

**IN THE CHIEF MAGISTRATE COURT  
OYO STATE OF NIGERIA  
IN THE IBADAN MAGISTERIAL DISTRICT  
HOLDEN AT IBADAN  
BEFORE HIS WORSHIP E. A. IDOWU (MR.) C.M.A.  
THIS FRIDAY, THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2019.  
BETWEEN SUIT NO: MI/17C/2014  
COMMISSIONER OF POLICE  
AND  
OLABISI BABATUNDE DEFENDANT**

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**J U D G M E N T**

The defendant was arraigned on two counts charge of obtaining under false pretence punishable under Section 419 of the Criminal Code Law and Stealing punishable under Section 390 (9) of the Criminal Code Law. The defendant pleaded not guilty to the two counts.

In proving the case, the prosecution called three witness and tendered Exhibits A-D. In order to defend the allegation, the defendant testified on his own behalf, without calling further evidence and tendered Exhibits F-F9 which were receipts.

The gist of the prosecution witness is that the PW1 gave N1,265,000 to the defendant to get her accommodation in Ikeja, buy a motorcycle which is to be used as okada with monthly remittance by the defendant to her account, furnished the apartment, and to buy her a laptop and that the defendant failed to do all these. PW1 under cross examination stated that the defendant did not got her house anywhere. PW1 stated that she sent the money to the Skye Bank account of the defendant. The PW3 the IPO stated that though he asked to visit the "accommodation" the defendant did not lead him to any and that he told him that he did not buy any "okada"

The summary of the defence is that the PW1 is his lover whom he met at K.S. Hotel, that the PW1 sent money to him to get apartment which he did at No. 24, Itoki Road, Agbado, and to furnish it and that he did all these and have house receipts to that effect, Exhibits F-F9. That the PW1 saw this and later asked for another apartment at Ikeja and that all his effort to get another apartment at Ikeja proved abortive and that the PW1 later asked someone to come and collect the keys of Agbado apartment from him. The defendant also stated that the people at Operation Burst and SCID refused to follow him to Lagos despite the facts that he made statement. Under cross examination the defendant stated that all the money he received was for

Agbado apartment and not for Ikeja or anything else and that the PW1 sent all the "money" to him via his Skye Bank account whose statement of account is admitted as Exhibit "C"

The learned counsel for the defendant in his written address did not formulate any issue for determination but simply stated that the prosecution failed to prove "the case beyond reasonable doubt and not on a balance of probability" (sic) that the case is that of relationship that went bad and that the evidence of the PW2 and PW1 are contradictory.

It is a trite law that where the evidence of the prosecution is found contradictory, such contradiction should be resolved in favour of the defendant. However the contradiction must be such that goes to the root of the charge and not a mere discrepancies. See: EMEKA VS. THE STATE (2014) 6-7 MJSC, PART 1 PAGE 115 particularly at PAGES 131-132.

I have gone through the evidence of the prosecution particularly that at PW1 and PW2 and I hereby hold that it is free of inconsistency, if at all they are mere discrepancies that led authenticity to their story as it could only mean that their evidence were tutored if at all is all on fours.

With respect to the issue of relationship going sour, the defendant while the prosecution was given evidence, under cross examination did not raise such issue with the PW1 therefore raising same while he was testified is nothing but afterthought.

With respect to count 1 obtaining money under false pretence punishable under Section 419 of the Criminal Code Law, prosecution must prove the following:

1. That there must be the thing or goods.
2. There must be a pretence.
3. The pretence must emanated from the defendant and must be either past or present.
4. That the defendant know of its falsity or did not believe in its truth and have intention to defraud.
5. That the defendant induced the owner to transfer his/her whole interest in the property to him. See: ALAKE & ANOR. VS. STATE (1991) 7NWLR PART 205 PAGE 567 @ 591.

From the adduced evidence, both oral and documentaries, there is no doubt as to the existence of money between PW1 and the defendant which he is to get apartment and furnished same, at least the parties agreed to this though there is a disagreement whether this was done or not. The problem

is as to the issue of pretence and whether it was made by the defendant. PW1 in her examination in chief stated that she told the defendant to look for house in Ikeja. It was not the defendant that approached the PW1 that he has a house in Ikeja for rent. From this is clear that no pretence emanated from the defendant to the PW1. This means that the case of prosecution lack one of the essential ingredients of the offence therefore the prosecution has failed to prove beyond reasonable doubt the alleged offence. The defendant is hereby discharged and acquitted in respect of count 1.

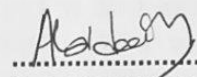
With respect to the second count 2 stealing punishable under Section 390 (9) of the Criminal Code Law, the offence is committed when:

1. There is an existence something capable of being stolen.
2. That the thing was fraudulent converted by the defendant to his own use or that of another with the intention to permanently denied the owner of such good his/her ownership on that good.
3. That the value of that good is more than N1000. See: DR. E. ONWUDIWE VS. FRN, DR. O. ONAGORUWA VS. STATE (1993) 7 NWLR PART 303 @ PAGE 49 Particularly at PAGE 86 PARAGRAPH D.

There is no doubt as to the existence of the money see Exhibit C which the PW1 paid into the defendant's account. The issue is whether the defendant used the money for the purposes it was meant for or his own purposes thereby converting the said money as the money is more than N1000. The defendant in his testimony before the court stated that the money was for accommodation at Agbado and to furnish the same which he did and tendered Exhibits F-F9 to that effect excluding that of the rent Exhibits F-F9 had various date 21/10/11 till 22/03/13 with some of them like Exhibit F4 and F9 altered to reflect sum/price on them. It should also be noted that the defendant in his statements at the police stations stated that he collected money from the PW1 for house/accommodation for Ikeja but that he was duped by another. I painstakingly went through the defendant's statement of account and I discovered that the PW1 actually paid that money into his account and that the PW1 was actually the only person, except now and then, who paid money into the account and that the money was most of the time withdrawn in Ibadan at rate of N10,000 and below in a particular branch and not in Lagos where the money was supposed to be used and not to the amount contained in Exhibits F-F9. All those points to the fact that exhibits F-F9 could not have all been true among some are altered without

any explanation from the defendant. All of these are indicators that the testimony of the defendant before the court and his Exhibits are false. Any way the defendant in his statements which he wrote himself stated that he collected money from the PW1 but not N1.2million. This is an admission of sort. It should be noted that the defendant stated that, in his testimony before the court, that he gave the key of the house to someone, within six day or thereafter before the matter was reported, however exhibits F6, 9 were made during that period when the key had been collected from him the question is to which apartment was the good supplied definitely not the house in issue. The defence of the defendant is full of contradictions and I found it difficult to believe him while the case of the prosecution remain consistent and constant. It is clear that the defendant received money from the PW1 to get accommodation at Ikeja and to buy laptop and motorcycle and that the defendant did not used the money for what it was intended. This means that the defendant fraudulently converted the money to his own use. The defendant is therefore found guilty of the offence of stealing punishable under Section 390(9) of the Oyo State Criminal Code Law.

Sentence: Defendant is hereby sentence to one month imprisonment and fine N50,000.00 However the defendant is sentence to four years imprisonment if unable to pay the sum.

  
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**E. A. IDOWU (MR.)**  
**(CMA)**  
**27/9/19**