

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. ALIYU ----- JUDGE

SUIT NO:KDH/KAD/5/EFCC/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .....COMPLAINANT

AND

MOHAMMED RABIU MUSA & 1 OR.....DEFENDANTS

24 - 11 - 2016

Accused in court, speak English.

B.M. Buhari for prosecution.

C. J. Nnaji for accused.

### **R U L I N G**

The two defendants are standing before this court on a 2 count charge of obtaining by false pretence the sums of ₦750,000.00 each from one Abdulkadir A. Mohammed and one Abdullahi Adamu sometimes in the year 2014. The allegation on both counts is that the defendants with intent to defraud obtained the said sums of money from the said persons on the pretence that they own plots of land at Hayin Dan Mani new layout, Kaduna which is false. That the actions of the defendants constitutes an offence punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. The defendants pleaded not guilty to the charge and the prosecution led evidence by calling 4 witnesses in the effort to prove the charge against the defendants. A total of 10 documents were tendered as exhibits by the prosecution.

These include the petition against the defendants – (Exhibits.1) Corporate Affairs Commission letter dated 26/05/15 which shows that the 2<sup>nd</sup> defendant is registered with the commission (Exhibit.2) extra judicial statements of the 1<sup>st</sup> defendant (Exhibits 3 – 7), EFCC letter dated 8<sup>th</sup> April, 2015 to the branch manager, Eco Bank Plc (Exhibit 8), Eco Bank Plc reply letters (Exhibits 9 and 10).

After the plaintiff had closed its case, the defendants made a no case submission.

It was submitted by learned counsel for the defendants that the prosecution had not proved the ingredients of the offence under section 1 (a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 which is that there must be intent to defraud. Learned counsel submitted that pw1 confirmed that he conducted a search before he agreed to pay for the land and also that the payments were made with a period of 4 months. That the defendants were not aware of the encumbrance in respect of the plot of land sold the nominal complainants by the defendants. Further that in exhibit 4 1<sup>st</sup> defendant stated that he purchased the plots of land from one Hassan Usman. That there is no evidence to show that the defendants intended to defraud the nominal complainants. I was urged to hold that the case involves a failure of contract and to discharge the defendants.

The learned prosecutor formulated one issue for determination i.e whether in the light of the evidence the prosecution has not made a prima facie case against the defendants. Relying on the authority of **AMINU V. STATE** (2005)2 NWLR (pt. 909) 180 at 191 he submitted that at this stage, the court is not called upon to determine the guilt of the defendants and that a prima facie case is one showing a ground for proceeding against the defendants.

The evidence of the 4 prosecution witnesses was referred to and it was submitted that it has been proved that pw1 was deceived to part with his

money by the defendant on the basis that the plot of land belongs to the defendants. The evidence of pw3 who stated that the plots of land belong to him was also referred to and it was submitted that a person who made representation when he knew it to be false intends to defraud. **ALAKE VS STATE** (1991) 7 NWLR (pt. 205) 592 and **ONWUDIWE V FRN** (2006) 10 NWLR (pt. 988) 382 were also cited in support.

It was also submitted that the 1<sup>st</sup> defendant did not supply sufficient information to enable prosecution locate the person he named in his extra judicial statement as his vendor.

The correct proposition of the law is that in the consideration of submission of no case to answer the court is not called upon at that stage to make a finding of guilt against the defendants. All that is required of the court is to make a finding whether a prima facie case has been made require the defendant to enter a defence to answer or not. See **AMINU V. STATE** (supra), **UGWU V STATE** (2013) ALL FWLR (pt. 660) 1177 at 1188. A prima facie case simply denotes a situation where there is ground to proceed against the defendants. See **AMINU V. STATE** (supra). The court may uphold a no case submission where one of the following is satisfied:-

- a) When there has been no evidence to prove an essential element in the alleged offence either directly, circumstantially or inferentially;
- b) When 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 **AMINU V. STATE**, and **UGWU V STATE** (supra).

From the submissions of the learned counsel for the defendants no allegations of discredited evidence has been levelled. The allegations is that the prosecution has failed to establish an essential ingredients of the offence to wit:- the defendants obtained the sums of money in the charge from the nominal complainants with intent to defraud them. The ingredients of the offence created under section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under section 1 (3) of the Act are:-

1. The accused/defendant made a representation, which is false.
2. The representation operated in the mind of the person from whom the money was obtained.
3. The pretence or representation was false to the knowledge of the accused person or that the accused did not know the representation as true, and
4. The representation was made with intent to defraud.

See **EDE V FRN** (2001) 1 NWLR (pt. 695) 502 at 512. It is therefore clear that the intention to defraud the person from whom the sums of money the charge was obtained is an important ingredient of the offence.

With evidence which shows representation that the defendant owns the two plots of land including the evidence that the person from whom the defendant derived title does not live in the address given by the defendant in his extra judicial statement, it is my humble view that there are grounds to proceed against the defendant. I so hold and overrule the no case submission.

Signed Hon. Judge

24/11/16