

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA

IN THE KADUNA JUDICIAL DIVISION

HOLDEN AT KADUNA

SUIT NO: KDH/KAD/1/EFCC/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

.....COMPLAINANT

AND

1. MURTALA SHARIFF AHMED
(a.k.a Mohammed Shariff Ibrahim, Muhammadu)

2. CLETUS ILIYA

3. ESSIEN EKANEM

4. MOHAMMED SANI

5. DAVID MICHAEL

6. JOEL

7. MR. DIKKO

8. A.B. AHMAD

.....ACCUSED

15/10/18

Defendant in Court, speaks Hausa

Nasiru Salele prosecution

E.B. Maza for defendant

Yusuf I. Mamuda affirmed to interpret from English to Hausa and vice versa.

JUDGMENT

The defendant along with one other person were arraigned before this Court on a nine Count Charge of criminal conspiracy, obtaining property by false pretence, forgery and using forged documents as genuine. The offences are punishable under Section 1(3) and Section 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and Section 364 of the Penal Code Law. The Charge was filed against the defendant and 5 others. Only the defendant and one Essien Ekanem were arraigned. The other 4 defendants were said to be at-large. The defendant and Mr. Ekanem pleaded not guilty to the charge. In the effort to prove their guilt, the prosecution called 5 witnesses and tendered 22 documents. At the end of the prosecution's case, Mr. Ekanem was discharged after his No Case Submission was sustained. Thereafter the defendant proceeded to defend his case. He testified and closed his case on 1st January 2018 without calling additional evidence. Learned Counsel for the defendant and the learned prosecutor filed and exchanged their Final Written Addresses which they adopted on 18th July 2018.

Learned Counsel for the defendant did not raise issues for determination. He argued the Ingredients of the 4 offences in the charge. The learned prosecutor identified one issue for determination to wit:-

“Whether the prosecution has proved each Count of the charge against the accused beyond reasonable doubt.” Of course the learned prosecutor also argued the Ingredients of the 4 offences. I shall also consider the ingredients/elements of the offences in the charge under the lone issue identified by the prosecution. Before I do that however, it is convenient, for ease of reference, to reproduce the 9 Count Charge in this case. They are as follows:-

COUNT ONE

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) sometime around 2nd August, 2010 and 21st September, 2011 in Kaduna within the jurisdiction of the High Court Kaduna State did conspired among yourselves to commit an unlawful act to wit: obtaining a total sum of N64,000,000.00 (Sixty Four Million Naira) only under false pretences and you thereby committed an offence contrary to Section 8 (a) of the

Advance Fee Fraud and other Fraud Related Offences Act, 2006 and punishable under Section 8 (c) of the same Act.

COUNT TWO

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 2nd August, 2010 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to defraud dishonestly obtained the sum of N5,000,000.00 (Five Million Naira) only from Alhaji Ibrahim Idris for the purpose of selling to him plot No. 5 Kwato Road Unguwar Rimi, Kaduna, and you thereby committed an offence contrary to section 1 (1) (b) and punishable under section 1 (3) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

COUNT THREE

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 17th August, 2010 at Kaduna within the jurisdiction of the

High Court Kaduna State with intent to defraud dishonestly obtained the sum of N5,000,000.00 (Five Million Naira) only from Alhaji Ibrahim Idris for the purpose of selling to him plot No. 5 Kwato Road Unguwar Rimi, Kaduna, and you thereby committed an offence contrary to section 1 (1) (b) and punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

COUNT FOUR

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 18th August, 2010 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to defraud dishonestly obtained the sum of N50,000,000.00 (Fifty Million Naira) only from Alhaji Ibrahim Idris for the purpose of selling to him plot No. 5 Kwato Road Unguwar Rimi, Kaduna, and you thereby committed an offence contrary to section 1 (1) (b) and punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

COUNT FIVE

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 10th February, 2011 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to defraud dishonestly obtained the sum of N2,500,000.00 (Two Million Five Hundred Naira) only from Alhaji Ibrahim Idris for the purpose of selling to him plot No. 5 Kwato Road Unguwar Rimi, Kaduna, and you thereby committed an offence contrary to section 1 (1) (b) and punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

COUNT SIX

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 10th May, 2011 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to defraud dishonestly obtained the sum of N1,000,000.00 (One Million Naira) only from Alhaji Ibrahim Idris for the purpose of selling to him

plot No. 5 Kwato Road Unguwar Rimi, Kaduna, and you thereby committed an offence contrary to section 1 (1) (b) and punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

COUNT SEVEN

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 21st September, 2011 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to defraud dishonestly obtained the sum of N500,000,00 (Five Hundred Thousand Naira) only from Alhaji Ibrahim Idris for the purpose of selling to him plot No. 5 Kwato Road Unguwar Rimi, Kaduna, and you thereby committed an offence contrary to section 1 (1) (b) and punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

COUNT EIGHT

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadu Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the

17th August, 2010 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to defraud forged a document titled "DEED OF ASSIGNMENT" in respect of plot No. 5 Kwato Road Unguwar Rimi, kaduna purporting to have been executed by Late Col. A.B. Umar and you thereby committed an offence contrary to Section 363 and punishable under Section 364 of Penal Code Law.

COUNT NINE

That you Murtala Shariff Ahmed (a.k.a Mohammed Shariff Ibrahim, Muhammadau Shariff), Cletus Iliya, Essien Ekanem, David Michael (at large), and Joel (at large) on or about the 17th August, 2010 at Kaduna within the jurisdiction of the High Court Kaduna State with intent to commit fraud dishonestly used as genuine a document titled "DEED OF ASSIGNMENT" which you knew to be forged for the purpose of selling plot No. 5 Kwato Road Unguwar Rimi, Kaduna to Alhaji Ibrahim Idris, and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of Penal Code Law.

The case of the prosecution is as narrated by the PW4. The PW4 is Abubakar Abdulkareem. He is an Assistant Detective Superintendent attached to Procurement Fraud Section of the Economic And Financial Crimes Commission, Kano Zonal Office. He investigated the offences in this case. He commenced under affirmation that it was in the course of investigating a land scam case against the defendant that they stumbled upon the crimes alleged in the charge in this case. The crimes relate to property No. 5 Kwato Road Unguwar Rimi, Kaduna. The plot was originally allotted to one Colonel A.B. Umar who commenced the process of documentation to secure title but was involved in a coup and could not conclude the process. That his investigation revealed that the defendant and others he was charged along connived together and procured fraudulent title documents in the name of Col. A.B. Umar and a Deed of Assignment by which Col. A.B. Umar purportedly assigned his title to the defendant. That as at the time of the transfer, Col. A.B. Umar was deceased. Having secured the documents of transfer, the defendant and his fellow conspirators proceeded to secure a buyer for the plot of land. The PW5 Alhaji Ibrahim Idris offered to pay N75 Million for the land and it was sold to him. Alh. Idris paid N65 Million by instalments in cash and by cheques. The balance was to be paid after the Certificate of Occupancy has been procured. Alhaji Idris

instructed his Lawyer to conduct a search. The Lawyer mandated Mr. Ekanem, also a Legal Practitioner, to conduct the search on his behalf. That Mr. Ekanem discovered some discrepancy in the Land File but was given N5 Million by the defendant not to report the discrepancy to his client.

Now the two offences of Criminal Conspiracy and obtaining property by false pretence are punishable under Section 8(a) and 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. The term ***"conspires with.....to commit an offence"*** in Section 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act has not been defined by the Act. The contention that for a conspiracy to become an offence punishable under the Act it must relate to the commission or attempt to commit an offence as posited by learned counsel for the defendant is not correct. Section 8(a) of the Act provides:-

"8. A person who

(a)conspires with, aids, abets, or counsels any other person to commit an offence, or

(b)attempts to commit or is an accessory to an act or offence, or

(c) incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.”

It is clear the above provision of the Act punishes all the acts mentioned in sub-sections (a) – (c) and did not define the acts mentioned. The key words in Section 8 relevant to this case are ***“a person who conspires with any other person to commit an offence”*** and ***“commits the offence and is liable on conviction to the same punishment”***. The whole Section 8 must be read together to appreciate the fact that the agreement to commit an offence is the only requirement to establish. The offence is complete when agreement to commit an offence is established and not necessarily after the offence has been committed. To that extent I do not find much distinction between the definition of the term Conspiracy in the Act and in the Penal Code Law. I do not think that the provision relating to conspiracy in Section 8 of the Act is narrower than in Section 96 of the Penal Code Law. In any case, the allegation in this case is that several sums of money as explained in counts 2 – 7 of the Charge have been obtained by the defendant under false pretence. Thus the offences allegedly conspired, by the defendant and

others have, allegedly, been committed. Learned Counsel for the defendant has argued, and rightly in my view, that the prosecution needed to prove that the 1st defendant agreed with two or more persons to do an unlawful act and that the secret intention must have translated into an act or omission. That is the correct position of the law See OJO & ANOR V FRN (2008) LPELR – 5155 (CA), 2008 11 NWLR (pt.1099) 467 at 515, (2009) ALLFWLR (pt. 494) 1461 where at p.58 and 59 of the LPELR report the Court stated:-

"It is trite that the conspiracy to commit a crime must be proved independently of the commission of the crime itself. See the case of: Obiakor v State (2002) 10 NWLR (pt. 776) p.612 at pages 628 – 629 paragraphs H – A. Conspiracy is the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. The two or more persons must be found to have combined in order to ground a conviction for conspiracy. For the offence to be in existence, there must be a consent of two or more persons, (other than husband and wife). There must be an agreement which is an advancement of an intention conceived in the mind of each person secretly "mens rea". The secret intention must have been translated into an overt act,

omission or mutual consultation and agreement "actus reus."

....." The offence is complete when it is shown that there was a formation of a Scheme or agreement between the defendants before the doing of the act for which the conspiracy is formed. It is proved generally by inference deduced from certain criminal acts of the defendants done in pursuance of an apparent criminal purpose in common between them. See *OJO V FRN* (Supra) at p. 59 and *TANKO V STATE* (2008) 16 NWLR (pt. 1114) 597 at 638.

It is clear from the submissions in paragraphs 4.8 and 4.9 of the Prosecutions Final Written Address that the evidence of PW4 and the Extra Judicial Statement of the defendant (Exhibit 7) were relied upon to establish the offence of conspiracy and obtaining by false pretence. I have already summarised the evidence of the PW4. His evidence is to the effect that the defendant and others conspired to procure the title document in respect of the property No. 5 Ifwato Road in the name of a deceased person which property they fraudulently sold to the PW5.

The Extra Judicial Statement of the defendant is Exhibit 7. It was dated 9th January 2014. Because of the importance of this document I reproduce the relevant portion thereof. The defendant stated:-

"Sometime in 2010 David David Mark, Mansur Bege, Sani Mohammed and Joel met me in my house at No. 2 Zobe road, Unguwar Rimi, Kaduna and told me that they want me to pose as an owner of a land located on Kwato road which belonged to Col. A.B. Umar. They told me that Joel whose father was a cook to Col. A.B. Umar and his brothers are living in a block of 3 rooms that were built on the land. That since the death of Col. Umar nobody from the family has come forward to claim the land. So we all went to the plot of land and I saw it. I then asked them of the papers, David told me that it is being processed at the Ministry of Land, Kaduna. After about four months David called me and informed me that they have collected the papers from the Ministry of land, Kaduna and that they have prepared a Deed of Assignment purporting that Col. A.B. Umar has sold the land to me. I then asked them of the name they used in the Deed of Assignment and David told me the name used was Mohammed Sheriff Ibrahim and that the address used was number 5 Sharada Bata Kano. I then asked David why he did not use my name Murtala Sheriff Idris and he said that there

is no problem. That the document is even with him and has been approved by the Ministry. I was given a photocopy which was advertised and then one Alhaji Ibrahim Idris became interested and we bargained and he agreed to buy the land at the sum of N75 Million Naira only. I then opened an account with Wema Bank at Ali Akilu Road branch in Kaduna with the name Mohammed Sheriff Ibrahim. Alhaji Ibrahim Idris was given photocopy of the document for him to conduct search on the piece of land at the Ministry of land. After about a month Alhaji Ibrahim Idris connected me with his Lawyer Barrister Laminu who also joined me with Barrister Ikenna to conduct the search. After some time Barrister Ikenna told me that he has discovered that the land is not genuine but since the documents of the land were all from the Ministry of land, I should give him the sum of N5,000,000.00 so that he will tell Alhaji Ibrahim Idris that the land is a genuine one. So when I consulted with David and the rest of the group, they agreed and we decided to give him the amount when Alhaji Ibrahim Idris pays for the land. So barrister Ikenna told Alhaji Ibrahim Idris that the land is

good and Alhaji paid me the sum of N59 Million Naira through Keystone Bank cheque which I lodged in the Wema Bank account I opened. He then later N1 Million and subsequently gave me a cheque of N2 Million, N1 Million and N500, 000.00 respectively. Alhaji Ibrahim gave me a total of N63, 500,000.00 and the balance of N8, 500,000.00 which will make up N75 Million will be paid after the Certificate of Occupancy has been signed and released to him. We then came together, myself, David, Joel, Bege and Barrister Ikanna and Sani Mohammed shared the money. Barrister Ikanna was given N5, 000,000. David was given N22, 000,000.00 and a Mercedes Benz C350 2008 Model worth N8, 000,000:00. He also came and collected a Range Rover, 2008 Model at the cost of N6,000,000;00. The total amount he collected was N36, 000,000 which I gave him a cheque of N22, 000,000.00 and above mentioned cars as the balance. That was what happened in respect of the land that was sold to Alhaji Ibrahim Idris.”

The above statements are clear admissions of not only the formation of a scheme or agreement between the defendant and the persons he mentioned

before the doing of the act for which the conspiracy was formed but also clear evidence that the conspirators committed the offence conspired by obtaining from Alhaji Idris (PW5) the sum of N63, 500,000.00 for a property the defendant knew he had no title over.

It has been submitted in the defendant's Final Written Address that he has testified that the statement he made was in Hausa. That the PW4 admitted that the statement was made in Hausa Language and he recorded it in English language. It is now settled that statements should be, whenever practicable, recorded in the language in which they are made. Wisdom of doing so is to avoid technical arguments which could be raised. See *ISILKILU OLANIPEKUN V STATE* (2016) LPELR – 40440 (SC) where the Supreme Court explained the wisdom of recording in the language statement is made at page 8 (C – D) in the following words:

“It is not an invariable practice but one to ensure the correctness and accuracy of the statements made by accused persons.”

The facts in *ADEYEMI V THE STATE* (2012) LPELR – 7956 (CA) 1 at 14 – 16 are similar to the facts in this case. The statement of the accused in that

before the doing of the act for which the conspiracy was formed but also clear evidence that the conspirators committed the offence conspired by obtaining from Alhaji Idris (PW5) the sum of N63, 500,000.00 for a property the defendant knew he had no title over.

It has been submitted in the defendant's Final Written Address that he has testified that the statement he made was in Hausa. That the PW4 admitted that the statement was made in Hausa Language and he recorded it in English language. It is now settled that statements should be, whenever practicable, recorded in the language in which they are made. Wisdom of doing so is to avoid technical arguments which could be raised. See *ISILKILU OLANIPEKUN V STATE* (2016) LPELR – 40440 (SC) where the Supreme Court explained the wisdom of recording in the language statement is made at page 8 (C – D) in the following words:

“It is not an invariable practice but one to ensure the correctness and accuracy of the statements made by accused persons.”

The facts in *ADEYEMI V THE STATE* (2012) LPELR – 7956 (CA) 1 at 14 – 16 are similar to the facts in this case. The statement of the accused in that

case was made in Yoruba Language but recorded in English Language. The Court held:-

“The fact that the statement was not first recorded in Yoruba language before being translated into English will not ipso facts under the English translation inadmissible. The issue is one of accuracy and correctness of the statement and not an issue that will automatically render the statement inadmissible.....”

The defendant did not allege that the statement Exhibit 7 is not correct and accurate at the time when the statement was tendered or when in his evidence in chief. The defendant completely re-traced the confession when he testified in this case. He now claims that he bought the plot of land direct from the owner of the property who gave him the title document after paying the purchase price of N13, 500,000.00. That his own lawyer Suleiman Abdullahi confirmed to him that the title is genuine after conducting a search. He was then given an Agreement and the original copy of the Certificate of Occupancy (Exhibit 18). He succeeded in changing the Certificate of Occupancy in his name before selling the land to Ibrahim Idris for N75 Million. That Ibrahim Idris paid after confirming the genuineness of the title. The payment was made by Ibrahim Idris in 6 instalments. It was when Ibrahim

Idris attempted to take possession of the plot that another party, Abdulkadir Abacha, surfaced to also claim the property. Both defendant and Abacha filed complaints before the Police and after investigation it was resolved that the land belongs to Abacha. The defendant refunded to Ibrahim Idris the sum of N64, 500,000 paid to him. It has been held in plethora of Judicial authorities that the court can act on a retracted confession provided there is something outside the confession to show that is true. See KIM V THE STATE (1992) 4 NWLR (pt. 233) 17 at 51 and 52, UBIERHO V THE STATE (2005) LPELR – 3283 (SC) at p. 22. In AFOLABI V STATE (2014) LPELR – 22249 (CA) the court observed at pp. 36 – 37 that:-

“When a confessional statement is retracted or its voluntariness denied at the defence stage, the issue of its voluntariness in the sense of whether or not to admit the statement is closed because the confessional statement had already been admitted in evidence, it is however incumbent on the trial Judge to test the credibility of the accused as to his retraction of the statement and the weight to attach to the confessional statement in term of its truthfulness or otherwise in line with other available evidence and circumstances of the case. R v Sykes (1913) 8

CAR 233; R v Itule (1961) ALLNLR 462, Salawu v State (1971) NNLR 249; Akinfe v State (1988) 3 NWLR (pt. 85) 729 at 746; Onwumere v State (1991) 4 NWLR (pt. 186) 428 at 440. The accused also bears the burden as part of his defence to explain to the court or give reasons why the court should believe him that he did not make the confessional statement. In Onwumere v State (Supra) the court observed that the accused under such circumstances, to succeed in convincing the court that the confessional statement was not true or not made by him must do one of four things:- (1) adduce evidence to the satisfaction of the court that he was not correctly recorded; or (2) that he in fact did not make the statement; or (3) that he was unsettled in mind at the time he made the statement; or (4) that he was induced to make the statement."

In KAREEM V FRN (2002) LPELR – 1664 (SC) at p. 17, the Supreme Court per Ejiwami JSC (as he then was) stated:

"If the accused person resiles from his confessional statement, it is his function to explain to the Court as part of his evidence, the reason for the inconsistency."

When he testified in this case the defendant did not deny the confessional statement in Exhibit 7. He did not also allege and lead evidence to show that he was not recorded correctly or that he was unsettled in mind at the time he made the confessional statement. The defendant had opportunity at the earliest opportunity when the statement was tendered to attach the voluntariness of the statement (Exhibit 7). The only complaint he registered to them was in relation to the manner the statement was recorded without administering cautionary words. The defendant throughout his testimony in this case did not explain the reason why he gave evidence which is inconsistent with his earlier statement (Exhibit 7). It is settled that for a confession to be upheld, it should be tested as to its truth by examining it in the light of other evidence to determine whether:-

- a. There is anything outside it to show that it is true***
- b. It is corroborated,***
- c. The facts stated in it are true in so far as can be tested***
- d. The accused had opportunity of committing the offence***
- e. The accused's confession is possible and,***
- f. The confession is consistent with other facts which have been ascertained and proved."***

See BATURE V THE STATE (1994) 1 SCNJ 19 at 28 and IBRAHIM V COP, PLATEAU (2017) ALLFWLR (pt. 908) 1946 at 1994.

Now I think the evidence of PW1 and PW2 the Director of Land Administration at the relevant time in this case and the Surveyor General of Kaduna State both of the Ministry of Lands, Surveys and Country Planning Kaduna State settle the issue to the effect that the property the subject matter of the charge in this case does not belong to the defendant. The PW4 who investigated the case alleged that the title document in this case was procured by the defendant. That has turned out to be false. However, the truth of the matter is that the title to the property was never transferred to the defendant by the holder of the right of occupancy.

The document in this case including Exhibits 3, 9 – 17, 19, 20 and 21 are made by the defendant. He did not deny the fact even in his oral evidence. These are very important documents which include the Deeds of Assignment between the defendant and Lt. Col. A.B. Umar his vendor and between him and Alhaji Ibrahim Idris, the person he transferred title to. The documents also include the bank documents evidencing the various payments made by Alhaji Ibrahim Idris to the defendant. All these documents were made by the defendant in the name given to him by his fellow conspirators David in Exhibit

7 "Mohammed Sheriff Ibrahim". At this stage it is appropriate to recall what the defendant stated in Exhibit 7. He stated thus:-

"I then asked them of the name they used in the Deed of Assignment and David told me the name used was Mohammed Sheriff Ibrahim and that the Address used was number 5 Sharada Bata Kano. I then asked David why he did not use my name Murtala Sheriff Idris and he said that there is no problem"

This clearly shows that the name Mohammed Sheriff Ibrahim in exhibit 3, perhaps the most important document in this case, is not the name of the defendant but one given by his conspirators for the purpose of the transaction to fraudulently confer title on him. In his evidence before this court, the defendant could not deny exhibit 3 and the other documents in the name Mohammed Sheriff Ibrahim and when pressed under cross examination, he admitted that Mohammed Sheriff Ibrahim is also his name. He proffered no explanation why he earlier on in his statement (Exhibit 7) stated that the name was given to him by David and other conspirators. In my humble view exhibits 3, 9 – 17, 19, 20 and 21 which are all in the name of Mohammed Sheriff Ibrahim amply corroborate the evidence in exhibit 7

and show that the oral evidence of the defendant in this case does not represent the truth of what actually happened.

Another important evidence which supports the confessional statement of the defendant in exhibit 5, the Wema Bank Plc Certified copy of cheque issued to Essien Ekanem, the erstwhile 3rd defendant in this case. The cheque which was dated 24/08/10 is evidence of payment of N5 Million to the said payee, Mr. Ekanem. In Exhibit 7 the defendant vividly explained how the payment came about. He ignored this document in his evidence in chief until it was brought up during cross examination. It was only then that he admitted issuing the cheque to Mr. Ekanem. In exhibit 7, the defendant explained the payment to Mr. Ekanem in the following terms:-

“After some time Barrister Ikenna told me that he has discovered that the land is not genuine but since the document of the land were all from the Ministry of land, I should give him the sum of N5,000,000.00 so that he will tell Alhaji Ibrahim Idris that the land is a genuine one.....

.....
Barrister Ikenna was given N5, 000,000.” These documents

tendered in Evidence clearly show that the confession in Exhibit 7 is true so far as can be tested and that the confession is consistent with other facts which have been ascertained and established. I have no doubt that the documents amply corroborate facts admitted by the defendant in Exhibit 7 and that exhibit 7 represents the truth of what actually transpired in respect of the transaction in this case clearly the facts as admitted by the defendant prove that the defendant agreed with the defendants at large to fraudulently obtain document of title over the property No. 5 Kwato Road Kaduna with which they deceived Alhaji Ibrahim Idris who parted with the sums of money in Counts One two, three, four, Five, Six and Seven, of the charge. The confession also establish that the defendant held himself out as owner of the property No. 5 Kwato Road Kaduna to simply defraud Ibrahim Idris who paid the whopping sum of N64 Million believing that the defendant had title over the property when in reality he had not. The defendant in unambiguous terms confessed that he pretended to own the property and the intention was to defraud a buyer who happened to be Ibrahim Idris (PW5).

The fact that the money defrauded Ibrahim Idris was refunded does not exonerate the defendant from the crime. He merely refunded after the offence has been concluded. The fact that the title of A.B. Umar, Exhibit 18 is genuine will not legitimize the transaction by the defendant who in no

ambiguous term admitted that at the time he purportedly sold the property to Ibrahim Idris (PW5) he knew that he had no title and no authority to conduct the transaction. I am satisfied that the prosecution has established the offences in Counts 1 – 7 of the Charge against the defendant. I accordingly convict him for the offences in Counts 1 – 7 of the charge.

Now I think the prosecution made little effort to establish Counts 8 and 9 which alleged forgery and using forged document as genuine. None of these two crimes punishable under Section 364 of the Penal Code Law can be established without proof that the document allegedly forged and used as genuine was forged by the defendant. The only way the prosecution can prove this crucial element of the offences is by proving that the signature of A.B. Umar, the alleged vendor was made not by him but by the defendant who procured it. It is not enough to simply state without proof that A.B. Umar is dead at the time the document forged was made. The burden of proof is on the prosecution to prove beyond reasonable doubt that the defendant forged the signature of Col. A.B. Umar. The problem with the prosecution's case as per the charge in Counts 8 and 9 is that it is not even clear which of the several documents was forged and used as genuine. According to Counts 8 and 9 the document is a Deed of Assignment dated or made on 17th August 2010. In this case there are two documents titled Deed of

Assignment. One, Exhibit 3 was made between Lt. Col. A.B. Umar and Alhaji Mohammed Sheriff Ibrahim and the other was between Alh. Mohammed Sheriff and Alhaji Ibrahim Idris (Exhibit 16). Exhibit 3 was dated 2003 while Exhibit 16 is dated 18th August 2010. The date on both counts of the charge is 17th August 2010 and not 2003 or 18th August 2010. Even though the date in exhibit 16 is close to the date in the charge the document was not as contained in the charge "purported to have been executed by late Col. A.B. Umar". It is exhibit 3 dated 2003 that was alleged to have been executed by LT. Col. A.B. Umar and as I have said it has not been established that he did not sign the document. I for all the reasons explained find that prosecution has failed to establish the guilt of the defendant in relation to the offences in Counts 8 and 9 of the charge.

In the final result and for the reasons advanced in this Judgment I convict the defendant as charged in Counts 1 – 7 for conspiracy to commit the offence of obtaining the sum of N64 Million by false pretence and for obtaining the said sum of money by instalments on the dates stated in Counts 2 – 7 of the charge. I discharge and acquit the defendant on Counts 8 and 9 of the charge.

Signed

Hon. Justice M.T.M. Aliyu _Judge

15/10/18.

SENTENCE

I have considered the plea for mercy by Mr. Maza and the fact that the convict is not a first offender. I also consider the fact that the convict was not released on bail since after he completed his term of imprisonment on 23/05/16. I therefore take into account the period from 23rd May 2016 to today in awarding the convict prison term of 7 years to be served less the period from 23rd May 2016 to today in respect of each count of the charge for which he was convicted. The Sentences shall run concurrently.

Signed

Hon. Justice M.T.M. Aliyu _Judge

15/10/18.