



Exhibit A3:- Voluntary Statement of PW3

Exhibit A4:- Voluntary statement of PW4

Exhibit A5:- Voluntary/cautionary statement of Defendant.

Exhibit A6 and A7:- Police report/finding.

The Prosecution witnesses are:-

Mrs. Tolari Comfort, The Complainant as PW1

Mr. Tolari James Babawale as PW2

Mrs. Racheal Idowu as PW3

Mrs. Felicia Oke as PW4

W/Corporal Orunduyi Abike, the IPO as PW5

**SUMMARY OF FACTS:-**

The complainant Mrs. Tolari Comfort (PW1) together with her son Tolari James Babawale (PW2) was introduced to the defendant by PW3 through PW4. The defendant had earlier met PW4 and introduced himself to her as retired custom officer and that she should help him to look for customers. So as a result, when PW3 heard that PW4 was looking for an interpreter at Cotonou to assist PW1 who wanted to purchase a car; she gave them the name and phone contact of the defendant. A call was put through to the defendant and subsequently about two meetings were held between the defendant and the prosecution witnesses, that is PW1 to PW4 during which arrangements were concluded and the defendant gave them the name and phone contact and account details of one Mr. Apetu Noah Oluwafemi as his Cotonou business partner but now at large. The complainant through her son paid the total sum of N400,000.00 in three installments to the Fidelity Bank account of the Defendant's Cotonou business partner Exhibit A1 is the teller with the which the said payments were made.

The evidence of all the prosecution witnesses followed in sequence of arrangement of events and also in consonance with each other, that is the reason why the no case submission of the defence was overruled. The defendant gave

evidence as sole witness in his defence. The statement of the defendant on oath before the court is not in any way different from his cautionary statement obtained at the station and tendered as Exhibit A5 on one hand; and all the prosecution witnesses on the other hand. Here are some excerpts from Exhibit A5 and PW2 testimonies on oaths for the purpose of comparism.

Exhibit A5:

"Sometime January I met a woman at Ajibode – Ibadan and I HELP HER FROM Ajibode to Apete her name is Iya-Adura. And a we are (we) coming I asked her what she denny at U.I. and she told me there she was working in U.I. and I introduce my market to her that I can trading, shoes, cloth and phone and I told her that she should help me to patronized my business to U.I. personnel and I also told her I used to travel to coton to brought some goods like shoes & clothes and that I know her and she also promised me that she will help me to patronized my business and after then we exchange our phone number and after a week intervned, one Iya-Adura called me on phone and when I got there, she show me her office and after I told her I will come back the next day and I told her that I will bring some phone to the office in order to used her interest and when I came the following day I brought some phone in order to sell and after then Iya-Adura introduces some people to me that they need motor-car at Cotonu and I was asked welter , I know somebody there (which) who will help us interpreting cotonu language and that was while I gave them one Mr. Femi number because he understand their language, he is a Nigeria man but he used to cotonu very well and immediately I called Femi cotonu number and both of us speaked together including Iya-Adura people and they told Femi in my present on phone that they will go

and met Femi in Cotonu and I left them and everybody departed. About two hours after discorssion I saw one of the boys that said they wanted to buy car where (am) I parked my car in order to patronized my business safe to me and left and that was all. Until after five days when one of them called me on phone that one Femi called him to come down to Lagos and I told him that, that is where he will pass to cotonu and that was all. After another five days one of them called, that they have given Femi money and they did not see any car and I told them that it is not my consumed because I did not there and he did not tell me any amount given to Femi and I did not no when money was sent to Femi and I did not no how much they paid him and I was not told from Femi nor the other parties I did not tell them to give money to Femi since then I did not see anybody tell to deny being 18/02/2016 when I seek them with Police to arrest me and I followed them down to the Station. In addition I am not a motor dealer. I only know Femi because he help same at cotonu when I wanted bought my own car. (all sic.)"

**Excerpt from PW2's Testimonies on Oath:-** I am Tolari James Babatunde of Aroro Makinde Gospel Church, Ojoo, Ibadan, I am a fresh Graduate looking for Job. I know the Defendant and Mrs. Comfort Tolari is my mother- PW1. I met the Defendant on 1-2-2016 at University of Ibadan. He introduced himself as a re-tired custom officer on voluntary retirement after sustaining gun-shot injury on his face. Myself and Mrs. Idowu, and Mrs. Oke were all there. He specialized in helping people to get cars from cotonu and that he has a business partner there. He gave his partner's name as **Mr. Apetu Noah Oluwafemi.** He asked for the car specification and I said space wagon Mitsubishi. Right on the sport, he called Mr. Apetu that he has a customer with him needing a space bus, Mr. Apetu gave the cost of the space bus at N600,000.00 and we should pay deposit of N300,000.00 and

that the balance would be given to him in three days after he had brought the car. Mr. Ariyo gave me the account number that I should pay the sum of N300,000.00 into the said account and Mr. Apetu's phone number. Afterwards, we left U.I. On my way home, I met the Defendant at Ojoo where he gave me the assurance that I should pay the said amount, that he trust his business partner. Mr. Apetu and that he would deliver the car to us in the next three days. At home, I narrated everything to my mother who immediately called Mr. Ariyo who also assured of no problem and that the car would be delivered within the next three days of payment. On the following day 2/2/2016; my mother gave me her ATM Card to proceed with the transaction. On my way to the Bank, I called the Defendant to inform him and he gave me go-ahead. When I got to the Bank, I first made deposit of N200,000.00 to the account number given to me by Mr. Ariyo the Defendant and another N100,000.00 to the same account. Afterwards I called both Mr. Apetu and Mr. Ariyo. The two of them confirmed and acknowledged the payments. I have the receipts of payments. Mr. Ariyo also called my mother to acknowledged the payment. We were expecting the car, surprisingly on 3/2/2016, I received a call from Mr. Apetu that I should pay another N100,000.00 I called and informed Mr. Ariyo myself and my mother declined because it was not part of our initial agreement but the Defendant called us back and said that we should sent the money to Mr. Apetu because he had spoken with him and he needed the money for clearance. We informed Mrs. Idowu also called Mr. Ariyo and he told her again that we should go ahead with the transaction. So on 4/2/2016 I paid another sum of N100,000.00 to the same account number immediately Mr. Ariyo called me that Mr. Apetu has acknowledged the sum of N100,000.00. And that in the next two days we should be expecting the car. About seven days after when we did not see the car, I called Mr. Apetu but his phone had been switched off. I called Mr. Ariyo who picked and started cursing me, that he did not know me and that I should stop calling his phone. My mother also called him and he did the something to her we informed Mrs. Oke too about the new development and said that Defendant had been cutting her off on phone. We were



able to locate the Defendant through the help of Mrs. Oke at his house around Generation Area, Apete, My mother and Mrs. Idowu went to Apete and including myself, we were able to apprehend the Defendant through the help of the residents of that Generation Area, Apete, we tracked him down to his Pastor's house and he denied knowing or seeing either myself or Mrs. Idowu and also denied knowing anybody by name Mr. Apetu. People in the church now collected the Defendant's phone, dialed Mr. Apetu's number and it came up with Apetu's name on the phone. It was then that he now owned up. From there, the Police were invited. At the station I volunteered statement. The Police also requested for the photocopy of the receipt of payments that I made and I gave them. At the Station, he admitted knowing Mr. Apetu and undertook to produce him in the next two weeks and failing which he should be held liable and accountable in court. Statement of the PW2 is hereby admitted as Exhibit A2. Original automated receipts are three and already photocopied together and tendered in evidence as Exhibit A1.

The highlight of the facts which the Court relies is as follows:-

1. The sum of Four Hundred Thousand Naira (N400,000.00) was paid in three installments to Mr. Apetu's account vide exhibit "A1".
2. The identify of Mr. Apetu is known only to the Defendant who introduced him absentia to the Complainant as his Cotonou Business Partner.
3. The Defendant was in between the Complainant and Mr. Apetu.
4. The Defendant during investigation failed to lead the investigating Police Officer (IPO) to Mr. Apetu when he was asked to do so and was given enough time.
5. There is therefore evidence of conspiracy between the Defendant and Mr. Apetu as an accomplice.
6. It is evidently clear that the Defendant is neither a retired custom officer nor a car dealer.

7. The Complainant's case is a straightforward case of conspiracy, obtaining under false pretence and stealing against the Defendant.

Thus, in the circumstances of this case, the evidence available against the Defendant is cogent, complete and unequivocal.

Defendant is hereby found guilty as charged.

Fact admitted need no further proof and the evidence against the defendant in respect of Count 1,II, and III of the charge is overwhelming direct and cogent See Shugaba Umar Gana Vs FRN (2013)8 NCC Pg. 135 at Pg 152-153 and 156 where the Supreme Court held as follows:-

"..... Thus, Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics. In order to secure a conviction in a criminal trial, circumstantial evidence available must be cogent, complete and unequivocal. Such evidence must be compelling and must lead to the irresistible conclusion that the accused and no one else must have committed the crime."

It is trite law that the court is free to accept an uncontradicted evidence of the prosecution witnesses. See AJIBADE VS STATE (2013) 8 NCC Pg 211 per C.B. Ogunbiyi JSC at Pg. 245.

The defendant is hereby find guilty as charge.

ALLOCUTUS: The Defendant pleaded for leniency and that he is bread-winner and a farmer but no longer doing his business as a result of lack of fund.

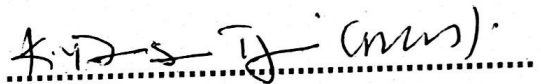
SENTENCE:- The Defendant is hereby sentenced as follows:-

COUNT I:- Three years imprisonment

COUNT II:- Three year imprisonment without an option of fine. The two terms shall run concurrently.

COUNT III:- One year imprisonment or a mandatory of the sum of fifty thousand naira in lieu. One year imprisonment is not to run concurrently (in default of five) with the three years terms.

RESTITUTION:- The Defendant shall refund to the complainant- Mrs. Tolari Comfort the total sum of four hundred thousand naira being the sum allegedly and fraudulently received from the complainant within a month otherwise the complainant is free to institute Civil action to have her money refunded. In martins Vs C.O.P (2013)8 NCC Pg 284 at Pg 309, it was held in alia by the court and in consideration of Section 365 of Criminal Procedure Code on Award of Compensation against a person convicted of Criminal Offence that "The Chief Magistrate Grade 1 and in fact any other Court of Criminal Jurisdiction has the power to award compensation.



K. Y. DUROSARO-TIJANI (MRS.)

CMA/DCR II

18/8/2017.