

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 11, SPECIAL OFFENCES COURT 1,
BEFORE THE HON. JUSTICE M. A. DADA (MRS.)
TODAY THURSDAY THE 28TH DAY OF NOVEMBER, 2019.

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA

AND
OSEN IYERE

SUIT NO: ID/4047C/1

COMPLAINANT

DEFENDANT

JUDGMENT

The Defendant stood trial on a 3 Count Information dated 9th March, 2017 for Obtainin money by false pretence contrary to Sections 1 (1) (a) and 1 (3) of the Advance Fe Fraud and Other Fraud Related Offences Act No. 14 of 2006 and Stealing contrary t Sections 278 (1) (b) and 285 (1) of the Criminal Law of Lagos State, 2011. He i alleged to have sometime in March 2016 in Lagos within the Ikeja Judicial Division wit intent to defraud obtained the sum of N5,000,000 (Five Million Naira) from Terry Christa Energy Nigeria Limited under the false pretence that he was the owner of th Mobil Petrol Station at No. 93, Akpakpava Road, Benin City, Edo State and that the sai sum of money represented the two years rent of the Mobil Petrol Station to Zar Contracting and Consultancy effective from 31st May, 2016 to 31st May, 2019 whio representation he knew to be false on Count 1. He is alleged to have between the Month of March 2016 and May 2016 in Lagos within the Ikeja Judicial Division dishonestl converted for his own use the sum of N17,164,000 (Seventeen Million, One Hundred an Sixty Four Thousand Naira) property of Terry-Christa Energy Nigeria Limited entruste to his trust with him for the purchase of Petroleum products on Count 2. On Count3, he i alleged to have on or about the 3rd day of March, 2016 in Lagos within the Ikeja Judiciz Division dishonestly converted for his own use the sum of N9, 740,000.00 (Nine Millior Seven Hundred and Forty Thousand Naira) property of Terry-Christa Energy Nigeri Limited entrusted with him for the purchase of Petroleum products.

The Defendant pleaded not guilty to the 3 Counts and each Party called 3 witnesses.

PW1 was Mr Ugochukwu Udeghunani. His evidence-in-chief is thus:

I am a businessman. Yes I know the Defendant and I know Zara Contracting an Consulting Company Ltd. I also know Terry-Christa Energy Nigeria Ltd. Sometime i 2016, I was running a Filling Station in Benin, and so I met a woman Barrister Itoha Naana, an Agent that normally leases Stations. I told her I am interested in anothe

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Station. After sometime, she contacted me that she had seen one in a choice area. I made enquiries and they said she is really into the business that I can go ahead with her. She called me to come and see the owner of the Filling Station which I did. She took me to Mr Iyere, the Defendant, and the owner of the Station. I asked questions regarding the Station and he promised there was no problem. I called my in-law, the owner of Zara Contracting and Consulting Company and discussed with him. He said he hoped there would be no problem. I said since a lawyer was handling it, I don't think there would be any problem. We now went into an Agreement with the Defendant to give out the Mobil Station at Benin to Zara Contracting Company for 3 years for N2.5M per annum. We paid N5M with the understanding that when we start running the Station and we see how it goes; we would pay the remaining N2.5M within 6 months. We equally paid N9,740,000 into Mobil's Account through the Defendant's consent with his code as a Dealer in Mobil. Then we started renovation when our Lease was supposed to commence on 1st May. While renovating and fixing things, we also made payments into the Defendant's Account another N5,888,000, N2,980,000 and N1,306,000. The Defendant also collected N100,000 cash from us. We equally paid N680,000 for the construction of the gate. While under construction in May, 2016, we were at the Station when some people just drove in with thugs and Police and chased everybody away. I went by the side wondering who they were and I was told they were from Mobil and that the Defendant had been chased out of the Station. So, I called the Defendant and he said, 'don't worry, they will pay through their nose'. After sometime, I went to the Defendant and said since you have problems with Mobil, can I just take whatever products I have with Mobil while you go and settle with them? Later, I was finding it very difficult reaching the Defendant. So I had to go back to Barrister Nnana Itohan who took me to him. When we got to him, we pleaded with him to please let us take whatever we had there and go. At a time we became tired of calling him and after some time, his phone was no longer reachable. I then decided to make enquiries around and I got to know that he had taken Mobil to court in Benin. Then I went to Benin High Court with the consent of my lawyer to get the case between the Defendant and Mobil which I got. Then I knew that he had been having problems with Mobil and that he was not the rightful owner of the Station but only a dealer and that most of the money paid into Mobil's Account at times when he got products from Mobil, he diverted them without letting me know. When I confronted him, he said there is nothing like that. Then I called my lawyer and told him everything. Then we decided to do a Petition to EFCC and I attached the copy of the case between him and Mobil, the letter from Mobil to him, my Statement of Account showing the transaction between me and the Defendant. From my own stock taken, I got about N12M stock of products at the Mobil Station and Mobil also got about N12M stock from their own stock taken. Mobil was at that time willing to pay me the money but they cannot pay me without the Defendant's consent and he had refused to give his consent for that money to

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(The Defendant's 4 statements are Exhibits 12-15).

The Filling Station is owned by Mobil Oil Nigeria Ltd. The payment due to the complainant paid to the Defendant is N3M for 3 years which the Defendant said he used to settle his debts. The Defendant has not made any restitution to the complainant. There was no consent by Mobil to lease the Station to Zara Contracting and Consulting Company.

Under cross examination, he further testified thus:

Yes, we investigated this case as a Team. Yes, I am an Inspector of Police. This is my 27th year in Service. I have been with EFCC since inception May 9th 2003. I was among the people that opened the Lagos office on that Friday. I am the only Policeman attached to that Team. The name of the lawyer that wrote Exhibit 1 is Udochi Iheneanacho. The signature reads Udochi Iheneanacho Partnership. This is his brand signature. We have several of his Petitions in our office. This is a signature. I am a Policeman, not an Analyst. I don't know the definition of a signature. Yes, in the course of our investigation we wrote to the Corporate Affairs Commission in respect of Zara. It is here. (EFCC's letter to the CAC is Exhibit 16).

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CAC did not reply us. The name of the Company they replied to is different from the name we sent to them. We wrote another letter which they have not replied to. Yes, our request to CAC was in respect of Mobil and Zara. I got a reply for Mobil but not Zara. It was a mistake on the Petition's typographical error. The company is Zara and not Zaza. This is not even the fact in issue.

(CAC's reply to Exhibit 16 is Exhibit 17). CAC did not reply to our request for Zara. I am not investigating Zaza but Zara. They are not the same. The complainant told us it is the mistake in the Petition that the company is Zara and not Zaza which CAC said they do not have in their system. Zara and Terry-Christa are sister companies as they have the same Directors. I am not investigating the companies. I am only investigating the Defendant. Mobil's letter dated 24/05/16 attached to Exhibit 1 signed by the Defendant was received by him on 27/05/16. Exhibit 2 is the Lease Agreement dated 24/02/16 which Clause 2 reads, "The Lessor has a valid Licence. . . " No, the Defendant never told anybody that he is the owner of that Station. Yes, I saw this Agreement. Some of the responses to our investigation letters were received on 13/01/17. We wrote to Diamond Bank Compliance office at Oniru Estate, Lagos. We write letters to Head Offices. I don't know the source of the crime. I wrote to the receiving Banks and they replied me. The Corporate Banks always give us the addresses where we should make our enquiries and when we wrote Diamond Bank, they gave us the address of their compliance unit. I don't know the address of Terry-Christa offhand or if it has 2 addresses. They may have relocated. They are not in Lagos but it is a sister company to Zara. Yes, we are 4 in our

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Team who investigated this case and none is a lawyer. Exhibit 4 is said to have been written by a lawyer. None of us is a lawyer. The Defendant's statements in Exhibits 12-15 that PW1 operated a Station in 4 months before he was driven away. It is not my line of investigation to know how much profit PW1 made. I am investigating his losses through the Defendant which is N25M. Yes, I investigated pursuant to Exhibit 1.

Under re-examination, he stated thus:

The contract was a monthly one the Defendant had with Mobil while the Lease Agreement was for 3 years and Mobil already told him before that they would not be renewing the contract with him.

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PW3 was Babatunde Bolutife Odunuga, the Territory Manager Retail for Ibadan, Benin and Warri Sales Area for Double-One Plc. formerly owned by Mobil Oil Nigeria Plc.

"I am here representing Mobil Oil Nigeria Plc. Yes, I know the Defendant. He was a former Dealer at Mobil Oil Station at Akpakpava Benin. The Mobil owned the said Service Station and it was handed over to the Defendant as the Operator and given a Service Station Operation Agreement which can be renewed at the discretion of the Company either for a year or 6 months or one month as the company pleases. Normally we give performing Dealers one year to operate but in the Defendant's case, he wasn't performing too well so we started reducing the term of the Service Station Operation Agreement to one month. So we were renewing it monthly until it was not renewed and we informed him that we would no longer renew it which he attested and confirmed it through a letter. Exhibit 1 is the letter acknowledged by the Defendant on page 19. It is dated May, 24, 2016. This is the standard procedure to serve a dealer of our intention not to renew. The Defendant was served and he wrote to us confirming receipt of this letter where he appealed to us not to pull through with our decision not to renew the offer but we did not oblige him. He was supposed to be on the site and there was no reason for him not to be there. So I went with the Security because of the terrain of Benin. A couple of his employees signed the Inventory sheet and the Station was handed over to a new Dealer. He took us to Court in Benin. So there is a civil case in Benin contesting what was met on site on that day. The Service Station Operating Agreement is like staying in a hotel. You don't own it but only run it and it is timed and renewal is at the discretion of the company. The products on the site were owned by the Defendant. He bought all the products on site but he was meant to evacuate them but he did not. All the inventories have been monetised as documented and monetary value given and available to him anytime he wants to collect it. It is about N13-14M. He is claiming more than that. At EFCC, we worked it to N16M but he rejected it because he wanted to keep all the money instead of paying the person he owing. I think this led to the disagreement with them. No, my company had no Agreement with one Udegbanam Oguchukwu, only with the

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Defendant and not with Zara Contracting Company. He is owing Oguchukwu and Zara Contracting. This is the document in Exhibit 1 describing the Defendant as the Operator. The position did not change when the Agreement was terminated.

Under cross examination, he state thus:

From the inception of the Service Agreement here, I have not always been the Territory Manager for Ibadan, Benin and Warri depots. It was one Biodun that handed over to Ihenne Otaigbe who then handed over to me in 2015. Yes there was a hand-over Note. I don't have it here with me. We have about 8 Filling Stations in Benin. When I took over, there was a specific reference to the Defendant's Station as a non-performing Station. I have a letter I wrote to him for some form of infraction. He told me he was arrested in Abuja and he was in Court in Abuja. There are 4 letters here 3 by us and the Defendant's. (These are Exhibits 18-21).

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The Operating Agreement between Mobil and the Defendant commenced on 01/08/2005. The attachment to Exhibit 1 shows 1/12/2009. The renewal term is at the discretion of the company whether it is monthly or yearly. The first renewal as stated in the initial contract was at the discretion of the company. The 1st line of the attachment to Exhibit (read). The acknowledgment shows when the letter was received. The contract lasted for about 7 years; between 2009 and 2016. Yes the contract prohibits Sub-lease where he is not sure of the renewal period. It was a Service Station Agreement to manage the whole premises including the Supermarket, but he did not own it. A performing dealer is one who performs his operation according to the tenets of the company. These are well incorporated in the Service Station Operating Agreement. The company does the assessment of the performance. Since I came into the territory, the Defendant had not been doing well with his working capital. We arrived at N13-14M of the value of the goods but as a result of the Arbitration between us and our lawyers, we moved it up to N16M. We made an inventory of the products we met on Site. I have a very rough copy of the Inventory as represented by the Defendant here. The security we arranged for when I went to take over the Filling Station were Police officers. I was acting for Mobil. As the officer in charge, I wrote the letter to the Police and they gave me officers to go with me. The letter I wrote was written to Akpakpava Police Station. I don't have a copy or an acknowledged copy. The Police don't work with us. The properties are still in the civil court.

This closed the Prosecution's case.

The Defendant opened his defence as DW1 and he testified thus:

I am a Petrol dealer under Mobil. My place of Business is 93, Akpakpava Road, Benin city. I do not have a residence in Lagos. I do not do business partly or wholly in Lagos.

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Between March and May 2016, I did not do or receive money from anyone in Lagos. Yes I know Zara Contracting and Consultancy Services. Yes, I know Mr Ugochukwu Udegbumam. I know Mobil Service Station in Benin City that is my own as a dealer at Akpakpava Road. In 2009, Mobil offered me a dealership to run a Mobil Filling Station at Akpakpava Road Benin city. I've been a dealer since then according to how I was told to run it. This is my letter of Appointment. (The letter is Exhibit D)

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I know Exhibit 1. It related to me. This is not the Agreement I had with them. The Agreement I had with them is what I just tendered. As I operated the Service Station from 2009, they offered me that letter in October 2009 and they asked me to pay N9.9M and another N1M which I paid in that same Month of October. They said they would be supplying me one Truck for each Month. But for 3 months there was no supply until January that they began to supply scantily like bring 11,000 litres and at the end of every month, they made me to pay N330,000 as Service charge as rent of the Station, meanwhile I was not making that kind of money. So I complained and they reduced it to N220,000. I also paid tax of about N200,000 yearly to Edo State as well as taxes on Bill Boards etc. Then in 2012 they said I should look for more money to the business, worrying me, writing letters that I should get more working capital. The Sales Rep that was available was barely managing. The problem was also experienced by many others. When the Sales Reps were transferred to other States, they now brought this Tunde Odunuga who said I must raise my capital up to N15M. Because I did not do that, when they supplied other Stations, they would not supply me. I now called Tunde on the phone that other Reps that had been in this place did not behave like him and he vowed to deal with me that how can I call him and threaten him. Then the M/D of Mobil came on a visit to Edo State and he said they should be supplying me products and they should deal with me the way they deal with others. His name is Dr Oyechanji. In 2016, I was in my brother's office at Ministry of Works, Sapele Road when Mr Friday, who worked with me before at that Station and one Barrister Itohan came to me and the Barrister asked me if I was the dealer at the Station at Akpakpava Road and I said yes. She now said that she noticed that I have not been running the Station very well because she passes by that place and that the Station is in a very good location that she had somebody who has money that can join me to run the Station very well. Then she took her phone and called somebody and the person said he would be coming the next day. The following day, the same woman called me and asked me to hurry up and come to the Station. Then she came with Mr Ugochukwu and I narrated how we had been managing the Station. Mr Ugochukwu now said he can be of help. I told him if he got the money, we would share the profit after paying salaries at the end of every month. He brought out his phone and called somebody who said he was calling his sister who had the money, that he is not the owner of the money. They were now speaking Ibo language which I don't understand. Ugochukwu said I should give him the dealership document and I gave him the letter of

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2009 and the Operational Agreement we signed in February. It is the renewal Agreement. He said I should allow them to scan it to the woman who lives abroad. I gave it to them and the woman now said she wants to talk with me. I took the phone and I spoke with the woman. She said she has someone in Mobil and she would need to verify and get back to me the following day. I gave them the letter and they scanned it and left that day. The 3rd day Ugochukwu and the same Barrister Itohan came to the Station and met me in the Filling Station Supermarket and said the sister had verified that I am the dealer of the Station. Then he called the sister again that they were right there with me in the Station and I told her how we would operate the Station. I told her we are going to be selling together and share the profit after salaries. Then they left. I gave them my number and they texted it to the woman. In the evening the woman called me that the sharing formula would be different from what I said and I said that is how it would be. She said there would be a conference call on a given date. After 3 days, Ugochukwu came to the Station with Barrister Itohan and they called the woman and spoke their language before they put the phone on speaker and I told her that the profit would depend on the sale and the supply. She said I should send my Account number with which I deal with Mobil for verification. Later she said she would like to pay me upfront and that the dividends would belong to her alone that she would not like sharing. After much argument, Barrister Itohan and Ugochukwu said why would I not agree since she is going to pay me my commission up front. In order not to allow the Station to lay waste because of lack of funds, I had to agree. She now said she would be paying me N2.5M which I said no, but I later agreed to avoid the running problem with Mobil and Tunde Odunuga. I told her I would not release the Supermarket to her so that Mobil would find me in the Station whenever they come. She begged me to give her part of the Supermarket where she can stock Mobil products, so I gave her part of the Supermarket and part of my Manager's office. She said she would run it for 3 years and after then, I should help her get her own Filling Station and I agreed that when they call for Interview, I would let her know. After 2 days, she called me that she had paid N9,740M to my Mobil Account. She said she would pay up to make it N15M and that she would pay me my commission first for 2 years and later the one year balance and I agreed. After 2 days she called me that she had paid me N4M and after 2 weeks, she paid me the balance of N1M. The Station is in 4 Junctions and they now said they don't like the way people parked there and that they would do the burglary gate and that I would be responsible for that. I disagreed because that's the way I met it. She said since I would be the one that would inherit it she said she would use part of the balance of N2.5M to do the gate. They initially paid for 2 years and the balance would be partly used for the gate. The woman's name is Zara as in the Agreement. Then they did the gate and they now started supplying them fuel and they started selling and as we were selling, Mobil came to visit twice and were happy with the new look of the Station.


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Ugochukwu and the lawyer drafted the Agreement, which is Exhibit 1, A4J. They told me to read it. I read it and signed it. Mobil Rep visited on 11/05/2016 and said the money was not enough that we should add more capital. So I had to let Ugochukwu know because even when Mobil came, it was Ugochukwu who received them as the Station Manager. So I told him what they came for. So we now called the sister who said she had no money then but would send it later. I also was looking for money to pay into the Account. On 24th May, 2016, they brought a letter that they would not renew the Operating Agreement and I now called the woman about the letter that Mobil was threatening. That was how she sent N5.8M plus to my personal Account and I now transferred it into my Manager's Account who now transferred it into Mobil Account because I was not around. I now told my lawyer to write because we already got what they said we should get. My lawyer wrote but Mobil refused to reply. The letter they sent was that they were coming on 31/05/2016 to take over the Station and for us to take Inventory together at 1pm. I rushed down about 12.30pm. The girl in the Supermarket told me that Mobil came to the Station with Police, thugs and 3 buses and one other vehicle and drove all of them away from the supermarket and the office. The salesgirl is Miss Nneka Madaka. Ugochukwu also called me. When I got there I had no access as they already barricaded everywhere and they started taking stocks on their own. I went to the Police Station and they said my lawyer has to come with me with a letter. So I went to my lawyer who followed me to make a formal complaint. My girl Nneka and Ugochukwu and others said the people broke down my office door, forced everybody out and carted everything away including the sales money. At the time the Police came, they were gone and had locked up the gate, only the security was there. The Police said we should alert them anytime they opened the place. When they took stock, they dropped an Inventory where they said it was about N15M worth of goods they carted away. After about 3 days, they re-opened and were now selling products. Then myself, Police and Ugochukwu went into the station and the new dealer they gave it to ran away. The Police now locked up the Station and told the security to tell new dealer and Tunde, the new sales rep to report at the Police Station. The 3rd day, they came to the Police Station and made their statements. Then we all went to the Filling Station to assess the damages. At the Station, I told them I had 74,000 litres of petrol but Mobil said what they met was 69,000 litres and the Oil was about N2M plus. I told the Police that was not true because when we closed the evening before, we had 74,000 litres in our record and the Police took a deep even after they had started selling and discovered 72,500 litres. They had changed our Deep stick we used to measure the Tank level. The Police told them to go and bring our own stock and they now brought it. When the Police measured and saw 72,500 litres in our presence, they challenged them that it means they had sold 1,000 litres plus. The Police went to the supermarket and found the quantity less than what we said we had left of the engine oil and they took them to the Station and locked them up.

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When the Police said they would charge them to court, Ugochukwu's sister said she would bring a lawyer from Lagos. The woman said she would fly to Lagos to see her contact in Mobil. She now said it's a matter of jealousy when they saw I was doing gate and now selling when I had previously said I had no money. The General Manager of Mobil started calling me to drop the matter that they would give me another Station which I refused. Then they said they would give another contact to be in charge of LUBE. They said I should come for a meeting but they would not show up. They would be calling me on phone to cool down, to be patient that they would settle the matter. Even the same Sales rep was calling me that it is the Manager that said he would take it from me. When I saw that they were playing me, I told my lawyer to file the civil case to court in Benin and leave the criminal aspect first. Then Zara now called me that it's better to drop it so that it can be settled. But when Mobil refused to come for the meeting they called, we told the lawyer to carry on with the case. So, one evening while I was in my wife's shop in my house compound, 3 men came and ordered for drinks and I served them myself. Then I went inside and left my daughter there and they told her to go and call me. I went to them and saw 11 Mobile Police who introduced themselves as EFCC men and they took me to Benin State CID that night. The next morning. They asked me questions about who gave me money and I knew Zara and I said I don't know Zara but I know Zara. They now put me in the cell and brought me to Lagos the next morning. While there they took my statement and invited Mobil. The first two Mobil staff that came were sacked because of the way and manner they treated me and took over the Station. The 2 officers of Mobil quarrelled with Tunde as to why they took the Station from me. They begged for the settlement of the matter. They kept coming and after a month, I was released on Bail and I was coming to Benin to report but Mobil would not always come. They were always worrying me to perfect my bail and I was reporting regularly.

(A copy of the Mobil Oil Service Agreement is Exhibit D1).

Yes, there were further renewals of the Operating Agreement in February, March, April and May. The originals are in the Police Station and some with EFCC.

(2 Service Station Operating Agreements became Exhibits D2 and D3).

Yes, Mobil served a Letter terminating the Agreement on May, 30, 2016. The original is not with me. (Same is Exhibit 3). Yes original of my lawyer's letter to Mobil is with EFCC. (Same became Exhibit D4). I gave the Inventory they left behind with the security to EFCC. Yes I filed a matter in Edo State.

(A copy of an Inventory signed only by the Defendant is Exhibit D5 while 2 bundles of Court Processes in Suit No. B/387/2016 became Exhibits D6 and D7).

At the EFCC, there was a settlement meeting. I agreed for N16M to be paid but there was oil that they refused to pay for. They also said I should withdraw the case in court which I refused and they said unless I withdraw, they would not pay a dime. The EFCC Operative, Mrs Deborah said they should pay part of my own money so that I can move on but Mobil said they cannot pay more than N16M which is that woman, Zara's money. (The draft undated Terms of Settlement became Exhibit D8 which probative value will be determined later if need be).

Yes payments were made both by me and Zara into Mobil Account. (A copy of the Defendant's statement of Account with Mobil became Exhibit D9).

His evidence under cross examination is thus:

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I have been in the service of Exxon Mobil since 1984 as a Petrol Attendant. I became Manager in 1989 and worked till 2002 and resigned as a Station Manager. I was interviewed in 2007 as a dealership owner and I passed. Then in 2009 I was given a Station at 93 Akpakpava Road, Benin City which Station belongs to Mobil. Yes, I entered into Service Station Agreement with Mobil as a dealer about 3 months after the Agreement in 2009. I was given a Station. It was a yearly Agreement, but later they turned it to 6 months then to 3 months and later to 1 month depending on your performance. Mobil brought a letter in January 2016 that if I didn't have money, I would have to resign. I signed the letter to Mobil but this is not the Agreement I had with them.


(The Defendant's letter to Mobil dated 31/01/16 with attachment is Exhibit D10).

In Exhibit D 10 stating that I resigned, I never sent any letter to Mobil. I entered into a Lease Agreement with Zara Contracting to be bringing money from the Service Station for 3 years in February. They paid N5M for 2 years. I was evicted by Mobil on 31st May. I entered into Lease Agreement with Zara Consulting because I needed money to operate and I gave them my offer letter by Mobil. They knew that Mobil owned it. Mobil was not in the know of this Lease Agreement with Zara. No I did not deceitfully collect their money. The total sum I collected from Zara apart from the N5M were the products supplied to them. The N5M they paid to me is for the Lease. Yes, Mobil confirmed my termination after Exhibit D10. Yes, I had entered the Lease Agreement with Zara before Mobil's letter of termination. I didn't read the Agreement I entered into with Mobil to know whether it is allowed for me to Lease the Station or not.

There was no re-examination.

DW2 was Kanisuru Oluwaseun Kobet. His evidence in chief is thus:-

I am a Manager to the Defendant at Mobil Service Station, Benin. I have been his Manager since 2010. Yes I have a letter of Appointment from him. As a Manager to the



Defendant, I oversee the day to day activities of the Station to take proper care of the Station, take deliveries and sales of the Station and go round with Mobil officials when they come for inspection. (His Appointment letter became Exhibit D11).

I'm in charge of correspondence. I acknowledge them and the Defendant gives me directives also to write letters whenever consignments are to be received. I was never instructed to write any letter of resignation by the Defendant on his behalf. Exhibit D10 did not emanate from our office. We always write on our Letter headed papers. We have what we call Retail Development Report Book. (Same is Exhibit D12).

Under cross examination, he testified thus:-

I resume at 7am and close at 9 to 9.30pm. I oversee the Sales and collection of sales of the Station and take care of the workers and ensure they work appropriately. I don't draft Agreements except when I have to write letters on behalf of the Defendant. The Lease Agreement attached to Exhibit 1 was not drafted by me. I am not a Party to it. Yes, the Defendant's name is reflected on it. The letters attached to Exhibit 1 dated 24/03/16 were not received by me. I was employed in 2010. This Dealership Agreement with Mobil was not received by me. Yes, it's not all the mails like Exhibit 1 attachment that I know about. I am not aware if the Defendant wrote Exhibit D10.

There was no re-examination.

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DW3, subpoenaed duce tecum witness was one Babaniyi John Ajibero, a Banker with GTB. He tendered the Statement of Account of Zara Contracting and Consultancy Services which became Exhibit D13.

DW4 was Nneka Onyejenolise, Miss. She testified in chief thus:-

I am presently at an Aluminium company. Yes, I know the Defendant. He is my in-law married to my cousin's sister and my boss in Exxon Mobil Company in 93 Akpakpava Road, Benin city, Edo State. I started working with him in December 2009. I am no longer there. The employment ended on 31/05/16. I was in-charge of the Supermarket selling perishable and non-perishable goods including Lubricants. The real owner of the Filling Station is Exxon Mobil. They come periodically to inspect the Station to know it was going on. After then they will comment on the Development Book which is always in the Defendant's office. When Mobil Inspectors come, we, i.e. the Manager or myself, bring the Book out. Yes, this Exhibit D12 is the Development Book. The last entry in it was on 11/05/16. R. O means 'Retail Outlet' no sales on-going. On the pages before the last, on 29/04/16 with the comments, "visited the site on routine", "no sales due to on-going scarcity dealer is allowing" (read out). On 3/05/16, the comment there was "Goods well displayed...to be sure they don't run out of stock". In April 2016, from March, there was renovation in the Station, stocks of fuel, Lubricants and sales were on. Being the one

BY: 

in-charge of the sales of the Lubricants, I gave the money to Ebenezer Nwane to take to the Bank. I don't know about the fuel. On 31/05/16, I was in the supermarket attending to customers, all of a sudden I saw Policemen outside with their van. The Station's sales Rep. Mr Tunde stopped the sales, came into the supermarket with thugs and drove everybody out including the customers. As I was about to go out, I walked back to the Sales Rep and asked what is going on? He told me to keep quiet or else he would send the Police to arrest me, then I left. I stood outside watching what was going on inside the supermarket as they put stocks inside cartons. Then the Sales Rep came outside and sent for welder while the thugs were inside the supermarket taking goods down and taking them back till the Welder came and he told the Welder to break the office and when he was reluctant, he told the thugs to order him to do it. The sales rep said nothing would happen to him. When they were breaking the door was when I called the Defendant who said he was on his way coming. After breaking the door, they were bringing things out of the office. Then they locked the gate and drove off before my boss came and everyone left. They didn't allow me to join them in taking the Inventory. I never signed any inventory. He didn't allow me.

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Under cross-examination, she stated thus:-

I don't know any Terrychrista Energy Nig. Ltd. I don't know Zara Contracting Company. I have also not seen any Petition. I can't really tell why the Defendant is standing trial in this court. I don't know anything when it comes to money. I am here based on what happened on 31/05/16 at the Station. I don't know the charge against the Defendant. The Mobil official signed on that **Exhibit D12**. I was not there when he signed the last one but I was there when he signed on 3/05/16 with "visited site... routine... goods well displayed... Target to be on an average of 4,000 litres monthly" comment. I was the one that brought this Book out to sign when the Manager was not around. The Manager is in charge of fuel. I don't sell fuel. I'm in charge of the supermarket. This does not contain anything about the supermarket which I am in charge of. Between January and March 2016, I don't know the transaction with my company. Aside **Exhibit D12**, I don't know anything about all the other Exhibits.

There was no re-examination and this ended the trial.

The Defendant's Final Address by his counsel, Seth O. S. Amaefule is dated 7/07/19.

The 3 issues submitted for determination are:-

1. Whether the processes by which the investigation leading to the information in the charge is competent and the Court has jurisdiction to try the defendant on the information preferred against him.



2. Whether the prosecution proved that the defendant obtained any property from the complainant by false pretences as charged in count one of the information.
3. Whether the prosecution proved that the defendant stole or converted any property of the complainant as charged in counts two and three.

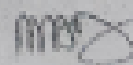
On Issue one, argued that the document which initiated the investigation of the offences alleged by the complainant against the defendant is the petition dated 29/11/2016, Exhibit 1 written on the instruction of Zaza Contracting and Consulting Services. He argued that the Petition was written by Udochi Ibeanacho Partnership, a firm of Legal Practitioners but it does not bear the signature of any person who is qualified to practice law in Nigeria pursuant to Section 2 LPA Cap L11 LFN. Nor was it signed by a natural person. He argued also that Zaza Contracting and Consulting Services on whose behalf the Petition was written and this suit is based, is a non-existent entity and therefore that no legitimate process can be commenced on its behalf. He contended that the particulars of the three counts of this Information are stated to have been committed in Lagos State without satisfying Section 93(1) of the ACJL 2015 and Sections 8 and 9 (1) (b) of the High Court of Lagos State. He pointed out that they are aware of the Ruling dismissing their Preliminary Objection but that same was at a time when the court was yet to hear the evidence in the case. He submitted that the Prosecution did not lead evidence to show that any ingredient of the alleged offences took place in Lagos State and that supposing without conceding that Terrychrista Energy Ltd qualifies as the owner of the property allegedly obtained by false pretences and/or converted by the Defendant and therefore a proper complainant before the court, all evidence is to the effect that at all material times, both PW1 who claimed to be the owner of Terrychrista and the owner were domiciled in Edo and Delta States.

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On issue 2, he submitted that the Prosecution must prove that the Defendant;

- i. Made representation whatsoever to either the prosecution or to Zaza Contracting and Consultancy Services,
- ii. Falsely claimed to be the owner of the filling station,
- iii. Produced any documents containing any false statement and on which the complainant relied and acted to his detriment, or
- iv. Withheld any information or material that that could assist the complainant in making a correct assessment of the incidence of any transaction with the Defendant.

Learned counsel argued that the Defendant neither practiced any deceit on the complainant nor obtained any property from the complainant by false pretence. But that the defence of the Defendant created so much reasonable doubt in the allegation of the



prosecution that the charge became manifestly weak, feeble, unsupportable and incapable of grounding a conviction.

It is his further submission that the only material the court can rely on in determining if indeed the Defendant required the consent of Mobil to grant a Lease of the filling station are Exhibits 3 and D, the Offer of Dealership, an incomplete document and the Service Station Operating Agreement of the Akpakpava Road Service Station by Mobil to the Defendant respectively. He urged that Section 167 (d) of the Evidence Act be invoked against the Prosecution for tendering an incomplete Agreement; i. e. without the execution page. He submitted that nowhere was there a provision excluding the right of the Defendant to grant a lease or sub-let the filling station.

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His contention is that Exhibits 21 and D10 the purported letter of resignation by the Defendant has no consequence but whether at the time of embarking on the Lease Agreement in Exhibit 2, the Defendant's License as the dealer of the filling station was subsisting. He submitted that the answer is in the affirmative because despite Exhibit 21 or D10, Mobil still renewed the Defendant's License in February, March, April and May, 2016. After which it purported to terminate it. He submitted that the Defendant's reason for writing Exhibit D10 was stated under cross examination to be that the official of Mobil put him under intense pressure to resign if he could not increase his capital. He therefore posited that Mobil obviously did not accept his resignation, hence the continued renewals even after the expiration letter. He further submitted that the Prosecution failed to prove both the physical and mental elements of the offence of obtaining property by false pretence with intent to defraud against the Defendant and that the totality of the evidence led by the defence puts forward the defence of a bona fide claim of right which the Defendant makes and which formed the core of his mental disposition at all times material to the transaction. He conceded that it may be that the grounds for such belief did not exist in law, but that it is sufficient that at the time the Defendant engaged in the Leasing Agreement, he honestly believed that having increased his capital to the N15M set by Mobil representative that his License would continue to be renewed monthly beyond three years. He relied on the Court of Appeal's decision in **UZOKA VS. FRN 2010, 2 NWLR PT.1177, 118** which he stated held thus;

"By virtue of Section 23 of the Criminal Code a claim of right made in good faith is a defence to all offences relating to property. An accused will not be held criminally liable so long as he asserts that he honestly believed he had a lawful claim of right even though it might be unfounded in law or in fact. Once it is shown that an accused has a bona fide claim of right the required mens rea is negative"

On issue 3, he submitted that rather than the evidence of the Prosecution proving that the Defendant stole or converted any property of the complainant, it exonerates him. He



stated that the total of the payments Zara sent to the Defendant exceeded N30M. He then wondered where lies the evidence of stealing and conversion and that PW1 under cross examination admitted that he managed the filling station for four months but that the Bank statement of Zara Contracting and Consultancy Services show inflow from Akpakpava Road Benin City from 25/4/2016-1/6/2016 total of N9, 287,424.03. This he argued omits the period from February to 24/4/2016 during which PW1 was managing the station. He further argued the inflow of money into Zara's account showed that products were supplied and that PW2 gave evidence that not all the products paid for by the defendant were supplied by Mobil. Therefore that the Prosecution has failed to prove any element of the alleged offences in counts 2 and 3 of the Information, or that the complainant has locus to institute this action nor that the alleged offences occurred within the geographical or territorial jurisdiction of the court. He finally concluded that the evidence adduced by the Prosecution is at variance with the charges preferred against the Defendant.

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All the authorities cited by counsel are in the body of the Address.

The Prosecution's Address by F. Ofoma is dated 10th July, 2019 where the sole issue he submitted for determination is whether the Prosecution has proved beyond reasonable doubt the essential elements or ingredients of all the offences alleged against the Defendant.

He contended that the case against the Defendant is that he fraudulently obtained various sums of money; N5M, N17, 164,000M and N9, 740M respectively from Terrychrista Energy Nigeria Limited by falsely representing that the sums represent the cost of the Lease Agreement between him and Zara Contracting and Consulting Services to wit; renting the Mobil Filling Station, Service charge and procuring Premium Motor Spirit (PMS) for sale in the said Filling station. Learned counsel stated that the Defendant is charged with stealing and obtaining the sum of over N31, 904,000M submitting that the offence of obtaining by false pretence can be committed by oral communication, in writing or even by the conduct of any of the Defendants. He submitted that the Defendant pretended to the victim that he has an existing lease agreement with Mobil Nig. Ltd for service Station operation and then agreed to grant the victim an Operator's right to operate the service station, consequent upon which the victim parted with various sums of money. This he argued the defendant knew was false and had an intention to defraud the victim because he had already resigned his appointment as at 31st of January 2016, Exhibit 21, two months after he made the false pretence to his victim by the said false pretence by March 2016, two months after the defendant terminated or determined his contract with Mobil Nig. Ltd, Exhibit D10. Therefore that the defendant's right to operate the Station ceased and as such he cannot or does not have a legal or lawful authority to transfer and or enter into any Agreement whatsoever with anybody with

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respect to the Filling Station. He submitted that the money in issue is capable of being stolen and the pretence he initiated induced the victim to transfer the money to him and that by **Exhibit 12**, the Defendant admitted squarely that he was aware of his Lease expiration but hid the information from the Petitioner even after he acknowledged and received the letter of termination from Mobil Oil Nig. Ltd. He relied on **AYOADE & ORS VS. MIL. GOV. OF OGUN STATE 1993 3 NWLR PT. 309, 111 @123**.

On the offence of stealing, he quoted Sections 278 (1) (b) of the Criminal Law of Lagos State 2011 to the effect that anyone who converts to his own use or to the use of any other person, anything capable of being stolen, is said to steal that thing and submitted that the Prosecution proved all the elements of stealing. He submitted that the law is clear that it is not the name that parties give to an act that makes it a civil or criminal matter but rather the outcome of investigation into the conduct and the charge against the Defendant. He submitted that the confessional statement of the Defendant alone is enough to secure a conviction.

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He referred to a host of authorities which are contained in the Address and concluded that the Prosecution has established its case beyond reasonable doubt as required by Section 138(1) of the Evidence Act.

The Defendant's Reply Address is dated 16th September, 2019. Seth O. S. Amaefule Esq. submitted that the evidence of the Defendant that his offer to Zara Contracting and Consulting Services was for investment of funds and joint-trading but that Zara insisted on outright lease was neither challenged nor contradicted coupled with the Defendant's insistence on running the Supermarket in order to be always present and interface with Mobil Oil Limited negates any assertion of ill motives or false pretence. He submitted that at the time of making entering into the Lease Agreement, the Defendant had a valid license to operate the Mobil Filling Station in issue was true but the fact that a subsequent twist in events on 31/5/16 robbed/purported to rob him of title to the Filling Station cannot in law take a retroactive effect as to deprive him of the title to the Station in February 2016 when the Lease was entered into and PW1 began trading on the Filling Station nor on 1st March when the Lease legally commenced running. All these facts he argued lead to the inexorable conclusion that there was no intention to defraud in any manner, the Defendant having made full disclosures to Madam Zara of Zara Contracting and Consulting Services even on the date he received the Notice of Termination of the License and hence her paying in additional money even at such critical point and subsequently going to the offices of Mobil Oil to contest the purported termination. Learned counsel argued that apart from there being no inducement in the particular case, PW1 who, according to him initiated the criminal process against the Defendant is not the owner of the money, having, again according to him, acted purely as an agent-a mere conduit-in the transaction he cannot claim to have been induced by any deception

whether directly and indirectly to part with his money, that the principle of law being that an agent of a disclosed principal does not acquire a legal interest in the subject of the agency.

He contended that PW1 did not testify that he had the authority of Madam Zara nor of any Director of Zara Contracting and Consulting Services to initiate the suit and cannot orally claim to have the authority of Zara Contracting and Consulting Services which is a corporate entity to represent it and testify in the proceedings.

On the alleged confessional statements of the Defendant in Exhibits 12-15, he submitted that before the Prosecution can rely on same, it must first establish compliance with Section 9(3) ACJL and the conditions in DAWA VS. STATE 1980 8-11 236.

The issue of Jurisdiction was well considered by this Court by its Ruling on 30th January 2018 on the Notice of Preliminary Objection dated 20/11/17 filed and argued by the defence and raising the issue again in the Defendant's Address is an abuse of the Judicial Process more so as no appeal was filed against the said Ruling.

The only issue for determination therefore is whether the Prosecution has proved its case against the Defendant or not.

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Exhibit 3, which is the much touted Service Station Operating Agreement between Mobil Oil Nigeria Plc. and the Defendant which the Defendant denied as the Agreement he had with Mobil stating that Exhibit D, which is just a letter of Offer of Dealership given to him is the Agreement he had with Mobil. Yet he did not deny his signature on every page of the Agreement in Exhibit 3 neither could anyone describe Exhibit D as an Agreement. Interestingly, this Exhibit D states that the dealership offer is subject to, "Execution of our standard dealership contract, in which the terms of agreement are specified". The burden then shifts and thus it behoves the Defendant to contend that there is another standard dealership agreement different from Exhibit 3 which he signed in satisfaction of the condition in Exhibit D. Why then would the Defendant deny Exhibit 3? The reason would be clear after a review of the said Agreement hereafter. Under the Term thereof, it states thus;

"The Term of the Agreement shall:

- (i) Commence on December 1, 2009 (the 'Commencement Date')
- (ii) For a Period of (eight (8) consecutive months)
- (iii) Until July 31, 2010 (the "Expiration Date")

Unless terminated earlier or temporarily extended in accordance with this Agreement..."

I believe these wordings are clear and unambiguous enough. It is unequivocal that the Service Station Operating Agreement was for only 8 Months from December 1, 2009 and

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is effectively expired on July 31, 2010. Thereafter, according to the said Agreement, all that the Defendant could enjoy would be a "temporarily extended" license.

The next Clause which is the Renewal Clause tells what the extended period would be. It states thus:

"The Operator may, not less than one month before the Expiration Date, give notice to the Company of his/her desire to renew the agreement. Company shall reply within 10 working days confirming intent whether or not to renew on mutually acceptable terms. Where both parties wish to renew but the terms and conditions for renewal are not agreed upon the Expiration Date, Company may agree in writing to extend the Term of the Agreement on a monthly basis in the same terms and conditions herein until new terms and conditions are agreed upon. Otherwise, this Agreement will expire in accordance with Section 2.1"

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As observed above, the Defendant signed every page of this Agreement in Exhibit 3 which he now denies. The Supreme Court per Onu JSC in **AGUNEDU VS. ONWUMERE** 1994 1 NWLR, PT. 321, 375 @ 401 held that a Party cannot escape from the legal effect of a document signed by him while quoting the dictum of Scrutton L. J. in **BLAY VS. POLLARD**, 1930, L. K. B. 628 @ 633 thus, "It would be very dangerous to allow a man over the age of infancy to escape from the legal effect of a document he has, after reading it, signed in the absence of an express misrepresentation by the other Party of that legal effect". This denial of the Defendant gives the impression of bad faith and lack of frankness on the part of the Defendant and of course his counsel.

There is no other Service Station Operating Agreement or its renewal before the court. Therefore between July 31, 2010 and May 2016 when the Defendant was purportedly evicted from the Station, he had no subsisting Agreement with Mobil except a monthly extension which was to be in writing by Mobil. From the Retail Development Report Book in Exhibit D12 which the defence relies on in proof of an alleged good and continuous relationship with Mobil, the last endorsement by Odunuga B. B. was on 11/5/2016 about 2 weeks before the Termination of 24/5/2016, not that termination cannot take place at any given time in compliance with the contract between the Parties.

Under Clause 3.2.1 of Exhibit 3, it is stated that the "Operator shall occupy the Service Station strictly as a licensee of the Company"

A fortiori, as at 24th February, 2016 when the Defendant purportedly entered into a 3 Lease Agreement with Zara Contracting and Consulting Services of 3, Saka Tinubu Street, Victoria Island, Lagos State in Exhibit 2, he knew or ought to have known that he did not even have a 6 Months extended License to operate the Station himself and you cannot give what you don't have. By leasing out the Station for 3 years under whatever

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guise was on the understanding that he had the power to do so notwithstanding that Madam Zara of Zara even paid in more money in her failed attempt to salvage the situation on the pleas of the Defendant for more money so as to quieten Mobil and make them change their mind about the termination.

By Exhibits D1, D2 and D3, the contract was renewed from the months of February 29, 2016 to March 31, 2016, March 31, 2016 to April 30, 2016 and lastly from April, 30, 2016 to May 31, 2016 respectively. From the Defendant's lawyer's letter in Exhibit D4, it is stated that reference was being made to Mobil Oil Nigeria Plc.'s letter dated May 24th, 2016 which gave the Defendant notice of clear 7 days not to renew the monthly contract at its expiration on May, 31st 2016. This said letter is attached to Exhibit 1 in clear compliance with Clause 18.3 of the Service Station Operation Agreement in Exhibit 3 which provides for Termination by 7 (seven) days' Notice. Exhibit D4 confirms the position and puts paid to any argument of the defence that no Notice was issued to the Defendant. Moreover, the said Termination of Agreement Letter in Exhibit 1 further informed the Defendant that, "for the purpose of handing over the service station to Mobil, please arrange to meet our representative at the service station on 31st May 2016 at 1.00pm. Handover formalities will include jointly taking inventory of the stock to enable us compute your final entitlement".

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In spite of this, the Defendant even by his own testimony and those of his witnesses was not there at the scheduled time to meet the representative of Mobil for the purpose of taking stock/inventory. From the said Termination letter which the Defendant himself received and signed for, his lawyer's letter in Exhibit D4 which is dated 27/05/2016 did not raise any issue of inadequacy of the Notice. In particular, paragraph 9 of page 2 of the said letter states thus, "That in view of the foregoing, he craves your kind understanding to appreciate how distressing your notice under reference must be to him, especially when the 7 days notice of no intention to renew the contract is not for any cause made known to him". Throughout this letter, the Defendant's lawyer who referred to the Termination letter received by the Defendant never alleged that the 7 days' Notice would not have matured on the 31st of May, 2016. As a matter of fact, the Defendant while giving his evidence in chief on 8th November, 2018 stated inter-alia thus, "On 24th May, 2016 they brought a letter that they would not renew the Operating Agreement..." It could therefore be concluded that the endorsement of 27/05/2016 as the date of the receipt of the said letter coming from the Defendant was an afterthought as the truth of when he received it was consciously confirmed by the Defendant himself in his oral evidence-in-chief and not even forced out during cross-examination.

The issue of who wrote the Petition and signed same is irrelevant in this criminal proceeding. Section 36 (6) of the 1999 Constitution as amended provides that, "every person charged with a criminal offence shall be entitled to be informed promptly in the

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language he understands and in detail of the nature of the offence". The Defendant understands what he is standing trial for and he admitted knowing Zara Contracting and Consulting Services and entering into a Lease Agreement with her and for which he was paid N5M. What is relevant therefore is that the Defendant entered into a Lease Agreement with a 3rd Party on a Property that he had no right to for the period covered by the Lease. It is in fact not necessary that such a complaint should be in writing much less being signed. Information may be filed by an anonymous Personer which is not even the case here. I refer to Sections 88 and 89 of the ACJA 2015 and Section 57 of the ACJL 2015.

The Defendant was at the time of entering into the Lease Agreement with Zara Contracting and Consulting Services a monthly Licensee of Mobil Oil Nigeria Plc. Who then is a Licensee? A Licensee has been described in Black's Law Dictionary, 7th Edition as, "One to whom a license is granted. One who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit".

From this definition, the Defendant ought not to have granted Leasehold on someone else's property without the latter's permission. The Defendant admitted being paid a commission of N5M upfront by Zara Contracting and Consulting Services which means he received a benefit and let out the premises solely for himself when he ought not to have done under the circumstances.

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The Court of Appeal in **HADEJIA VS. LADAN & ORS 2018 LPELR 45638** held inter alia that, "It is settled law that a license is prima facie a right personal only to the licensee and it does not give any estate in land or proprietary interest", per Abiru JCA @ Pp. 65-66, Paragraphs. D-C.

Therefore, a Licensee cannot pass title to anyone under whatever guise. The reason why the Defendant denied Exhibit 3 is now clear and it strengthens the position that he had no right or power to grant Leasehold over a property where he was only a monthly Licensee. This is proof of mala fide and a criminal intention to obtain money under false pretence; the ignorance of the victim notwithstanding. Once all the essential ingredients of an offence charged have been proved or established by the Prosecution, as in this instance, the charge is proved beyond reasonable doubt. See **OSENI VS. STATE 2012 2 S. C. PT.11 51**.

The Defendant is therefore hereby found guilty of obtaining money by false pretence and is hereby convicted accordingly.

Section 1 (1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006, provides that, "any person who by any false pretence, and with intent to defraud



obtains from any other person in Nigeria or in any other country for himself or any other person, commits an offence under this Act".

Section 1(3) provides that, "A person who commits an offence under subsection (1) or (2) of this Section is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option the option of a fine".

From the foregoing which dovetails into the 2nd and 3rd Counts of Stealing, and what is clear is the evidence of the receipt of N5M upfront by the Defendant from the victim of these crimes while the remaining was paid into the Account of Mobil for supply of products. By Section 281 (1) of the Criminal Law of Lagos State, no.11 of 2015, it is provided that, "Anything which is the property of any person or body corporate is capable of being stolen".

The Count of stealing N5M (Four Million Naira) is therefore established and proved against the Defendant.

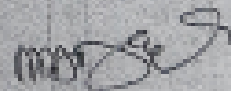
The Defendant is therefore found guilty of stealing and hereby convicted accordingly. By Section 287 of the Law, the punishment for stealing is 3 years which however allows for the discretion of the court.

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The Defendant is hereby sentenced to 7 years imprisonment which is the minimum under Count 1 which admits of no discretion while he is sentenced to two years imprisonment on stealing. Both sentences are however to run concurrently commencing from the date of his first remand by this Court, to wit, 28th November, 2017.

The Defendant is hereby ordered to restore the N5M (five Million Naira) he received directly from ZARA Contracting and Consulting Services. There is no doubt that some refunds are still outstanding to the victim out of this failed transaction which in my view is already subjudice at the Edo State High Court and therefore no further comment need be made on same in this Judgment.

This is the Judgment of the Court.



HON. JUSTICE M.A. DADA (MRS.)

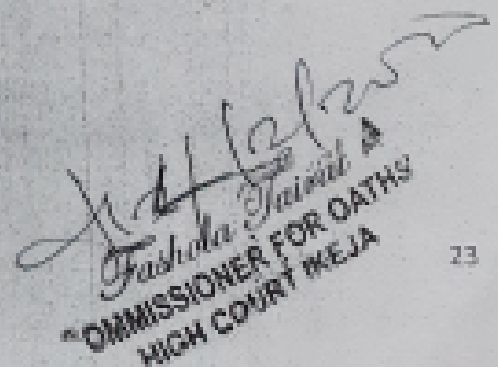
JUDGE

(28/11/19)

Defendant Present.

F. Ojoma for the Prosecution.

Musa Ilkhuorlah and S.O. Amaefule for the Defendant.



Fashola Taiwo A.
COMMISSIONER FOR OATHS
HIGH COURT MEJA

Zara Contracting and Consulting Integrated Services for investigation. We contacted the Petitioner to report with the Client and he reported with PW1 and he made statement. On 19/12/16, we sent letters of Investigation activities to the Corporate Affairs Commission, UBA and Diamond Bank and requested for the Defendant's statement of Account at UBA and the sister company of Zara Contracting and Consulting which is Terrychrista. From the analysis we saw how money moved from these 2 companies into the Defendant's personal Account. We went to Benin to effect the arrest of the Defendant with permission. We received the responses from the Banks before we moved to Benin. On 9/2/17 myself and detective Perelasu Oruza left Lagos for Benin. At exactly 8 pm we got the Defendant arrested in his residence in Benin and took him straight to the State CID in Benin where we obtained the 1st statement from him under caution. On the next morning 10/02/17, we took him to Lagos. In our office, in the presence of Mrs Oni Deborah, he made another statement under caution. He was served a bail condition but he was unable to fulfil it. So he was detained. On 14/02/17, he made another statement and he was later released on bail. He reported on 17/02/17 and made another statement. From his various statements, he alleged that Mobil Oil Company carted away his properties at the Filling Station at Akpakpava Road Benin city while PW1 claimed that the Defendant misrepresented himself as the owner of the Filling Station. Then we invited the Secretary of Mobil Nigeria Plc. Emmanuel Amade and Babatunde Odunuga the Benin Mobil Territorial Manager. They made statements under caution. The Secretary was released on self-recognition and the other man on bail. They had series of meetings with the Defendant in our office trying to resolve the issues. Mobil Oil Nigeria Ltd. agreed to pay N16M for all the goods they carted away to enable him pay the complainant but on the condition that he would go and withdraw the case he filed in Benin. In our investigation, we discovered that the Defendant misrepresented himself to the complainant as the owner of the Filling Station and collected N5M rent from him. From his statement of Account, he had collected over N25M from the complainant paid by the Defendant to Mobil Oil Company. Out of the money, we discovered there were some monies he paid to Mobil for products which were not supplied. When they could not reach a compromise, we brought the matter to court. Some of the products like PMC and AGO of N10M which were carted away by Mobil were sourced by the complainant himself outside Mobil. We saw a document that says that Mobil would not renew its contract with the Defendant before he leased the property to the complainant. These include the Petition and PW1's statement. I saw everything attached to Exhibits 1-3 given to us by PW1 and some by the Defendant after we arrested him.

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(3 EFCC's letters to UBA Plc. and 1 to Diamond Bank with the latter's replies with their attachments are Exhibits 5-11)

These are the 4 statements of the Defendant I took.

[Signature]

be paid to Zara Contracting. In total what we have with the Defendant and Mobil is about N26M. Zara Contracting is my in-law's company, so I am representing Zara Contracting in the business. I am the owner of Terrychrista Nig. Ltd. Most transactions went through Zara contracting to Terrychrista and from Terrychrista into the Defendant's Account. Yes, Terrychrista made payments to the Defendant and Zara also made some payments to him. When the Station was invaded, it was being operated by Zara contracting. They chased the whole of us representing Zara contracting from the Station. Before we were chased, I got a new stock before they came and I couldn't reach our stock books. The money I paid into Mobil's Account was with the name and code of the Defendant as a Dealer to Mobil. The Defendant did not give his consent to Mobil to pay me because I came to understand he wanted Mobil to pay him so that he can clear his debt. I don't know how much he wanted Mobil to pay him.

(Witness identified the Petition his counsel wrote and the attachments which became Exhibits 1, 2 and 3).

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The payments made to the Defendant were for Mobil Products, PMS and AGO Diesel and Loop engine oil into his Account. We paid N5M rents into the Defendant's Account as he leased out the Station to Zara Contracting.

Under Cross-examination, he stated thus:

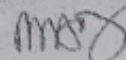
Yes, I made a statement to EFCC (Same became Exhibit 4).

Yes, I made my statement when the facts were still fresh. Terrychrista is not dealing with the Defendant. Zara Contracting is the Company that has an Agreement with the Defendant. Before I went to rent the Station from the Defendant, I had been in Petroleum Marketing business since 2006. Yes, I am not a stranger in the business. Before I met Itohan in 2016, I did not know her. I knew her as an Agent in 2016 and she took me to the Defendant and because she is a lawyer, I agreed to do business with her. She told me she is a lawyer and from enquiries I made from my fellow Station owners, they said she is a lawyer. I was not a Station owner before then. I am not the owner of a Station. Yes Itohan told me the Defendant was the owner of the Station. I had to believe her because she is a Barrister and I believed that whatever we are doing will go with the law.

There was no re-examination.

PW2 was Inspector Ifidon Ebohon. His evidence in chief is thus:

I am attached to the Governing Fraud Section of the EFCC, Lagos Team 8 under the supervision of Mrs Oni Deborah with Yusuf Gulma, myself and Perelasu Oruzia now in Yola. I know the Defendant as Oseni Iyere. On 14/12/16, we received a Petition of obtaining money under false pretence signed by Barrister Udochi Iheanacho on behalf of

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IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDING AT COURT NO.10, SPECIAL OFFENCES COURT 1
BEFORE HON. JUSTICE M.A. DADA (MRS.)
TODAY MONDAY THE 20TH DAY OF JANUARY, 2020.

SUIT NO: ID/11090C/19

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT

AND

1. JEAN CODO
2. TPMS-TRANSPORT AND MANAGEMENT } DEFENDANTS
SYSTEMS LTD

RULING

This is another summons for the Bail of the Applicant dated 13/01/2020 after the refusal of an earlier one dated 16/12/19 due to the scant materials placed before the court. In the latest Application however, the facts and materials showing that the Applicant is not only involved in a civil Arbitration with the Nigerian Ports Authority, an Agency of the Complainant on the issues forming the basis of this case against him, but also that of his alleged health challenges by another Agency of the complainant, to wit, The Nigerian Correctional Service, through its Deputy Controller of Corrections have now been placed before the court. See **Exhibits JC1** and **NCS1** respectively. Paragraph 6 of the Affidavit in support relating to the facts in **Exhibits JC1** has not been countered by the Respondent in their Counter-Affidavit neither have they been able to fault **Exhibit NCS1** in spite of their investigation on same. Furthermore the fact that the Applicant had been attending the Complainant's office regularly from 2017 till date was not opposed by the Respondent. All these factors weigh heavily in favour of the Applicant.

It is trite that when an Applicant has placed some materials for the consideration of the court in an Application for bail. The onus moves to the doorsteps of the Prosecution to show cause why Bail should not be granted. See **Chinemelu Vs. Cop 1995, 4 NWLR, Pt 390, 467 @ 484.**

Where there is no evidence that the Defendant if granted bail will interfere with witnesses or that there is a serious risk of him escaping from justice by jumping bail, the court has a duty not to refuse bail in such circumstances.

I am persuaded particularly by paragraph 6 of the Affidavit in support and the supporting material in **Exhibit JC1** and the fact that the Defendant never

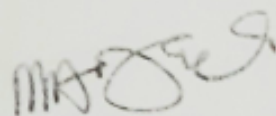
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jumped Administrative Bail since 2017 and December 2019 when he was arraigned in this court that he cannot be said to be a flight risk.

The Application therefore succeeds. The Applicant is hereby admitted to Bail in the sum of ₦100 million and two (2) Sureties in like sum one of whom must be the owner of a built-up property in a choice area within the jurisdiction of this court and both must be resident and gainfully employed within jurisdiction with proofs of same. Both must depose to Affidavits of means and an undertaking to permit a lien to be placed on their Accounts to the limit herein imposed all subject to the verification by the Chief Registrar of this court.

The Applicant shall in addition surrender his International Passport to the custody of the Chief Registrar pending the final determination of this case.

I so hold.



HON. JUSTICE M.A. DADA (MRS.)
JUDGE
(20/01/2020).