

IN THE HIGH COURT OF JUSTICE EKITI STATE OF NIGERIA

IN THE ADO EKITI JUDICIAL DIVISION

HOLDEN AT ADO EKITI

BEFORE HIS LORDSHIP: HONOURABLE JUSTICE A. ADESODUN – JUDGE

THIS 15TH DAY OF AUGUST, 2019

SUIT NO: HAD/113C/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT

AND

MICHAEL ADEDAYO IHINOLURINJONDEFENDANT

JUDGMENT

By the information dated 17th day of November, 2017 but filed on the Prosecution laid a one count charge against the defendant pursuant to Section 390(g) of the Criminal Code Law Cap C16, Laws of Ekiti State, 2012 to wit:

STATEMENT OF OFFENCE

Stealing contrary to Section 390 (9) of the Criminal Code Law Cap C16, Laws of Ekiti State, 2012.

PARTICULARS OF OFFENCE

That you Michael Adedayo Ihinolurinjon ‘M’ on the 20th day of September, 2016 or thereabout, at the banking hall of the Fidelity Bank Plc, Ado Ekiti Branch, Ado Ekiti did steal the sum of N15,668,795: 00 (Fifteen Million Six Hundred and Sixty Eight Thousand Seven Hundred and Ninety Five Naira) only property of Fidelity Bank Plc, and thereby committed an offence punishable under Section 390 (9) of the Criminal Code Law Cap C16, Laws of Ekiti State, 2012.

The defendant was subsequently arraigned before this Court in January, 2018 wherein he pleaded not guilty to the charge against him.

On the 9th day of February, 2018 the prosecution opened its case and called 9 witnesses in total and tendered several documents in evidence which were admitted and marked as exhibits as follows:

- a. Statement of Richard Abimbola Akinyoade (PW1) as Exhibit 1
- b. Petition from Fidelity Bank dated 17th day of October, 2016 to EFCC Ibadan as Exhibit 2
- c. Olorunfemi Kunle's extra judicial statement as Exhibit 3
- d. Letter dated 29th day of September, 2016 as Exhibit 4
- e. 10 deposit slips as Exhibit 5 (a – i)
- f. Specimen of signature of Alabi Kazeem (PW7) as Exhibit 6
- g. Posted tickets as Exhibit 7 (1 -24) and 8 (1 – 12)
- h. Statements made by the Defendant on 5/10/2017 and 6/10/2017 as Exhibit 9 and 9A respectively.

However on the day the final written address was to be adopted the Prosecution informed the Court of their intention to amend the information against the Defendant.

The amended information dated 17th day of June, 2019 and filed on the 24th day of June, 2019 runs thus:

STATEMENT OF OFFENCE

Stealing contrary to Section 390 (9) of the Criminal Code Law Cap C16, Laws of Ekiti state, 2012

PARTICULARS OF OFFENCE

Michael Adedayo Ihinolurinjon 'M' sometime in August, 2016 or thereabout at the Fidelity Bank Plc, Ado Branch, Ado Ekiti did steal the sum of N7,000,000 (Seven Million Naira) only property of Fidelity Bank Plc and thereby committed an offence punishable under Section 390 (9) of the Criminal Code, Cap C16, Laws of Ekiti State, 2012.

STATEMENT OF OFFENCE

Sealing contrary to Section 390 (9) of the Criminal Code Law Cap C16, Laws of Ekiti State, 2012.

PARTICULARS OF OFFENCE

Michael Adedayo Ihinolurinjon 'M' sometime in August, 2016 or thereabout at the Fidelity Bank Plc, Ado Branch, Ado Ekiti did steal the sum of N8,000,000 (Eight Million Naira) only property of Fidelity Bank Plc and thereby committed an offence punishable under Section 390 (9) of the Criminal Code, Cap C16, Laws of Ekiti State, 2012.

The Defendant there and then pleaded not guilty to the two count amended charge.

It should be noted that when the prosecution attempted to tender the other statements of the defendant same was swiftly objected to by the defence counsel on the ground that the statements were not made voluntarily by the defendant.

A trial within trial was there and then conducted and ruling delivered wherein the document sought to be tendered i.e (statements of the defendants) were admitted and marked as exhibits A, B, C & D and the letter written by the defence counsel on behalf of the defendant dated 6th day of October, 2017 was admitted and marked as exhibit DF1.

On the other hand at the close of the prosecution's case the defendant opened his defence and testified on his behalf without calling any other witness. Though a witness was subpoenaed to tender documents in the person of Ikeolu Aderopo (the Acting Manager of Fidelity Bank, Ado Ekiti branch). She tendered the documents i.e the Daily Vault Naira Cash Balancing Register and the Vault Movement Register and they were admitted and marked as exhibits D4, D5 and the computer printout as exhibit D6 respectively. Thereafter the defendant closed his case.

The summary of the case for the prosecution and the defence from the evidence led is as follows:

PW1 (Richard Abimbola Akinyoade) the Resident Control Officer, Fidelity Bank Ado Branch, Ado Ekiti. His evidence touches on dry posting by some Tellers under the supervision of the Defendant. The shortage of N500,000 by one Teller Bolanle James on 20/9/2019, the shortage of N8,891,000 from the Bank vault, the disappearance of the Defendant from the bank on 20/9/2018 following his implication in fraudulent practices. Exhibit 1 is his statement.

PW2 (Awodiji Philip) an employee of Fidelity Bank. On 19/9/2016 he collected the sum of N1, 206, 000 from Novel Universal Resources Ltd, Ado Ekiti which he gave to the Defendant to post to the account of the company being a customer of the bank. He later discovered that the defendant had absconded without posting the money. The wife of the Defendant later brought N1, 206, 000 to the bank three days after the defendant had absconded from the bank.

PW3 (Onovae Oghenevo) of the Audit Unit at the Headquarters of the bank in Lagos conducted an audit into the operations of Ado Ekiti branch. His preliminary investigation reveals among others that the balance difference of N8, 891, 000 in the vault of the bank and also a balance difference of about 7, 200,000 in the customers' accounts. That his investigation reveals that N15, 668, 000 only was missing or stolen from the bank and or fraudulently diverted by the defendant.

PW4 (Abduwasiu Abolarin) former Operation manager. His evidence was a recapitulation of the various fraudulent means and methods adopted by the Defendant e.g. dry posting of tickets by Tellers, suppression of cash deposit of bank customers and posting of tickets not backed with cash. That the Defendant absconded from the bank on 20/9/2016 when the bubble burst.

PW5 (Olorunfemi Steven) of SEAP lodged a complaint with the bank in respect of irregularities discovered in the account of SEAP. Monies deposited by SEAP were not posted into the account. When he took the Defendant up on it he claimed that the bank was migrating from one software to another and that the irregularities would be sorted out. Which irregularities were not sorted out in that monies deposited into their account on daily basis were not reflected in the account of SEAP on 20/9/2019 he made a formal report to the bank.

PW6 (Omowumi Popoola) testified that on 15/9/2016 she banked N97,000 for SEAP and on 17/9/2016 she banked N100,200 for SEAP. The Defendant received the monies from her in the banking hall on behalf of Fidelity Bank. The monies were not reflected in the account of SEAP. Aside from this, on several occasions she paid money into the account of SEAP which payments were not reflected in the accounts of SEAP.

PW7 (Alabi Kazeem) testified that on 20/9/2016 Defendant gave him about 10 deposit slips to credit the account without cash backing. He told the Operation Manager when queried by the Operation Manager that the value of the deposit slips was N873, 800. See Exhibits 5, 5a – 5c. Exhibit 6 is his specimen signature.

PW8 (Oluwaleke Elisha) testified to the effect that Defendant gave him some deposit slips to post without cash backing as the Defendant told him that the cash was being counted in the bulk cash room. That the Defendant promised to release the cash later that he should keep on posting the slip which he did. The value of slips posted by him was N2, 438, 750. Exhibits 7, 7₁₋₂₄ were the slips posted by him. Exhibits 8, 8₁₋₁₂ (13 in number) were the slips not yet posted by him.

PW9 (Ayo Anjorin) an ASP with EFCC testified on his investigation activities relating to the case.

The petition upon which case was premised i.e. Exhibit 2 was referred to his team for investigation by Mrs. Ronke Ogunmefun, Head Bank Fraud Unit. Upon information that the Defendant was in Police Custody in Ado Ekiti, they came down from Ibadan to arrest the defendant. The defendant was shown the petition. The Defendant under caution volunteered his statement on 5/10/2017. He volunteered additional statement on 6/10/2017 and 9/10/2017 Exhibit 9 and 9a are the statements made by the Defendant on 5/10/2017 and 6/10/2017. The statement of the Defendant made on 9/10/2017, confessional slip form. The statement of the Defendant dated 7/11/2017 and the one he made on 20/11/2017 were later admitted as Exhibits A, B, C and D respectively (after trial within trial).

The confessional statement of the Defendant was duly endorsed by Juliet Odogwu who testified as PW2 during the trial within trial.

Extracts from the evidence of PW9 is as follows:

“...we invited the affected officials of the bank and interviewed them at the commission. In the course of the interviews they confessed that the deposit slips were handed over to them by the defendant without the physical cash to back same up. One of the official invited by us was Elisha Oluwaleke so also Kazeem. There is also one Philip. They said they were just Tellers under the supervision of the Defendant. That they were directed to post the figures on the deposit slips while some of the slips were not posted at all...”

According to PW9 investigation revealed that the Defendant had been collecting deposit money and slips from bank customers hand over the deposit

slips to his subordinate to sign and not remitting the amount involved into the vault of the bank. That the Defendant made attempt to cover up his deeds by arranging higher denomination currency notes on top of lower denomination in the vault of the bank. Finally, PW9 stated that their investigation revealed a prima facie case of stealing against the Defendant.

With the evidence of PW9 the case for the prosecution was closed. It should be noted that the Defendant Counsel duly cross examined the witnesses.

In his defense the Defendant denied the allegations against him. He testified that he did not remove the sum of N8, 891, 000 from the vault of Fidelity Bank, Ijigbo, Ado Ekiti.

He admitted paying N7, 000, 000 to some men. That the money was paid from the money in the outside vault which was meant to be paid into the vault of the bank. He did not mention the incident to anybody. Efforts made by him to locate the men were all in vain.

He admitted absconding from the bank and or banking hall on 20/9/2016 when there was no way he could have balanced up the repayment of the money.

Exhibits 5, 5a – 5i were signed by him and backed up with cash. That Exhibits 8, 8₁₋₁₂ were collected by him and given to the Tellers but not backed up by cash.

According to the Defendant he did not agree with the figure of N15, 668, 795 as being stolen by him from Fidelity Bank.

Under cross examination by the prosecuting counsel the defendant admitted that the N7,000,000 he paid out to the men was still part of the bank's money.

It should be noted that Ikeolu Akinropo DW2 the Acting branch Manager, Fidelity Bank, Ijigbo, Ado Ekiti was subpoenaed on behalf of the Defendant to tender Exhibits D4, D5 and D6.

The Defendant identified his signature on Exhibits D4 and D5 following which the case for the Defendant was closed.

On the order of Court learned counsel appearing filed their final written addresses which have formed part of the record of this court and will be referred to where necessary in the course of this judgment.

It suffices it here to say that the learned counsel for the defendant formulated a sole issue for determination to wit:

“whether from the totality of the evidence adduced by the prosecution

In this case, the prosecution has proved beyond reasonable doubt the

Guilt of the defendant on the charge preferred against the defendant”

In arguing the sole issue in his final written address dated 19th day of June, 2019 and filed on the 21st day of June, 2019 learned Counsel for the defendant submits it is the duty of the prosecution to prove the guilt of the defendant beyond reasonable doubt and not beyond suspicion or speculation hence they must prove the essential ingredients of the offence charged.

Learned counsel referred to the case of BAKARE V. THE STATE (1987) LPELR (714) 1 @12-13 and Section 36 (5) of the Constitution of the Federal Republic of Nigeria (as amended) and section 139 of the Evidence Act.

He submits that no matter the gravity of the offence it remains an allegation until it is proved and prosecution must discharge the burden by proving beyond reasonable doubt that the defendant actually committed the offence charged. He cited DARLINGTON V. FRN (2018) LPELR 43850 (SC) and KAZEEM V. THE STATE (2009) ALL FWLR (PT465) 1749@1777-1778 paragraph E-B and B-E.

Learned counsel stated the ingredients the prosecution must prove in order to succeed in a case of this nature as stated in the case of ADENIJI V. THE STATE (1992) 4 NWLR(PT234) PAGE 248 as:

1. The act of taking
2. The action of conversion
3. Element of fraud
4. The intention to permanently deprive the owner of his ownership
5. The fact that the accused was the person who stole the property.

He submits that the prosecution failed to establish the fact that the defendant was seen moving the alleged stolen sum into his pocket neither was he seen stashed the same into a bag and or fraudulently converted same to his personal use.

He further submits that the case of the prosecution is full of material contradictions which the court cannot ignore and that the court cannot speculate on which of the material contradictions to believe, he relied on BOY MUKA & ORS V. THE STATE (1976) 9 & 10 SC 305 @325

AREHIA V. THE STATE (1982) LPELR –SC.81/1981

He stated that for the contradictions to be material it must have led to miscarriage of justice. He referred to BABATUNDE & ORS V. THE STATE (2013) LPELR-21896 (SC).

He urged the court to hold that the case of the prosecution is fraught with material contradictions.

He further submits that the prosecution could not establish the exact figure allegedly stolen by the defendant as the sum quoted in Exhibit 2 is quite different from the evidence of PW1 and the testimony of the defendant. He

urged the court to resolve the issue of doubt as to the exact amount allegedly stolen by the defendant in favor of the defendant.

Learned counsel submits that for the offence of stealing to be committed that prosecution must prove that the defendant had the intention of fraudulently taking anything capable of being stolen. That the prosecution must equally prove the mens rea and actus reus for the defendant to be convicted of a crime other than strict liability offences. He relied on the case of *ABBAH V. FRN* (2017) LPELR-43373 (CA).

It is the submission of counsel that the case of the prosecution is largely on circumstantial evidence and for the prosecution to establish the guilt of the defendant, the totality of the circumstantial evidence must be cogent, compelling and equivocal and not mere suspicion which will not sustain a valid guilt of the defendant. He relied on *STATE V. AJAYI* (2016) LPELR-40663, *OMONGA V. STATE* (2006) ALL FWLR (PT306) 930@938 RATIO 15.

Learned counsel urged the court to give the provision of Section 390(9) of the criminal code law Cap 16, Laws of Ekiti State its ordinary grammatical meaning without any embellishment by resorting to external aids for interpretation. He relied on *FRN V. OSAHON* (2005) 5 NWLR (PT973) 361.

Learned counsel submits that there is nowhere in the evidence of the prosecution witnesses that the defendant used any key to open any locked room not even the vault neither was it stated in anywhere that the vault was tampered with. He urged the court to hold that the prosecution has failed woefully to establish the guilt of the defendant and therefore discharge and acquit the defendant.

The final written address of the prosecution was struck out for being incompetent.

Having considered very carefully the case for the prosecution and the defence in the circumstances of this case I am of the view that the issue formulated by the defence counsel is apt in the circumstances of this case and the sole issue bothers on whether or not the prosecution has established the offence alleged against the Defendant beyond reasonable doubt. It is on this basis or issue that this case will be determined. The offences alleged in the two counts will be considered together.

It is not in doubt that the charges against the Defendant is criminal and the burden is on the prosecution to prove the guilt of the Defendant beyond reasonable doubt. It is equally not in doubt that the object of the charge is money which is capable of being stolen. The evidence of all the prosecution witnesses point to a systemic plan orchestrated by the Defendant as the cash officer at Fidelity Bank Ijigbo Ado Ekiti through the instrumentality of his subordinates i.e. Tellers under him to perpetrate fraudulent practices in the bank resulting in cash suppression, dry posting of deposit slips, non posting of deposit slips to outright diversion of cash for personal use by the Defendant to the detriment of his employer i.e. Fidelity Bank.

Let us at this stage pause to examine some of the exhibits tendered by the prosecution in the circumstances of this case beginning with Exhibit A.

In Exhibit A the Defendant owns up by admitting the sum of N16, 142, 600. It was made by the Defendant on 9/10/2017 and recorded and signed by him personally. Same was endorsed by Odogwu Juliet (PW2) during trial within trial.

Exhibit B: the form relating to the confessional statement of an accused to the EFCC showing that the Defendant made his statement to the EFCC which he duly signed showing in particular in paragraph F wherein the Defendant admitted making the statement voluntarily.

Exhibit C: the Defendant states that N8,000, 000 went to Divine Family Academy that he changed to 1st Line International School through his wife.

Exhibit D: Defendant states in part "...I wish to add categorically that the sum of N16,000,000 was invested in my wife's school...". I came home every day so there was no need for me to pay anything through my account. She was also the one that gave the advise so that she can always have direct access to the fund anytime she needed it. He also invested part of the money into MMM.

Exhibit 3: statement of Olorunfemi Kunle detailing the discrepancies in the account of SEAP with Fidelity Bank. He complained about suppression of cash relating to the account of SEAP.

Exhibit 9: statement of the Defendant dated 5/10/2017. He admitted the amount involved N7,500,000 and not N16,142, 000.

Extracts goes thus:

"...these people I never met them before. The 2nd day they came and said they have collected the forms and promised to take it home to complete and bring the following day. Then when they came the third day they sat in front of me. one of them just told me after exchanging greetings that they need money and that I should pay them N7,000,000. They never came with any cheque or document to back it up. I then after some seconds went into the bulk room to carry the cash from the bulk cash already counted by the Tellers to pay them and they left. These people till now I cannot recognize them..."

Exhibit 9A:

Extracts goes thus:

"...in addition to my earlier statement made on 5/10/2017 I wish to state as follows that I have to leave the branch without any permission or hand over note. That was done because there was no way for me to

make up all transfer given to Tellers to post. While I left I collected N500,000 from a Teller without any document.

The above Exhibits are the statements made by the Defendant to the EFCC duly recorded and signed by him.

Let us look at these issues of paying N7,000,000 to faceless men by the defendant claiming that he was hypnotized by the men. This is very hard to believe as the Defendant himself admitted that he did not tell anybody including his boss. Though he made some ramblings about making some repayment which he is not sure of. All of this points to the systemic scheme employed by the Defendant to defraud his employer i.e. Fidelity Bank.

I believe the evidence of all the prosecution witnesses and I accept same as the truth in the circumstances of this case.

A criminal matter can be founded on:

1. Direct evidence
2. Circumstantial evidence that is cogent and unequivocal and points to the guilt of the accused person
3. Confessional evidence which is invariably the best evidence.

In the circumstance of this case there is direct evidence coming from some of the prosecution witnesses e.g. PW1 – PW8 to the fraudulent scheme of the Defendant in the Bank culminating into his abscondment from the bank on 20/9/2016.

It is not in doubt that the amount involved were diverted by the Defendant for his personal use with a view to permanently deceive his employer of the ownership of the money involved.

As stated earlier Exhibit A, C, D, 9 and 9A are confessional statements made by the Defendant in the course of investigation by EFCC to this case.

In *Ekure V. State* (1993) 13 NWLR (Pt 635) 456 @469 para H the Court of Appeal held thus:

“by virtue of section 27(1) of the Evidence Act a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. The law is that the accused makes a free and voluntary confession which is direct and positive and is properly proved, the accused may be convicted on the confession.

The defendant having admitted to the commission of the alleged offence as contained in Exhibits 9, 9a, A, C and D the prosecution has established all the ingredients of the alleged offence for which the defendant is charged.

See *Igbinovia V. The state* (1981) 2 S.C 5 @ 17 -18.

The onus thus placed on the prosecution to prove the guilt of the defendant has been discharged by the admission of the confessional statement therefore the burden now shifts to the defendant to rebut which he failed woefully to do in the circumstance.

In *Solola V. State* (2005) 11 NWLR (pt937) 460 @ 497-498 the Supreme Court per Niki Tobi JSC (as he then was) stated thus:

“a confessional statement is the best evidence in the Nigerian Criminal Procedure. It is a statement of the admission of guilt by the accused and the court must admit it in evidence unless it is contested at the trial.”

Once a confessional statement is admitted the prosecution need not prove the case against the accused person beyond reasonable doubt as the confessional statement ends the need to prove the guilt of the accused...”

The confessional statement of the Defendant revealed various sum of money fraudulently converted by the Defendant most importantly the N7,000,000 he claimed to have paid to the faceless men.

I have considered the defence of the Defendant and I have no hesitation in rejecting the same as an afterthought. The confessional statement made by him as highlighted above have rendered valueless whatever the defendant may have concocted in defence.

On the whole, I hold that from the totality of the evidence before the Court the prosecution has established the charges against the defendant beyond reasonable doubt. The issue resolved for determination is resolved against the Defendant.

I find the Defendant guilty as charged and I convict him on each of the two count accordingly.

Hon. Justice A. Adesodun
Judge

Allocutus:

Mr. Akinrata: the essence of punishment is to deter an offender from committing a similar offence. The convict is a first offender. He had learnt his lesson. He is a man of straw. If allowed to stay long in prison he may end up losing his life as a result of psychological trauma.

We urge the Court to mitigate the punishment of the Defendant by giving the convict an option of fine as he may still be useful to the society.

Mr. Suleman: we confirm that the defendant is a first offender but we urge the Court to make an order as tom restitution.

SENTENCE:

The Court will be lenient in imposing sentence on the defendant being a first offender in this regard the convict will be given an option of a fine and there is the need for the court to make an order for restitution in favour of the nominal complainant i.e Fidelity Bank. The total sum involved is about N15,000,000.


In the circumstance the convict is sentence as follows:

Count I: a fine of N100,000 or five years imprisonment in lieu of fine.

Count II: a fine of N100,000 or five years imprisonment in lieu of fine.

The fine shall be cumulative while the terms shall be concurrent.

Similarly, an order for the restitution of the sum of N7,000,000 only is made in favour of the nominal complainant i.e. Fidelity Bank. The payment of which shall be made in installments based on agreement between the convict and the Bank to be facilitated by Adelanke Akinrata Esq. the learned Counsel for the convict.


Hon. Justice A. Adesodun
Judge

APPEARANCES:

A.L. SULEMAN Esq. for the Prosecution.

Adelanke Akinrata Esq. for the Defendant.