

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/1/EFCC/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIAPLAINTIFF

AND

1. ALIYU ABDULLAHI

2. THEOPHILUS EMEKA ECHEFULADEFENDANTS

23 - 04 - 2019

1st defendant in court, speak English.

2nd defendant absent.

Aisha A.T. Habib with B.M. Buhari and Salisu

Sani for prosecution.

T.T. Kyuga with him H.A. Adeyomi for 1st

Defendant holding A. Haruna's brief.

REGISTRAR – The 2nd defendant is not in court. He was in court. The last

Adjourned and is aware of today.

J U D G M E N T

The two defendants are standing trial on a 4 counts charge of criminal conspiracy, attempt to obtain property by false pretence and using forged document as genuine punishable under section 1 (3) of the Advance Fee Fraud And Other Fraud Related Act 2006 and Section 364 of the Penal Code Law. The two defendants pleaded not guilty to all the counts related

to them and in the effort to prove the counts of charges against them, the prosecution called 8 witnesses and tendered 13 documents as exhibits. In view of the fact that the 4 counts in the amended charge are themselves part of the controversy in the case. I decided to reproduce them to allow easy reference to them.

THE COUNTS

"COUNT ONE

That you Aliyu Abdullahi and you Theophilus Emeka Echefula sometimes in September 2014, at Kaduna within the jurisdiction of the High Court of Kaduna State did conspire among yourselves to commit an unlawful act to wit: obtaining property by false pretence and thereby committed an offence contrary to section 8 (a) of the Advance Fee Fraud And Other Fraud Related Act 2006 and punishable under Section 1(3) of the same Act.

COUNT TWO

That you Aliyu Abdullahi sometimes in 2014 at Kaduna within the jurisdiction of the High Court of Kaduna State and attempted to withdraw at UBA Kachia Road Branch, Kaduna from the account of one Okoye Charles Osita with account No. 2000697028 domiciled at the said United Bank for Africa Plc (UBA Plc) by falsely representing that you are the Okoye Charles Osita which pretence your knew to be false and thereby

committed contrary to section 1 (1) (b) of the Advance Fee Fraud And Other Fraud Related Act 2006 and punishable under Section 1(3) of the same Act.

COUNT THREE

That you Theophilus Emeka Echefula sometimes in 2014 at Kaduna within the jurisdiction of the High Court of Kaduna State with intent to defraud attempted to withdraw at UBA Plc, Ahmadu Bello Way branch, Kaduna from the account of one Okata Obioma Jude domiciled at United Bank for Africa Plc (UBA Plc) with account 2024687607 falsely represented that you are the said account holder by name Okata Obioma Jude which pretence you knew to be false and thereby committed an offence contrary to section 8 (1) (b) of the Advance Fee Fraud And Other Fraud Related Act 2006 and punishable under Section 1(3) of the same Act.

COUNT FOUR

That you Aliyu Abdullahi sometimes in 2014 at Kaduna within the jurisdiction of the High Court of Kaduna State with intent to defraud used as genuine a forged document to with a Federal Road Safety Corps drivers licence with name Okoye Charles Osita by falsely representing that you are the Okoye Charles Osita contrary to section 366 and punishable under section 364 of the Penal Code Law.”

The 1st defendant pleaded not guilty to the charge in counts 1, 2 and 4. The 2nd defendant pleaded not guilty to counts 1 and 3 of the charge which relate to him. After the prosecution had called 8 witnesses and tendered 13 documents, the defendants rested their case on the prosecutions' evidence without calling further evidence. In criminal law, it has always been the responsibility of the prosecution to prove a charge beyond reasonable doubt and the defendants are not bound to call any evidence to prove their innocence. See section 135 of the Evidence Act and the decisions in **NJOVENS & ORS V. THE STATE** (1973)1 NMLR 331 and **DAWAI V. STATE** (2018) 5 NWLR (pt. 1613) 499 at 509.

In paragraph 3.2 of the prosecution's final written address dated 27th November, 2018, it was conceded that prosecution has not proved count 1 of the charge which alleged criminal conspiracy against both defendants. This action of the prosecution is commendable particularly when it is evident from the facts that no relationship whatsoever has been established linking the two defendants in any transaction relating to counts 2 and 3 of the charge. It was impossible in the circumstances of this case to establish agreement between the 2 defendants who never met prior to the investigation of the alleged crimes in counts 2 and 3 of the charge. I hold that prosecution has failed to prove count 1 of the charge.

The facts in this case are not so much in dispute. In February 2015, the 1st defendant went to UBA Plc, Kachia Road Branch, Kaduna and met the Customer Relation Officer of the branch Gloria Akaeze. The 1st defendant requested for his ATM Card. He gave his name as Charles Osita Okoye. The name appeared in the bank's computer system. The officer (PW2) gave the 1st defendant the register to enter his name, account number, sign

his signature and enter the date of collection of the ATM Card. After he did all this the officer (hereinafter called the PW2) collected the register and entered the account number in the computer. She immediately accessed the account of Charles Osita Okoye. The picture of Charles Osita Okoye on the screen does not look like the 1st defendant. When PW2 became convinced that the 1st defendant is not Charles Osita Okoye. After confirming that 1st defendant is not the holder of the account from the Onitsha branch of the bank where the account was opened the 1st defendant was arrested and the ATM Card was not given to him. This is the evidence of the PW2 that was never challenged and controverted by the defendants.

In fact, the 1st defendant's extra judicial statement dated 30th January 2015 admitted all the facts attested to by the PW2.

In his said statement Exhibit 5 the 1st defendant stated that he returned to Nigeria from Egypt on 20th November, 2013 after he was deported. He wanted to return to Egypt and met with one Mr. Ade and Mich who promised to assist him return to Egypt. The two introduced him to what they call a "back job". It involves him posing as holder of an account that belongs to another person, securing ATM Card and using it to access the account and transfer funds to other accounts. He stated in respect of charge against him as follows:-

"I arrived Kaduna with Mr. Ade and Mich on Monday 26/01/15. I was given a phone and driver's licence of Mr. Okoye Charles Osita. I was told to process form for ATM Card. I submitted the form to a cashier at

UBA and the cashier ask me to come back for the ATM on Thursday. We came back on Thursday I met the cashier and she told me to hold on, the next thing I saw was a policeman and a security, I then look around to see where Ade and Mich was sitting in bank but they have all gone, that is how I was arrested. The information they gave to me by Mich from his phone, he will scroll down. And I wrote it down on a piece of paper it contains the account information of the customer of the bank Okoye Charles osita. I did not collect any cash from either Mich and Ade may be occasionally when we met they can gives me ₦2,000= or ₦3,000.....”

Exhibits 8 and 10 are the UBA Debit Card Application Form filled by the 1st defendant as Okoye Charles Osita and the ATM Card issued in consequence of the application also in the name of Okoye Charles. These exhibits were tendered through one of the investigating officers Omolola Olabode who testified as PW6. The question is whether these pieces of evidence garnered against the 1st defendant establish the charge against him in count 2 of the charge.

It has been submitted in the defendants' written address that the defence of obtaining property by false pretence does not crystalize without property being obtained by the defendant. That the defendant was not given the ATM Card and he could not therefore use false pretence to withdraw money from any account. That although the means rea of the offence in

this case may have been established that actus reus was not. **FOWLER V. PAGET** (1798) 7 T.R. 508 was referred to in support and I was urged to discharge and acquit the 1st defendant.

The offence allegedly committed by the 1st defendant in count 2 of the charge is attempt to obtain property by false pretence which is punishable under section 1 (3) of the Advance Fee Fraud And Other Fraud Related Act 2006. The ingredients of the offence attempted are as stated in **IKPA V. STATE** (2018)4 NWLR (pt. 1609) 175 at 237 (paras. G – H). They are as follows:-

- a. A pretence was made by the accused person.
- b. The pretence was false.
- c. The accused knew the pretence to be false and did not believe it to be true.
- d. The pretence operated on the mind of the person from whom the property was obtained.
- e. Some property must have been obtained as a result of the pretence. To prove the offence of obtaining

property by false pretence all the elements of the offence above must be established conjunctively together. To establish attempt to commit the offence, however, it would not matter if the property was not obtained and the defendant, was discovered before he says his hands on the property. The Supreme Court in **OZIGBO V. C.O.P.** (1976) LPELR – 2890 (SC) at p.12 per Alexander JSC stated:- What constitutes an attempt to commit an offence in the following words:-

“To constitute an attempt, the act must be immediately connected with the commission of the particular offence charged and must be something more than mere preparation for the commission of the offence; See R. V. EAGLETON, DEARS 515; R. V. ROBINSON, 11 Cr. App. R. 124; COMER V. BLOARFIELD 55 Cr. App. R. 305.” See also JEGEDEV. STATE (2001 LPELR – 1603 (SC) at P.7 and REV. KING V. THE STATE (2016) LPELR – 40046 (SC) at p. 64. In SHURUMO V. THE STATE (2010) LPELR – 3069 (SC) at 35 the Supreme court, per Fabiyi (JSC) stated:-

- “.....The mere intention to commit a misdemeanor is not criminal. Some act is required. Acts rearotely loading towards the commission of the offence are not to be considered as attempt to commit it. But acts immediately connected to it are of moment. The offender must have crossed the rubicon and burnt his boat: See R.V. EAGLETON DEARS 515, 548, 169 E.R. 826, 835 per Parke, B. See also ORIJA V. I.G.P. (1957) NRNLR 189. It literally means that the acts proved against an offender must be such as would show that he had done all he needed to do to complete the act before he was stopped.”

It is not in dispute that the 1st defendant applied for the ATM Card in the name of Charles Osita Okoye pretending to be Charles Osita Okoye, the holder of the account. This pretence to be knowledge of the 1st defendant is false. In his extra judicial statement exhibit 5, the 1st defendant narrated how he applied for the ATM Card posing as Charles Osita Okoye, how he went back to the bank, filled the ATM collection register in the name of Charles Osita Okoye and signed it all in the effort to secure the ATM Card. The PW2 stated that it was the 1st defendant who came to collect the ATM Card and that he filled the register and signed it as Charles Osita Okoye. His face however does not resemble the picture of Charles Osita Okoye when she accessed the account of Charles Osita Okoye in her computer. The picture of Charles Osita Okoye on the screen of the computer is not the face of the 1st defendant. There's also exhibit 8 the ATM Card application form filled by 1st defendant which he never denied. The PW2 also referred to the pretence of Charles Osita Okoye p. C42 b of exhibit 3 which she said is not the picture of 1st defendant. These pieces of evidence are not remote acts leading to the commission of the offence of obtaining property by false pretence. They are acts immediately connected to the offence. Why would the 1st defendant pretend to be Charles Osita Okoye to obtain an ATM Card in relation to the account of Charles Osita Okoye? The only inference to draw from the actions of 1st defendant is that he took all this risk to access the account of Charles Osita Okoye and defraud him of funds in the account. The 1st defendant was discovered before he could lay his hands on the ATM Card. To commit the offence charged in count 2 therefore, it is sufficient to establish that the 1st defendant represented himself as the holder of the account belonging to Charles Osita Okoye and that he applied for the ATM Card pretending to be Charles Osita Okoye,

the owner of the account. From this, the only irresistible conclusion to draw is that the 1st defendant wanted the ATM Card to fraudulently withdraw money from the account of Charles Osita Okoye. Though it was not at the point of accessing the account that the 1st defendant was caught but at the stage when he applied for the ATM Card, the result is the same. The intention was to secure the ATM Card and use it to withdraw money from Mr. Okoye's account. I am satisfied that the evidence led by the prosecution which the defendant never challenged has established that 1st defendant had done all he needed to do to complete the act before he was stopped by PW2 and his arrest. I so hold.

On 4th February, 2015 the 2nd defendant visited UBA Ahmadu Bello Way branch business office. He met Olajumoke Shakirat Tiamiyu, the customer relations officer of the branch. The 2nd defendant wanted to apply for an ATM Card. The 2nd defendant filled the form and the witness (PW3) used the account number filled by 2nd defendant on the form to check the account in the computer system to confirm if the account belongs to 2nd defendant. The name of the account is Ukata Jude Obioma. She opened the mandate to check if the 2nd defendant is the owner of the account. The picture on the screen looks like the 2nd defendant though younger. The signature is the same and she requested the 2nd defendant to append his signature again on the filled form. After this she asked him to return for the collection of the ATM Card after he has received text message from them.

On 9th February 2015, the 2nd defendant returned when the ATM Card was ready. PW3 gave him the dispatch register which he filled and she also gave him the ATM card. The POS machine in the branch was faulty. She advised 2nd defendant to go to another branch of the bank to activate the

ATM Card. Some hours later one of the bank's supervisors complained about ATM transaction. She was called to identify 2nd defendant at the police station. She identified 2nd defendant as the person who claimed to be Ukata Jude Obioma and who collected the ATM Card that same morning. On 2nd March, 2015, the witness made a statement at EFCC Kano office and also identified 2nd defendant among two other persons in an identification parade.

Maryam Kehinde Yusuf is the branch operation's manager of UBA Mogadishu branch. She testified as PW4. On 9th February, 2015 the 2nd defendant visited her branch to activate his ATM Card. The 2nd defendant filled the register with his name, account number, date, signature address and phone number. She checked the account number supplied by the 2nd defendant on her computer system to ascertain if he is the account holder. The picture and signature of the account holder on the screen are not the same. She informed the 2nd defendant and also contacted the branch where the account was opened. The branch responded shortly that the holder of the account is not in the country and also that 2nd defendant is an impostor. The 2nd defendant was apprehended by the police. Later she identified the 2nd defendant at the EFCC office and also wrote a statement.

The PW7 is one of the investigating officers of the case. He recorded the statement of the 2nd defendant which was tendered through him and admitted in evidence as exhibit 11 without objection. In exhibit 11, the 2nd defendant confirmed the testimony of the PW3 and PW4. He stated that late in 2014, one Mike called him on phone and they both met at command guest inn Kaduna. Mike asked him for help to apply for ATM Card. They both went to UBA Ahmadu Bello Way branch where he filled a form which

he signed and submitted at the customer care. He was asked to return after 5 days to collect the ATM Card. He returned to the branch the ATM Card which could not be activated in the branch. He was asked to go to UBA branch of the bank at Central Market Kaduna to activate the card and the officer at customer care said he is not the person in the picture on her computer. He was arrested. Mike ran away. It was Mike who filled and signed the form for the ATM in the name of Ukata Jude Obioma on 4th February 2015. He admitted that he's not Ukata Jude Obioma.

The evidence of the PW3, PW4 supported by the statement of the 2nd defendant in exhibit 11 over whelmingly establish that the 2nd defendant applied for the ATM Card in the name of Ukata Jude Obioma pretending to be Ukata Jude Obioma, the holder of the account. To the knowledge of the 2nd defendant the pretence was false. The 2nd defendant secured the ATM Card and proceeded to activate the card before he was discovered and arrested. His acts are not remote but are immediately connected to the offence of attempt to obtain property by falsely pretending that he is Ukata Jude Obioma. Again, I ask the question; why would the 2nd defendant pretend to be Ukata Jude Obioma. Without doubt, he did so to gain access to the account of Ukata Jude Obioma and defraud him of funds in the account. He was discovered before he could lay his hands on the funds after he gain access to the ATM Card.

To commit the offence charged in count 3, it is sufficient to establish that the 2nd defendant represented himself as the holder of the account belonging to another person and also that he applied for an ATM Card pretending to be that other person who he is not. I agree that ATM Card has to be activated before the 2nd defendant can perform any transaction

with the card. The intention of the 2nd defendant applying for and securing the ATM Card in respect of the account of another person which he admitted doing, is to gain access to the funds in the account of that other person, in this case, the account of Ukata Jude Obioma.

The evidence led by the prosecution which was never challenged by the defendant has established that the 2nd defendant had done all he needed to do to complete the act before he was stopped by the PW4 who caused his arrest by the police. I so hold.

The offence for which the 1st defendant was charged in count 4 cannot be established without proof that the defendant used as genuine a document which he knows or has reason to believe to be a forged document. Evidence led by the prosecution through the PW8, the Administrative Officer in charge of Driver's licence Federal Road Safety Commission, Kano is to the effect that the forged document allegedly used by the 1st defendant, Driver's Licence in the name of Charles Osita Okoye, exhibit 9 was verified by him as not genuine. He wrote a letter (Exhibit 13) as that effect. This piece of evidence may have established that the driver's licence found on the 1st defendant was not genuine.

The prosecution however, has not adduced evidence to prove that the 1st defendant used the fake driver's licence. The PW6 the investigating officer only stated that the licence was recovered from the 1st defendant during investigation and that the 1st defendant informed him that it was given to him by one Mike Umo to be used in the bank. No evidence was led to show that the 1st defendant used the licence in any bank or other transaction places. This count has not been proved against the 1st defendant.

In the final result, I find that the prosecution has failed to prove the charge in counts 1 and 4. I discharge the 2 defendants in count 1 and the 1st defendant in counts 4. I also find that the prosecution has established beyond reasonable doubt, that the 2 defendants as charged in counts 2 and 3 had attempted to commit the offence of obtaining property by false pretence punishable under section 1 (3) of the Advance Fee Fraud And Other Fraud Related Act 2006. I convict the 1st defendant for the offence in count 2 and the 2nd defendant in count 3.

Signed

HON. JUSTICE M.T.M. ALIYU – JUDGE

23/04/2019

HABIB – I apply that the court suspend sentences against the 2nd defendant because the 2nd convict is not in court. We apply for beach warrant against the 2nd defendant.

KYUGA – I agree with the submission of the prosecution. On behalf of the 1st defendant we urge court to consider the conduct of the 1st defendant from the time he was arraigned. The 1st defendant could not satisfy bail condition and has been in prison custody since January 29th 2015. He also suffer from Asthma and hypertension. He's been having difficult in accessing medication in prison and he is aged. We urge court to temper justice with mercy and show leniency. He's learnt his lesson while the matter lasts.

HABIB – No objection to the court tamper justice with mercy. The grounds of ill-health is not substantiated by medical report. I urge court to use its discretion judiciously.

COURT – Beach warrant issued against the 2nd convict and he's sentence is suspended till he's arrested. His surety shall be summoned to show cause. In considered passionate plea for mercy made by Mr. Kyuga on behalf of the 1st convict. I note that there's no complaint from the prosecution that he had been convicted of similar offence before now. I also note that he could not satisfy conditions imposed for bail and has been in prison custody throughout his trial since his arraignment on 25th June, 2015. The submission that the 1st convict is sick and is finding difficulty accessing medical care in prison custody is indeed not supported by medical certificate from the prison authority. By the provision in section 1 (3) of the Advance Fee Fraud And Other Fraud Related Act, the punishment can only be prison term of at least 7 years and not more than 20 years, without the option of fine. Because the 1st convict is a first offender and has been in custody throughout the trial, I sentence him to 7 years term and his sentence shall be deemed to have commenced from 25th June 2015.

Signed

HON. JUSTICE M.T.M. ALIYU – JUDGE

23/04/2019