcium chloride, potassium chloride, Bentonite, graphite and sodium chloride which are in 2 forms; edible (salt) and the industrial one. Chemical Engineering is a broad spectrum. It cuts across Petroleum and Gas Engineering. It is a practical oriented course. Practicals are conducted during the course of this Course. To graduate, there are 3 major





incurred as a result of the poor quality of the product and the devaluation of the Naira against the dollar which put the company into a very difficult position to pay the value of the invoice. Naira was about N155 to a dollar at commencement and about the time of discussion, Naira had been devalued to about N360 to a dollar. To our surprise, we were summoned to EFCC and that's why I am here today.

The representative of PMC, Mr Ohio visited the locus in quo, the private warehouse in Port Harcourt around June 2015 as a result of our persistent complaint about the poor quality of the product and he met with my son in the warehouse. I was aware that he was travelling to Port Harcourt and he confirmed that he saw the poor quality of the product and promised to do something about it. There was no concession granted to us in spite of the fact that we had lodged complaint to Mr Ohio.

Under cross examination, he stated further thus:-

Yes I am the owner of Midas Laboratories as the Managing Director. Page 1c of **Exhibit 1** is a document I issued in my capacity as the Managing Director of Midas Laboratories Ltd. and I signed it. Yes we took delivery of the 500 metric tonnes valued at \$179,000. I had three transactions with PMC. Yes there was no 4<sup>th</sup> transaction with PMC. I had it with Tombo. I complained to Mr. Ohio on 21/12/2013. Yes I sent a mail to Mr Ohio but I can't remember if I supplied the Mail Address to EFCC. Yes it took almost 2 years to pay for the 2<sup>nd</sup> shipment. The product was of a poor quality and it was losing its strength. Yes I carried out laboratory tests but not by Midas, but by our customer. The test was for the purchase of the customer so we could not ask for the Report of the test. We did not carry out the laboratory test ourselves. Yes we only saw the quality of the goods with our eyes. We never disputed that we sold the product and from its proceeds we were able to pay for the 3<sup>rd</sup> consignment. Yes we took photographs of the goods. No, we did not show the photographs to the EFCC officials when they asked for them.

When we sold the goods that brought me to court, we have not remitted the money to the supplier. We re-bagged at the import cost of 200 bags of about N12M. Yes some people are owing us. Yes, some have paid us. Yes I declined to take EFCC to the people who are owing us. The goods are not stolen and so I did not take them to my customers. I didn't anticipate that I would have challenges and I don't have anything to show now the quality of the goods I complained about. It is the duty of Midas. It is the duty of Midas to pay for haulage but the challenges we had... We have never denied that we are indebted to PMC for \$179,000. I was not in Port Harcourt when Ohio visited and the goods were still there and he recommended a customer Industry to us who is still indebted till today. Pajek Industries bought about 15 metric tonnes of the goods which he is still owing till today. We have asked Ohio to use his office to compel Pajek Industries to pay us which has not

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Warehouse insisted we take away the products from their warehouse, though we were doing regular cleaning with sawdust. So we had to rent a warehouse inside Port-Harcourt Township. It was becoming a mess to PTOL or else they would have continued to accommodate us. The private warehouse is near the Port-Harcourt Stadium. To move the close to 1,000kg chemicals involved/attracted very huge expenses. It involved hiring so many trucks, forklift and so many hands which cost so much money. We moved the chemicals from PTOL between 27<sup>th</sup>-31<sup>st</sup> May, 2014 and we paid cost.

The 1<sup>st</sup> transaction with Highest Chemicals Company through Tombo Industry in Nigeria was very successful. The goods were fully paid for. The 2<sup>nd</sup> and 3<sup>rd</sup> transactions also came through Tombo Industries but with PMC Industry in China. The 2<sup>nd</sup> transaction was fully paid for to PMC through Diamond Bank. We fully paid for the 3<sup>rd</sup> transaction. The 1<sup>st</sup> \$125,000 was remitted through the Bank and the balance of the \$179,000 was converted to Naira and paid to Tombo Industries; N1, 740,000. I received a letter from PMC authorising that I should pay the Naira equivalent to Tombo Industries. (The said letter is Exhibit D1).

The 90 days specified for payment is where the understanding of the Supplier comes to play. I was summoned by EFCC in December 2016. I quickly contacted my lawyer, Barrister C. Ogbonanya who wrote letters to their Awolowo Road, Lagos office and to the National Head Quarter Abuja via DHL that the case is not a criminal case. (The said 2 letters are Exhibits D2 and D3).

The Account of Midas with Diamond Bank has been blocked by EFCC since 2016. I was not put on Notice. I went to the Bank for normal transaction and I was told it had been blocked at the instance of EFCC. I have 2 Accounts with Diamond Bank in the name of Midas Laboratories and in my personal name, Lawrence Maduagwu. The 3<sup>rd</sup> Account is with Zenith Bank in the name of Midas Laboratories Ltd. They have all been sealed since 2016 till now. It has affected us adversely because we cannot do business anymore. We have a staff of 4 and my family and I cannot even pay my counsel.

The Debtor in this transaction is Midas Laboratories Ltd. In transacting this transaction, the overhead cost is about N65M plus loss of N12M, totalling about N77M but it covers transactions 3 and 4. The 4<sup>th</sup> transaction is a very legal transaction. All the documents passed through the Bank. If I'm to pay, I would pay through the Bank but the Bank's Form 'M' has an expiry date. It would mean that I have to apply to the Bank for re-validation of the Form 'M' before we can apply for Forex before payment for the goods. In view of the challenges that we had with the quality of the product, we called on the representative of our Suppliers, Mr Ohio of Tombo Industry to look at the losses we