

IN THE HIGH COURT OF EKITI STATE OF NIGERIA
IN THE IKERE-EKITI JUDICIAL DIVISION
SITTING AT IKERE-EKITI.

BEFORE HIS LORDSHIP HON. JUSTICE O.I.O OGUNYEMI
THIS THURSDAY DAY THE 24TH DAY OF OCTOBER, 2019

CHARGE NO: HCR/3^C/2016

THE STATE OF EKITICOMPLAINANT

V.

DARAMOLA OYINDAMOLA.....DEFENDANT

JUDGMENT

The Defendant was arraigned on eight Count information and charge with the following offences:

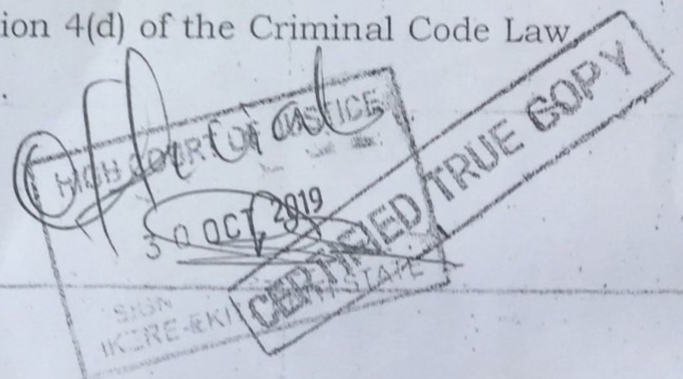
Count 1: Conduct likely to cause the breach of peace contrary to Section 249 of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012.

Count 2: Forcible Entry, contrary to Section 81 of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012.

Count 3-6: Obtaining Money under False Pretence contrary to Section 419 of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012.

Count 7: Impersonation contrary to Section 484 of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012.

Count 8: Forgery contrary to Section 4(d) of the Criminal Code Law Cap C16, Laws of Ekiti State 2012.



When the charge was read to the Defendant he understood perfectly to the satisfaction of the Court and he pleaded not guilty to each of the eight count charge.

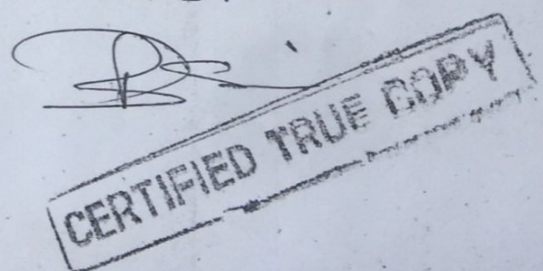
After several adjournment at the instance of the Defendant due to non-representation by his lawyer, Defendant elected to defend himself. To prove its case learned prosecution called four witnesses.

The evidence of the PW1, PW2 and PW3 can be summarized thus, the Defendant through his agent Pastor Ogunbiyi collected the sum of One Hundred Thousand Naira (N100,000.00) from each of Eniafe Titilayo (PW1), Azeez Abiodun (PW2) and Owoeye Bosede (PW3) with the pretext of selling a plot of land to each of them at different locations. Defendant presented himself as Barrister Oyindamola Daramola. He also collected from each of PW1 - PW3 a sum of N2,500.00 to prepare affidavits of transfer of ownership. However, according to the evidence adduced by PW1, PW2 and PW3 the real owners of the plots the Defendant purportedly sold to them prevented them from taking possession of the plots of land Defendant sold to them.

Evidence was led to show that when the police intervened, the Defendant could not show any title to the plots of land he sold to the PW1, PW2 and PW3.

Defendant, having elected to conduct his case by himself cross-examined the witnesses but he could not shake their credibility, rather the answers to his cross-examination further entangled him in the web of atrocities he allegedly committed.

The receipt issued to the PW1 by the Defendant, was admitted in evidence as Exhibit "A" while the affidavit of transfer of ownership by the defendant to PW1 was admitted as Exhibit "B".



When PW1 was re-examined, he replied that the Defendant posed as and claimed to be the owner of the land sold to him while the said Pastor Ogunbiyi is just his agent.

The receipt issued to the PW2 was tendered and admitted in evidence as Exhibit "C", while the affidavit of transfer of ownership sworn to by the Defendant and given to him by the Defendant was admitted in evidence as Exhibit "D". The Prosecution further tendered other exhibits through tendered other exhibit through the PW2 which were admitted as exhibits as follows"

1. Affidavit of Renew of Land Agreement as Exhibit "D".
2. Affidavit for renew of land Ownership as Exhibit "E".
3. The Odunro family receipt as Exhibit "F"
4. Extraction from police crime diary as Exhibit "G".
5. Receipt issued to PW3 – Exhibit "H"
6. Affidavit of transfer of ownership sworn to by the Defendant and issued to the PW3 – Exhibit I.

The PW4 was one Inspector Ajegbemibola. He stated that he served in Ikere-Ekiti between year 2004 and 2016, attached to the Divisional Headquarters Anaye, Ikere-Ekiti and was also attached to the crime branch of the division. He stated that he knows one Sergeant Eze John, because he served under the PW4. PW4 further stated that the Sergeant Eze John has been transferred to Oyo State but he was currently on a foreign trip as at the time of giving this evidence.

PW4 testified that he has met the Defendant in the course of his duty at the police station with Defendant coming to the Station as a Barrister. He gave evidence that on 15/12/2014 one Ojo Owoyemi Dare, a land and property agent lodged a complaint at the police station that a plot of land his Client bought from the Defendant turned out to be false. Further, the said Ojo Owoyemi

Dare informed him that it was at the Police Station that they discovered that the Defendant is not a real Barrister as he claimed.

PW4 stated that the Defendant wrote his statement after he was cautioned and signed the Statement as the maker. PW4 testified further that when Defendant came to the Police Station, he was confronted by Sergeant Eze John on his claim to be a Barrister. A complimentary card of Falana & Falana with the name of the Defendant as Barrister Oyindamola Daramola was tendered admitted as Exhibit "J".

PW4 stated further that when a search warrant was executed in the house of the Defendant some items were recovered which were tendered and admitted in evidence as:

- Exhibit K - Police Investigation report
- Exhibit L - The Statement of the Defendant
- Exhibit N - NYSC Certificate bearing Defendant's name.
- Exhibit O - Search Warrant
- Exhibit P - Nigeria Law School Certificate retrieved from the house of the Defendant.

Finally, when asked he replied that all exhibits A-I were brought to the station where he sighted them.

When cross examined by the Defendant on whether the PW4 was among those who came to execute search warrant in his house the witness denied ever saying so. He stated that investigation is a team work. That Inspector Adedoya led the team while he was assigned to another work.

When asked by Defendant if he has ever seen him practice in the court as a lawyer, PW4 replied that he has not but that the Defendant introduced himself as a Barrister.



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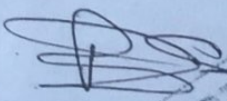
As stated earlier, the Defendant elected to defend himself and did not call any witness apart from himself.

His evidence was that for some time he has been sending people to clear the land in question because he was outside Ekiti State. On his return to Ikere he saw his uncle, Pastor Ogunbiyi and instructed him to allocate land to purchasers which he did. Defendant stated that the Pastor Ogunbiyi only gave him N50,000 out of the money collected for the land sold.

Defendant testified that he was brought up in Kaduna and that only Pastor Ogunbiyi knows the boundaries of the land. Defendant stated that on the advice of Pastor Ogunbiyi he attended the Isinkalu family meeting where he was told that his father's portion of the family land has been sold. He stated that he then instructed Pastor Ogunbiyi to refund money to those who purchased land from him if it will lead to problems. Defendant stated further in evidence that he returned the sum of N200,000.00 to Pastor Ogunbiyi and that when one woman named Bose asked for her money he directed her to Pastor Ogunbiyi.

Defendant later instructed a Counsel to write to the Isinkalu family to stop trespassing on the land and he later arrested some trespassers on the land together with members of Isinkalu family and were taken to the Police Station.

He testified that the police together with his father's siblings came to his house and when he was asked about the documents and deeds on the land he told them when his father died, his house was burgled and the land documents were among the things stolen away. He stated that the police towed away his two cars and carted away his properties and was detained. Defendant stated that when he was arrested and was asked to refund the money he refused and told the police that the money is with Pastor Ogunbiyi.


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When cross-examined, the Defendant stated that he did not volunteer his statement. When asked if he would not be surprised that 70% of his statement tallies with his evidence before the Court, the Defendant replied that he wouldn't know anything about it. Prosecution then asked Defendant whether he knows Daramola Sunday, Daramola Ayo and Daramola Kehinde. He replied in the affirmative. When he was further asked how the police got to know all these, witness replied that he wouldn't know.

When it was suggested to the witness that Pastor Ogunbiyi acted on his behalf, he replied in the affirmative.

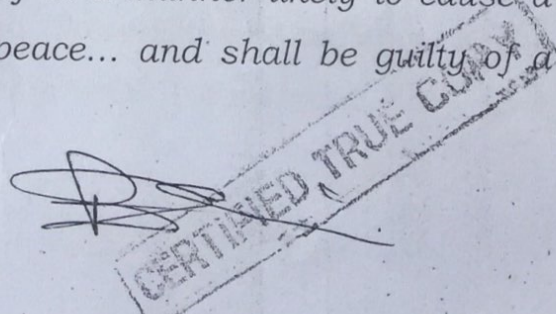
Again when learned Counsel put it to him that the money Pastor Ogunbiyi collected from the nominal complainants he did on Defendants behalf, Defendant replied in the affirmative. When witnessed was asked if he was aware that affidavits were prepared in respect of the lands in question he replied in the affirmative. When asked, the witness confirmed that when the police raided his house they took all of his properties away. Finally, when he was asked whether he would be surprised that he confessed to forging a land agreement in his statement, Defendant stated that he is not aware.

At the close of the case the prosecution and the defence waived their rights to address the Court. I proceed to consider each count of the charge that the Defendant stood trial for vis-à-vis the evidence adduced and the relevant Laws.

The first count is conduct likely to cause the breach of peace contrary to Section 249 of the Criminal Code Law, Cap C16 Laws of Ekiti State 2012.

Now, S. 249(d) of the Criminal Code Law of Ekiti provides thus:

"Every person who in any public place, conducts himself in a manner likely to cause a breach of the peace... and shall be guilty of a



simple offence and shall be liable to imprisonment for one month".

The particulars of the offence charged as follows:


"Daramola Oyindamola on or about the 4th day of January, 2015 along College of Education, Igbara Odo Road, Behind Nasfat Praying Ground, Ikere Ekiti within the jurisdiction of this Court did conduct yourself in a manner likely to cause the breach of peace".

I have considered the evidence adduced, the prosecution has failed to adduce evidence sufficient enough to sustain the charge. In fact no evidence was led to prove that the Defendant conducted himself in a manner likely to cause the breach of peace. None of the prosecution witnesses gave evidence on the alleged breach of peace. See S. 135 Evidence Act - An allegation of crime must be proved beyond reasonable doubt.

Further for the offence charged under S. 249 of the Criminal Code Law, Cap C16 Laws of Ekiti State 2012 to be proved, the conduct likely to cause a breach of peace must have taken place in a public place.

Under Section 1, the Interpretation Section of the Criminal Code Law (supra), a "Public Place - includes any public way and any building, place, or conveyance, to which for the time being the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meeting or assembly, or as an open Court.

In the light of the above definition can the place describe in the particulars of offence i.e. along College of Education Igbara Odo Road, behind Nasfat Praying Ground, Ikere-Ekiti be called a public place? To mine mind the answer is NO. I find and hold that


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Prosecution has failed to prove the Count 1 of the charge, the Defendant is hereby discharged and acquitted on Count 1.

Before I proceed to consider the other Counts it is important to reiterate the age long principle of criminal justice that the Courts, including appellate Courts, have a duty to avail an accused person of any defence open to him from the totality of the evidence whether or not he has expressly asked for it. See **Rasulu Oladipupo v The State (1993) 6 NWLR (Pt. 298) 131 at 14**, per Tabàí, JSC (0.7, paras. E-G). See **Oyakhire v State 2006 LPELR-2863 SC**. See also **Maiyaki v. The State (2008) LPELR (SC)**, where the Supreme Court stated that

"It is settled that Courts must consider all defences in the records of proceedings i.e. the defences must be available on the evidence before the Court or put up by the accused, expressed or implied" per Ogbuagu, JSC (P39, paras. B-C).

I will consider Counts 2, 3, 4, 5 and 6 together since they relate to same subject matter.

In Count 2, Defendant stood trial for the offence of forcible entry contrary to S. 81 of the CCL Cap C16 Laws of Ekiti. Defendant was alleged to have forcibly entered into the land of Isikalú family on or about 4/1/2015 along College of Education Road, behind Nasfat Praying Ground, Ikere-Ekiti within the jurisdiction of the Court. Section 81 provides that:

Any person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters a land which is in actual and peaceable possession of another is guilty of a misdemeanor and is liable to imprisonment for one year. Count

1 having failed, Count 2 cannot be sustained, Defendant is hereby found not guilty on Count 2.

By Counts 3, 4, 5, and 6 of the information the Defendant stood trial for obtaining money under false pretence contrary to S.419 of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012 by selling a plot of land belonging to Isinkalu family to one Owoyemi Bosede Pheobean (see Count 3)

By selling a plot of land belonging to Isikalu family to one Eniafe Titilayo (see Count 4)

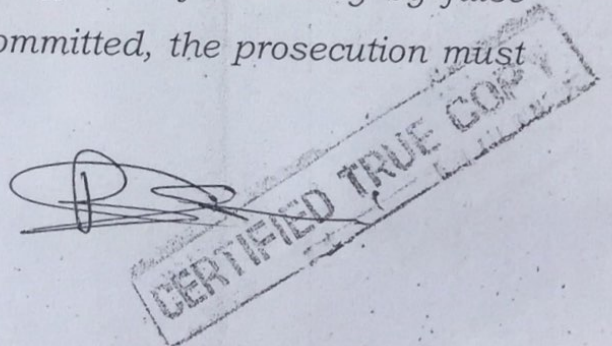
By selling a plot of land belonging to Isikalu family to one Azeez Abiodun (see Count 5) and by selling a plot of land belonging to Isikalu family to one Ogundele Taiwo (Count 6).

Prosecution have led sufficient evidence to prove the alleged crime against the Defendant Section 419 of the Criminal Code Law Cap C16 of Ekiti State provides that:

'Any person who by any false pretence, and with intent to defraud, obtains from any person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony and is liable for three years. If the thing is of the value of One Thousand or upward he is liable to imprisonment for seven years....'

In Nurudeen Adewale Arije v. FRN (2013) LPELR-22125 (CA)
the Court of Appeal stated that:

"In Onwudiwe v FRN (2006) All FWLR (Pt 319) 774 at 812 the Supreme Court per Niki Tobi, JSC held that: For the offence of obtaining by false pretences to be committed, the prosecution must



prove that the accused had an intention to defraud and the thing is capable of being stolen. An inducement on the part of an accused to make his victim part with a thing capable of being stolen or to make the victim deliver a thing capable of being stolen will expose the accused to imprisonment for the offence” per Oseni JCA p.53, paras A-D.

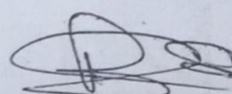
See also 1. **Rev Victor Mukoro v. F.R.N. (2015) LPELR-24439 (CA)** 2. **Chidolue Madu & ors v. F.R.N. (2016) LPELR-46315 (CA)**

In counts 3,4,5 and 6 the Prosecution has led evidence to establish that the Defendant through and by his agent Pastor Ogunbiyi did obtain a sum of N150,000 from each of the victim under the pretence of selling a plot of land to them knowing fully well that the land belong to the Isinkalu Family. See exhibit A – receipt issued by Defendant to PW1. See exhibit B- the affidavit of transfer of ownership given to PW1 by Defendant. See also exhibits C-I receipts and affidavits of transfer of ownership given to PW2-PW4 by Defendant.

In his evidence before the court, Defendant sought to convince the court that he acted under an illusion that the land belonged to his father before he learnt that his father’s portion of the land had been sold. The question is will this avail him of the defence under Section 23 of the Criminal Code Law, Cap C16 of the Ekiti State Law 2012 ?

Section 23 provides that:

“ A person is not criminally responsible as for an offence relating to property, for an act



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done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud”.

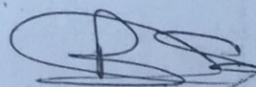
In **Mr. Christian Spiess v. Mr. Job Oni (2016) LPELR-40502(SC)** the Supreme Court per Muhammad JSC stated that:

“Bonafide claim of right. The phrase is an amalgam of the latin and English Languages. In latin ‘bonafide’ connotes ‘good faith’. Thus for a claim of right to qualify a bonafide claim of right, it must be made in good faith, without fraud or deceit. It must be sincere and genuine (Black’s Law Dictionary 8th ed)” per Muhammad, JSC (p.23, paras A-B)

See also **Nwakire v. C.O.P. (1992) LPELR-2097(SC)** where the Supreme Court stated that:

“once an accused person raises by his evidence, a claim of right in an offence involving property with which he is charged such as malicious damage to property, the burden is on the prosecution to prove the absence of right made in good faith because that defence negatives the requisite mens rea for malicious- or what is also known as willful and unlawful damage to property” per Ogundare JSC (p.13, paras B-C)

As deduced from the above for the defence of bonafide claim of right to avail the defendant such bona fide claim of right must be made in faith, without fraud or deceit. The question is, is this applicable in the instant case? The answer is NO. Throughout the



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evidence adduced by the prosecution it is crystal clear that the defendant herein carried out his dastardly acts with fraud and deceit. He did not only sell plots of land he had no right to, he presented himself as a barrister at law to his victims to give his actions a cloak of legality and authenticity. Consequently I find and hold that the defendant is guilty as charged on counts 3,4,5 and 6 i.e. obtaining money under false pretence.

On count 7, the defendant stood trial for the offence of impersonation contrary to S. 484 of the Criminal Code Law, Cap C16, Laws of Ekiti State by presenting himself to be a lawyer.

Section 484 of the Criminal Code supra provides that:

"any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead is guilty of a felony and is liable for three years.

If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof he is liable to imprisonment for fourteen years".

In the instant case the prosecution has led cogent and credible evidence to establish the guilt of the accused person. Each of the prosecution witnesses gave evidence that the Defendant at one time or the other introduced himself as Barrister Daramola Oyindamola. Exhibit "J" is the complimentary card found in possession of the Defendant.

Exhibit "J" bears Oyindamola & Co, Barrister at Law, Legal Practitioners of the Supreme Court of Nigeria. To my mind, Exhibit

"J" and oral evidence of PW1, PW2, PW3 and PW4 to the effect that the Defendant introduced himself as a Barrister establishes his guilt of the offence of impersonation with which he is charged in Count 7.

Consequently, I find and hold that he is guilty on Count 7.

Finally, on Count 8 Defendant stood trial for the offence of forgery, contrary to Section 4(d) of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012. The particular of the offence was that on or about the 4th of January, 2015 along College of Education Road, Ikere-Ekiti within the jurisdiction of the Court did forge Nigeria Law School Certificate, Complimentary Cards, Police extracts affidavits of land agreement and cash receipts. A cursory look at Section 4(d) of the Criminal Code Law, Cap C16, Laws of Ekiti State 2012 will show that the Section is not about forgery. The Sections governing forgery are 465 and 466.

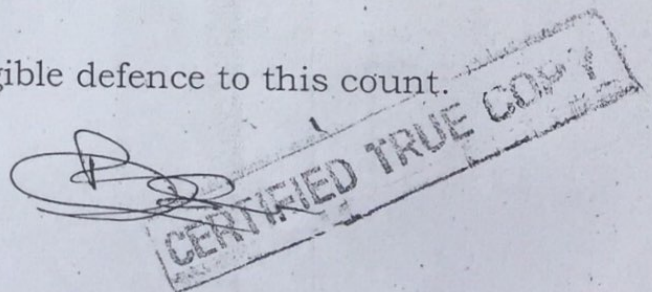
In **Olatunbosun v State (2013) 34 WRN 1**, the Supreme Court held that

"If the facts on which an appellant was convicted are known to the Law, the fact that the accused was charged under a wrong law or section of the Law will not lead to his acquittal. See also Aminu Mohammed v State (2007) 7 NWLR (Pt. 1032) 152.

In the instant case, the Prosecution led sufficient and credible evidence to prove that the Defendant forged the Nigeria Law School Certificate. See Exhibit "P", National Youth Service Corp discharge certificate. See Exhibit "M", Lawyer's complimentary card – See Exhibit "J".

PW1 – PW3 gave evidence of the Defendant haven given them forged receipts for the purported sale of plots of land to them which turned out to be fake.

Defendant did not raise any tangible defence to this count.



Consequently, I find and hold that the Defendant is guilty of forgery contrary to S.465 of the Criminal Code Law of Ekiti State, Cap C16.

I now proceed to sentencing of the Defendant.

On Counts 1 and 2, Defendant is found not guilty and he is hereby discharged.

On Count 3, Defendant is found guilty and he is sentenced to seven years imprisonment.

On Count 4 Defendant is found guilty and he is sentenced seven years imprisonment.

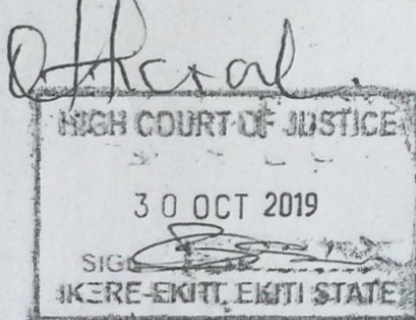
On Count 5 Defendant is found guilty and he is sentenced seven years imprisonment.

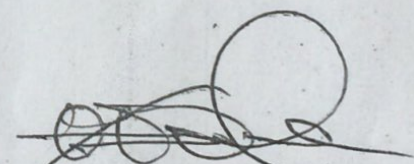
On Count 6 Defendant is found guilty and he is sentenced seven years imprisonment.

On Count 7 Defendant is found guilty and he is sentenced three years imprisonment.

On Count 8 Defendant is found guilty and he is sentenced fourteen years imprisonment.

Sentences are to run concurrently.

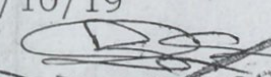


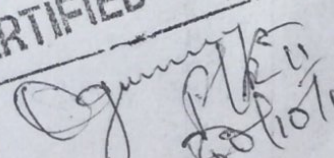

Hon. Justice O.I.O. Ogunyemi
Judge
24/10/19

Legal Representatives:

Akinola Abon, Esq. for the Prosecution

Dolu Oyeyiola, Esq. for the Defendant


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