

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA

IN THE KADUNA JUDICIAL DIVISION

HOLDEN AT KADUNA

SUITNO: KDH/KAD/8/EFCC/15

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

.....COMPLAINANT

AND

BALA ISA IDRIS

.....DEFENDANT

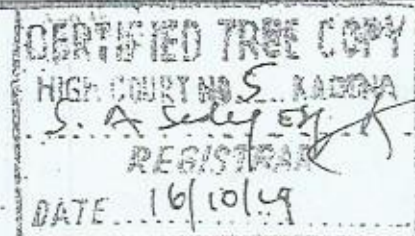
14/10/19

Defendant in Court, Speaks English

Y. Ajibola for defendant

RULING

The defendant is standing trial on a charge of cheating one Alhaji Bashir Ahmad of the sum of N3 Million which sum he obtained under the pretence that as Chairman of Kaduna South Local Government he had authority to dispose of a piece of land belonging to the Local Government. In the effort to prove the charge, the prosecution called 4 witnesses and tendered 5 documents including the Petition which complained against the action of the

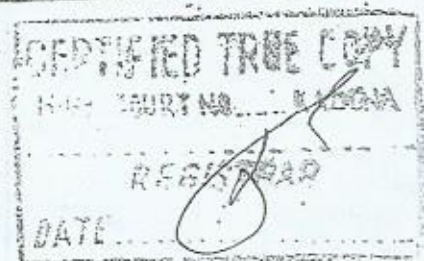


defendant before the EFCC, a letter dated 7th October 2015 written by the Ministry of Lands, Surveys and Country Planning to the Zonal Head of the EFCC Zonal Office Kano in relation to the status of ownership of the piece of land allegedly sold by the defendant and three extra judicial statements made by the defendant (Exhibits 1,2,3,4 and 5).

The defendant filed this No Case Submission on 27th May 2019 after the prosecution had close its case.

It was contended in the Written Address of the defendant that the totality of the evidence led by the prosecution have not established the essential ingredients of the offence of cheating. That there was no evidence of any direct contact between the nominal complainant who testified as PW1 and the defendant throughout the transaction to warrant any inference of deceit on the part of the defendant. That the PW3 and PW4 both former councilors in the Local Government have confirmed that the piece of land in this case belongs to the Kaduna South Local Government and that the defendant as Chairman of the Local Government had the right to lease it out and does not require the approval of the Governor of Kaduna State to do so.

On the evidential value of Exhibit 1, the Ministry of Lands, Surveys and Country Planning letter referred to earlier, it was submitted that the letter has

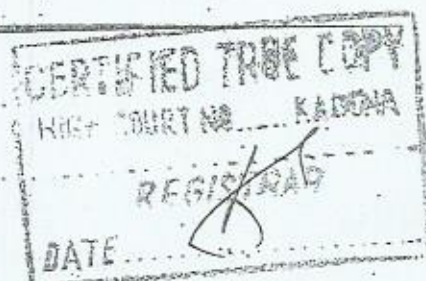


no probative value because the author of the letter was not called as a witness. The case of OKONKWO V STATE (1999) 8 NWLR (pt. 561) 210 at 258 and OLATUNJI V WAHEED (2012) 7 NWLR (pt. 1298) 24 at 47 E – F were referred to in support. The decision in SHATTA V FRN (2009) 10 NWLR (pt. 1149) 403 at 413 on the need for the Court to be satisfied that there's in law a connection between the criminal conduct alleged against the defendant and the offence he is charged with. I was urged to sustain the no case submission and to discharge the defendant.

The Prosecution in their Written Address in response to the No Case Submission contended that a prima facie case has been shown to support the charge. That the totality of the evidence adduced oral and documentary, at first look and on its face value have established the offence with which the defendant was charged. The cases of STATE V NWACHINEKE (2008) ALLFWLR (pt. 398) 204 at 231 and OKAFOR V STATE (2016) LPELR – 26064 (SC) at 26 and 27 were referred to in support.

The prosecution identified the ingredients of the offence to include:-

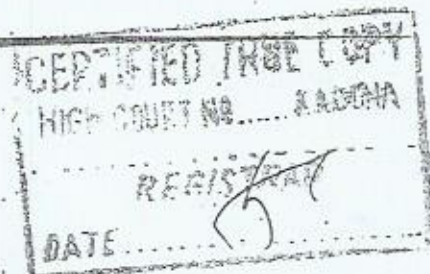
- a) The person deceived did or omitted to do something which he was not bound to do or omit to do
- b) The person deceived was induced by the accused as above



- c) The person acted upon the inducement in consequence of his having been deceived by the accused
- d) The accused so induced that person intentionally
- e) The act or omission caused or was likely to cause damage or harm to that person in body, mind, Reputation or property.

The prosecution has Submitted that the complainant paid the N3 Million for the land and he was not bound to pay that. That evidence of PW1, the Petition (Exhibit 2) and the statements of the defendant have established the 2nd and 3rd ingredients of the offence. That intention of the accused should be inferred from the fact that the defendant had an earlier Agreement with the Mechanics and from exhibit 1 which shows that he has no power to sell the land. Finally that the complainant lost N3 Million for a land the defendant had no approval to sale. I was urged to overrule the no case submission and in considering the submissions to only determine whether the prosecution has made out a prima facie case ie whether there is admissible evidence linking the defendant with the offence with which he is charged. (ALEX V FRN (2018) DLR – SC. 613/2017.

It is important to state that the distinctive feature of cheating is that the actus reus is always completed by an act or omission of the victim. The defendant



does nothing more than deceit and inducement. Deceit is making a person to believe what the accused person knows or has reason to believe is not true. The property must have been delivered in consequent of the deceit. Deceit must be proved by the prosecution as an essential ingredient of cheating. See SAMBE V POLICE (1968) NNLR 27. None of the witnesses in this case has testified that the nominal complainant ever had contact with the defendant during the transaction to warrant any inference of deceit on the part of the defendant. The nominal complainant who testified as PW1 did not mention the defendant as the person he had transaction with in respect of the land. He mentioned the PW4 Shehu Auwal and another person called Zubairu both of whom were Councilors of the Local Government at the material time. They were the persons he dealt with in respect of the transaction in this case. He didn't say that it was the defendant who sent them to conduct the transaction on his behalf and that the defendant made a representation to him through them which made him to part with his N3 Million. Indeed there was no evidence whatsoever to show that the defendant had any contact or made any representation to the PW1 which induced the PW1 to part with his money. The Charge in this case is clear that the pretence alleged against the defendant is that he had authority to dispose of the land belonging to Kaduna South Local Government of which, he was then its



Chairman. Both PW3 and PW4 called by the prosecution have stated that the defendant has the power to lease the property in contention in this case. It is the investigation of the complainant that brought about the only evidence which shows that the land falls outside the jurisdiction of the Local Government to allocate. I have stated earlier, no representation was made by the defendant to link him with the PW1 which have made him to part with his N3 Million. I have no doubt that the evidence led by the prosecution in this case falls short of establishing the essential ingredient of deceit against the defendant.

This is not the end of the matter. I believe the evidence so far adduced has disclosed prima facie case of a lesser offence of criminal misappropriation punishable under Section 309 of the Penal Code. I therefore call upon the defendant to enter his defence.

Signed

Hon. Justice M.T.M. Aliyu Judge

14/10/19

