

IN THE MAGISTRATE COURT OF ONDO STATE
IN THE AKURE MAGISTERIAL DISTRICT
HOLDEN AT AKURE

BEFORE HIS WORSHIP A.O OLOTUAH SENIOR MAGISTRATE II

THIS DAY 13TH DAY OF JULY 2017

Charge No-MAK/0/280/2016

BETWEEN

COMMISSIONER OF POLICE ----- COMPLAINANT

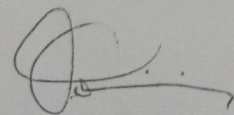
AND

MICHAEL ADEDEFE ----- DEFENDANT

JUDGEMENT

The Defendant pleaded not guilty to a 2 count charge of Obtaining money under false pretences an offence that is punishable under section 419 and Perjury an offence punishable under Section 118 both of the Criminal Code Law: Cap 37 Vol. 1 Laws of Ondo State of Nigeria 2006.

The Prosecution called 2 witnesses and tendered 6 Exhibits (2 Affidavits, High court processes, Statement of Deacon James Fayehun and Defendant, 4 Sale agreements for land buyers) marked as Exhibit A-F4 respectively while the Defence called a witness. The gist of the prosecution's case is that Defendant convinced Pw1 to buy 2 plots of land located at Adegbemile area of Akure. Pw1 said the land was waterlogged and the Defendant received the sum of ₦10,000 for the purpose of clearing the land of vegetation and large trees. Pw1 said that for each plots of the land she paid the defendant ₦25,000 but no receipt was issued because there was no layout yet on the parcel of the land. That after clearing the land, the Defendant and one Surveyor Fagbemi went with her to the land and measured 2 plots for her and the excess of ₦5,000 earlier paid was refunded back to her making the total paid for the 2 plots to be ₦20,000. That after surveying the land she paid for the service.



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Pw1 testified that she did not enjoy peaceful possession of the land because of a rival claimant and on several occasions she had to repay the defendant for the trees to be uprooted but this was not done hence she employed someone else who later uprooted the trees at a cost.

Pw1 reported the matter to the Defendant's family members. That there was a consensus that the defendant their Secretary did not remit money paid by Pw1 for the lands to the family so she should pay additional N20, 000 with some Kolanut, Bitter kola and Alcoholic Gin for the said land. The Defendant gave her Exhibits A and B for the receipt of the land, but still she did not enjoy peaceful possession. Her activities and development on the land was disrupted many times indeed her blocks and iron rods meant for the foundation were charted away by rival claimant to the land.

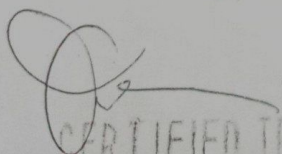
Pw1 testified further that for sometimes she stopped work on the land because of financial difficulty but she put one Mr. Adetola in care of the land and nobody disturbed her until 2015 when another Chief was appointed in the family of the Defendant. The new chief claimed that no money was given to him in regard to the land.

She also testified that the matter was taken to Ijoko Ojogbon a television program for reconciliation of local disputes but all efforts to settle it proved abortive. The matter was later reported and investigated at the police station. The statement of Deacon James (one of the family members of the Defendant) confirmed that Pw1 is the owner of the land and suggested that another land should be given to Pw1 but no land was given to her.

During cross examination Pw1 confirmed that the issue before the court was about a family land that she did not enjoy peaceful possession of. She testified that it was true the family had a new head but she did not know until they took over the land.

She confirmed that she paid N20,000 for 2 plots of land. She testified that as a result of the problem she was facing on the land she instituted a matter at the High court in which the Defendant was a party. She testified that it was the Defendant that made the Affidavit as receipt for the purchase of the land.

PW2, woman corporal Temitope Idowu with Force No 0413 2 attached to A Division police station, Akure testified that on the 4th day of September 2015 a case of obtaining money under false pretence and perjury was reported by PW1 and the case


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(A.C. Registrar)

was referred to her for further investigation. She said she recorded a voluntary statement from all the witnesses. She testified that the scene of crime was visited and she discovered that foundation of 7 or 8 blocks level was found on the land. During the course of investigation she also discovered that it was true the Defendant collected money from PW1 for 2 plots of land and some other family member were aware of this transaction and an affidavit was sworn to as a receipt for the land.

During cross examination Pw2 confirmed her testimony in examination – in - chief to the extent that the matter before the court is as per the charge and the land in question was at the back of Adegbemile hall which was sold to PW1 who did not enjoy peaceful possession of it.

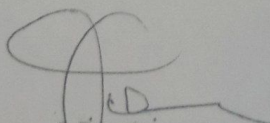
She said she did not visit the High court Registry to test the authenticity of the Affidavit because it was signed in the high court of Justice.

The Defendant filed a No case submission while prosecution filed a reply and the court overruled the Defendant's submission and invited him to enter a defence. The Defendant testified on his behalf and did tendered only one Exhibit tagged Exhibits F-F4

DW1, the Defendant testified that he knew PW1 in March, 2001 through one Mr. Elekeleke who was a prospective buyer. Dw1 said that he collected N20,000 from PW1 though it was for construction of bridge because there was no road leading to the land but later the prospective buyer paid fully and receipt issued and all effort to refund PW1's proved abortive until 2015 when PW1 show up. After Dw1's father demise, PW1 was not allowed to enjoy quiet and peaceful possession by the family because Pw1 did not fully paid the cost of the land. He testified that efforts were made for the matter to be resolved amicably but all proved abortive.

He testified that the new head of the family Chief Folabi Fayehun who claimed to own the land, suggested that another land be given to PW1 which she refused. He testified that he deposed to Exhibit A and B for PW1 as evidence of payment but if pw1 fully paid they will remove the N20,000.00 initial payment.

During cross examination Dw1 confirmed what he said in his examination-in-chief and also added that he did not know that PW1 paid additional N20,000 to his father because he was at Owo for nine months as a result of illness.


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The defendant filed and adopted a final written address on the 2nd of June 2017 and distilled a sole issue for determination that:

"Whether considering the totality of evidence adduced before the court, the defendant is not entitled to be discharged and acquitted".

The defence counsel argued that considering the totality of evidence adduced the prosecution had failed to discharge the legal burden placed on it to prove his case beyond reasonable doubt. He cited the case of **Yongo V C.O.P (1992) 4 SC NJ 113**.

He submitted that for the prosecution to discharge the legal burden he must prove all the ingredients of the offence of obtaining by false pretence and perjury.

He submitted that before a court convict a defendant for all the alleged offence the ingredients of the offence must be proved by the prosecution. He cited the case of **Michael Alake & Anor v. the State (1991) 7 NWLR part 205, 567 at 591**.

He submitted that from the totality of evidence given by the prosecution vice versa the defendant, the prosecution had failed woefully to prove the two counts. He cited the case of **Aituma v. State (2006) QCCR Vol. 7 pg 109**.

He urged the court to discharge and acquit the defendant based on the fact that the prosecution had failed to prove his case.

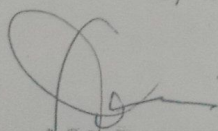
I have carefully perused through the charge, exhibits and listened to the entire evidence adduced in this case, I have formulated a sole issue for the just determination of this case i.e. whether the prosecution has proved the alleged offence beyond reasonable doubt.

In a proceedings of this nature the burden of prove rests on the prosecution to establish the guilt of the defendant. I place reliance on the case of **Egbirika V. the State (2014) 227 LRCN 1 at 32 U-Z**

On count 1, the Defendant was alleged to have obtained money by false pretence.

In order to succeed in the charge of obtaining by false pretence, the prosecution must prove that:

- 1) There is a pretence
- 2) The pretence emanated from the defendant
- 3) It was false



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- 4) The defendant knew of its falsity or did not believe in its truth
- 5) There was an intention to defraud
- 6) The thing is capable of being stolen
- 7) The defendant induced the owner to transfer his whole interest in the property.

See the case of **Alake V. State (1999) 7 NWLR part 205 at page 581**

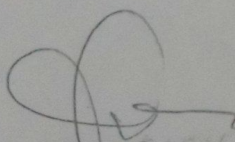
The offence could be committed by oral communication or in writing, or even by conduct of the Defendant. The above adequately presents the law as in Section 419 of the Criminal Code.

In the instant case pw1 testified that the defendant convinced her to buy plots of land which was behind Adegbemile Hall and promised to clear the land because it was a water lodge pervaded with vegetation and large trees while in the testimony of Dw1 he agreed to have collected money from pw1 for clearing of trees and construction of bridge while Exhibit A and B he deposed that he sold the land to pw1.

From the totality of evidence there is no controversy that Dw1 collected a sum of money from the Pw1 thus, in the evidence of pw1 she testified that she paid ₦20,000 for 2 plots of land and additional ₦20,000 with some kolanut, bitter kola and Alcoholic gum paid for the said land. . There is no doubt that money is capable of being stolen. Also from the evidence Dw1 knew that the said land belong to the family and yet he went ahead to sold it. I am piqued by all this fact that there was pretence and the pretence emanated from the defendant and it is false. Dw1 knew that the land belong to the family. Thus I hold that the prosecution had proof its case beyond reasonable doubt. Accordingly I hereby convict the defendant on this count.

On count 2 the defendant was alleged of perjury. This offence is created under Section 117 of the Criminal Code which reads thus:

"Any person who, in any judicial proceeding, or for the purpose of instituting or conducting a judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding is guilty of an offence, which is called perjury"


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