

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA

BEFORE: THE HON. JUSTICE M.T.M. ALIYUJUDGE
SUIT NO: KDH/KAD/1/EFCC/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

- 1. MURTALA SHARIFF AHMED
(A.K.A. MOHAMMMED SHARIFF IBRAHIM,
MUHAMMADU SHARIFF) }DEFENDANTS
- 2. CLETUS ILIYA
- 3. ESSIEN EKANEM.....DEFENDANT/APPLICANT
- 4. MOHAMMED SANI }
5. DAVID MICHEAL }DEFENDANTS
6. JOEL }

15 - 11 - 2017

1st and 3rd defendants in court.

1st defendant (speak Hausa)

3rd defendant (speak English).

G. Didam for 1st defendant.

G.O. Akpovwa for 3rd defendant with him P.Y.

Garba and Victor Fredrick.

R U L I N G

This is a no case submission filed by the 3rd defendant.

The 3rd defendant is standing trial before this court along with the 1st defendant on a 7 count charge of conspiracy and dishonestly obtaining the total sum of ₦64 million from one Alhaji Ibrahim Idris. The allegation in the 7 counts charge is that the accused persons with intent to defraud obtained various sums of money as in counts 2 – 7 from the nominal complainant on the pretence that the 1st defendant owns the plot of land No. 5 Kwato Road, U/Rimi, Kaduna which he sold to Alh. Ibrahim Idris.

The defendant pleaded not guilty to the charge and the prosecution led evidence by calling 5 witnesses in the effort to prove the allegations. 21 documents were tendered as exhibits by the prosecution.

Learned counsel for the 3rd defendant argued that the prosecution had not proved the ingredients of the offence of conspiracy and obtaining money by false pretence. It is his argument that for the offence of conspiracy to bind the 3rd defendant the charge must contain particulars of time and place of the offence and the person against whom it was committed. The charge did not contain such particulars of the agreement to conspire between the accused, neither was the time and place provided. See section 202 of the CPC.

The 3rd defendant's counsel also argued that the evidence of PW1 – the Director of Lands Administration and exhibits 1, 2, 3 have not shown

any connection whatsoever between the 1st and 3rd defendants. Likewise PW2 – Lawal Balarabe who under cross examination stated he does not know the 3rd defendant. PW4 – Abubakar Abdulkareem under cross examination admitted he was surprised there was an existing Certificate of Occupancy No. NC 927 issued to same Col. A.B. Umar. He admitted that L. Babagana instructed the 3rd defendant to carry out the search, that Babagana prepared the Sales Agreement in respect of the transaction. PW5 - Alh. Ibrahim Idris testimony did not also connect the 1st and 3rd defendant. On the whole he urged me to strike out the count on conspiracy or in the alternative sustain the no case submission.

With due respect to the learned counsel for the 3rd defendant the argument in relation to section 202 of CPC will not hold water as far as the offence of criminal conspiracy is concerned. The dates and time of the agreement cannot possibly be known to the prosecution. This is because agreement to commit an offence is usually a matter of inference and not an action that can be seen practically. Once the time and dates of the main offence conspired are stated there is compliance with section 202 of CPC.

The learned prosecutor in his address argued that connivance was proved through the evidence of PW4 and exhibit 7.

The evidence of PW4 – Abubakar Abdulkareem, an investigator with the anti-graft agency whose testimony was that the piece of land was

originally allocated to one Col. A.B. Umar who was involved in a coup. The defendants learnt of this development and connived to procure a fraudulent title document purporting transfer to the 1st defendant. Heavy reliance was placed on this piece of evidence by the prosecution and I was urged to rely on this and allow the 3rd defendant enter his defence.

A careful look at the cross examination of the PW1 by the 3rd defendant's counsel, he stated not knowing who applied for the title of the property No. 5 Kwato Road. In his word.....

“I do not know who applied for assignment. I don't know if it was the 3rd defendant who brought the application for assignment to the ministry of lands. 3rd defendant is neither the assignor nor the assignee of exhibit 3. Exhibit 3 was prepared by Barrister Y. Abdullahi...”

Exhibits 1, 2 and 3 were tendered through him. Exhibit 1 is a letter on the finding by the surveyor-general, exhibit 2 is a site inspection report of a piece of land situated at Kwato Road Kaduna, while exhibit 3 is a deed of assignment between Lt. Col. A. B. Umar and Alh. Muhammadu Shariff Ibrahim prepared by Barrister Y. Abdullahi.

It is the evidence of PW2 – Lawal Balarabe, the surveyor-general of Kaduna State; that he does not know the 3rd defendant.

PW4 – Abubakar Abdulkareem stated on oath “Barrister Laminu Babagana is counsel to Alh. Idris. I don’t know if the 3rd accused knows 1st accused before they were introduced by Babagana.

Our investigation revealed that the search conducted by the 3rd accused at the Lands Registry shows Barrister Babagana instructed the 3rd accused to work for the 1st accused. It was not the 1st accused that directly instructed the 3rd defendant..... I was not there and wouldn’t know what the 3rd accused told Alh. Babagana after the search except what Babagana stated in his extra judicial statement.....

Yes I found that when the 3rd accused went to conduct the search he discovered that its land has been sub-divided into 3 plots, 3, 3A and 5. This was not reflected in the certificate of occupancy of the land earlier given

None of the monies paid by Alh. Ibrahim Idris were paid to the 3rd accused.”

PW5 – Ibrahim Idris on oath made it categorically clear that his lawyer Babagana prepared all the documents needed, he had no dealing with any lawyer including the 3rd accused on this matter except Babagana. He also stated that he made payments to the 1st accused not to any of the other accused persons. Exhibit 7 is the recorded statement of the 3rd defendant. The only mention of money is of ₦6,000,000.00 (Six Million Naira) of which he was paid ₦5,000,000.00 for legal jobs he did.

Conspiracy was defined in *STATE VS AUGUSTINE OTU* (1964) NWLR 113 at 113 as “Conspiracy means an agreement voluntarily and intentionally reached by two or more people”.

“A prima facie case denotes a situation where there is ground to proceed against the defendants”.

See *IBEZIAKO VS COMMISSIONER OF POLICE* (1963)1 ALL NLR 61. The court may uphold a no case submission where one of the following conditions is satisfied:-

- a) “Where there has been no evidence to prove an essential element in the alleged offence either directly, circumstantially or inferentially,
- b) Where the evidence adduced by the prosecution has been so discredited as a result of cross examination or is

so manifestly unreliable that no reasonable tribunal can safely convict on it.”

See *IBEZIAKO VS COMMISSIONER OF POLICE (supra)*.

From the evidence of Pw1, PW2, PW4 and PW5 and exhibits 1, 2, 3 and 7 facts on conspiracy were not proved. No evidence to show that agreement to commit any offence was put forward.

Counts 2 – 7 bother on dishonestly obtaining several sums of money by the 3rd defendant. The prosecution relied heavily on exhibit 3 and on the fact that perfection on behalf of Lt. Col. A. B. Umar was stopped midway and the failure of the 3rd defendant’s non disclosure of his finding when he conducted search in respect of the property. I was asked to rely also on the evidence of PW4. The 3rd defendant counsel argued that elements of the offence as stated in section 1 (1) (b) of the Advance Fee Fraud and Other Fraud Related Offences Act ,2006 must be present, he argued such evidence has not been placed before me to establish obtaining by the false pretence.

A close study of the evidence before me I have not seen anywhere in the evidence of PW1, PW2, PW4 and Pw5 where the 3rd defendant obtained money by false pretence or connived with the 1st defendant to do so. It is interesting to note that the PW5 in his cross examination stated.

“..... I never had any dealing on this matter with any other lawyer including the 3rd accused.

I made payments to the 1st accused but not to any of the other accused persons.”

The PW5 is the alleged victim of the crime and he did not have any dealings with 3rd defendant.

The 3rd defendant in his statement on oath (Exhibit 7) stated;

“..... I was instructed by L. Babagana to help in perfecting and documenting the transactionI conveyed the situation to L. Babagana.”

It is evident that the 3rd defendant acted on the instruction of L. Babagana. He reported back to Babagana and had no dealings with 1st defendant in respect of the property the subject of the charge in this case.

To support this, the PW4 stated during cross examination:-

“I was not there and wouldn't know what the 3rd accused told Alh. Babagana after the search except what Babagana stated in his extra-judicial statements.

There's an indemnity clause in the sale agreement and deed of assignment between Alh. Idris and 1st accused.

The 3rd accused did other things in his professional service apart from conducting search. I agree he is entitled to be paid fees.

None of the monies paid by Alh. Ibrahim Idris were paid to the 3rd accused.”

The 3rd defendant is not standing trial for “deliberately refusing to disclose some of his findings (discrepancies) and their legal implication to the nominal complainant” as complained by the prosecution in their written address. I believe there’s no crime in our law books known as deliberate non disclosure of findings by a professional. I have not seen such crime. In any event if such were a crime in the instant case, the 3rd defendant was never charged for it.

The 3rd defendant is standing charge for criminal conspiracy and obtaining money by false pretence. Agreement is one of the ingredients of conspiracy and there was no relationship whatsoever between the 1st and 3rd defendants established as far as the sum of money in counts 2 – 7 of the charge. Both PW4 and PW5 agree that no such relationship existed between them. The offence of obtaining by false pretence could not be established against the 3rd defendant when the said witnesses conceded during cross examination that the sums of money in counts 2 – 7 were never given to the 3rd defendant. It cannot be established when the prosecution has failed to show how the 3rd defendant connived with

the 1st defendant to deceive PW5 to part with any of his money in counts 2 – 7.

No nexus has been shown between the crimes in counts 1 – 7 and the 3rd defendant. In such circumstances, no prima facie case has been shown by the prosecution to call upon the 3rd defendant to enter his defence. That being the findings of the court, the no case submission is upheld and the 3rd defendant is hereby discharged.

Signed Hon. Justice M.T.M. Aliyu – Judge

15/11/2017

DIDAM – We ask for a date for defence of 1st defendant, in view of the letter of the prosecution for adjournment.

COURT – Adjourned to 29/11/2017 for defence.

Signed Hon. Justice M.T.M. Aliyu – Judge

15/11/2017