

THE FEDERAL HIGH COURT OF NIGERIA
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDING AT AWKA
ON MONDAY THE 2ND OF DECEMBER, 2019
BEFORE HIS LORDSHIP,
HON. JUSTICE M. L. ABUBAKAR (JUDGE)

CHARGE NO: FHC/AWK/74C/2011

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

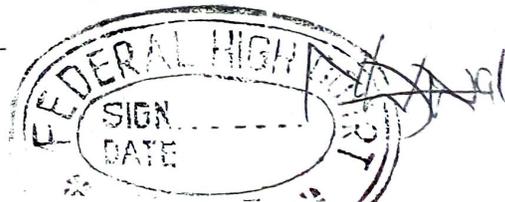
1. KINGSLEY CHINEDU NWEGWU
2. CHETACHUKWU JOAKIMNWEGWU
3. ACJEC GLOBAL SERVICES LIMITED

DEFENDANTS

JUDGMENT

The defendants stand charge of an amended fifty (5) Counts Charge of obtaining money by false pretence and transacting financial business without, valid licence from the Central Bank of Nigeria and adversing for deposits without a valid banking licence contrary to Sections, 1 (1b) and 8 (a) of the Advance Fee Fraud and other related offences Act No.14 of 2006, Sections 5 (6) and 44 (2) of the Bank and other Financial Institution Act 2004.

In proof of their case, the prosecution, called five (5) witnesses i.e Pw1 Kingsley Obiezeh, Pw2 Akin Valentine, Pw3, Osita Ozoemena, Pw4 Yepwi Joseph and Pw5 Arogundade Abayomi. Similarly, Eighteen (18) Exhibits were tendered though the saic' witnesses i.e. Exhibits A to R respectively as follows:-



1. Exhibit A – A flyer titled – “Adjec Global Limited”.
2. Exhibit B – A Cash receipt dated 25/10/2010.
3. Exhibit c – Deposit slip from intercontinental Bank No. 0130929
4. Exhibit D – Cash receipt dated 15/12/2010.
5. Exhibit E – Cash receipt dated 3/11/2010.
6. Exhibit F – Cash receipt dated 5/10/2010.
7. Exhibit G. and G1 – Cash receipt dated 24/12/2010 and the Diamond Bank Teller No. 8449670.
8. Exhibit H and H1 – The petition and the lists^{of} investors
9. Exhibit I – A letter from the Nigerian Communication Commission dated 8th July 2011.
10. Exhibit J – A response letter from the Central Bank of Nigeria to the EFCC dated 12/7/2011.
11. Exhibit K – A letter from the Corporate Affairs Commission dated 23/6/2011.
12. Exhibit L and M. – Statement of the 1st and 2nd Defendants.
13. Exhibit N, N1, N2, N2A, N3, N4, N5, N6 and N7 – Are statements of account of the Access bank, Eco Bank, Diamond Bank, Fidelity Bank and First Bank respectively.
14. Exhibit O and P – Are two (2) irrevocable power of Attorney found on the 1st Defendant
15. Exhibit Q – Response from the Security and Exchange Commission dated 12/7/11.
16. Exhibit R – A statement of Pw5 to the EFCC.

In his testimony the Pw1 stated that he knew the Defendants and that earlier 2010, one of the staff of the 3rd Defendant i.e. one Kelechi Okafor approached him and told him that their company

is in the business of phones, micro finance and oil businesses. He was shown one flyer which indicated that if one invests, he will get millions in return. He added that he chose slot 41 from the flyer where if he invests N492,000, he will get an interest of N315,000 under one month. He paid the amount into the account of the 3rd Defendant at the Intercontinental Bank and was given a teller. He then went to the office of the 3rd Defendant and was issued with a receipt indicating that he has paid. Before he was given the receipt he was made to purchase a phone from them at the rate of N10,000 and was given a receipt for the purchase. He added that he made the investment for three months but after the period he was not paid. Many promises of payment was made to him by the Defendants but in vain. So he reported the matter to the police at the 'B' Division, Awka and later to the Central Police Station, Awka. The police invited the Defendant but only one staff of the 3rd Defendant one Theresa attended to the police and promised to refund the Pw1. Meanwhile the 1st and 2nd Defendants are nowhere to be seen as they have absconded. The Pw1, later reported the matter to the EFCC Enugu for further investigation.

Under Cross-examination, the witness stated that he knew the 3rd Defendant very well and that he never applied for any employment with them. He added that he did not pay money for phones but was brainwash to pay for investment on slot 41. He denied signing any agreement to collect 34% interest on phones but interest is on investment he made. He added that he wrote a petition to the EFCC through his counsel.

- In his testimony the Pw2 stated that sometimes in June 2010, one of the Defendant's agents, approached him in Awka and told him that their company which is an investment company in oil and gas is offering investment slots and that if one invests, after 90 days, 90% interest will be paid to the investor. The witness decided to give them a trial and the business went well for a while. Initially, he bought 100 slots for N1.2million and later did another for 100 slots and then another for N18million. He was promptly paid for the investment. Then on 5th October, 2010, he did another investment for 750 slots for N9 million. On 3/11/2010, he did another investment for 750 slot at N9 million.

Finally, on 15/12/2010, one of the Defendant's staff told the witness that the company has an investment package for their old customers. It is called – Christmas Bonanza. If one invests up to N50 million within that period, he will get a vehicle and N30 million or N20 million. The staff was putting pressure on him so the witness met the 1st Defendant and he confirmed what their staff stated. Based on the assurance from the 1st Defendant, the witness invested the sum of N15 million, on 15/12/2010. Since that time, he did not get any payment from the Defendants despite many promises made. After 6 months, he wrote a petition to the EFCC. He added that all the payments he made were made through the Defendants Bank i.e. Eco Bank.

Under Cross-examination, he stated that the payments were made for investment and not V.I.P. phones. He added that he started the business with the Defendants in June 2010 and they even gave him

a Car as a gift and that he went to the EFCC because the Defendants could not pay him.

In his evidence, the Pw3 stated that he is a businessman and know the Defendants. That towards the end of 2011, the agent of the Defendants approached him at his house and told him about a business proposal. That if he invests money in their company, at the end of certain period he will be paid interest. He added that he invested N204,000 and paid the money through the Defendant's Account at the Diamond Bank and collected the teller which he Photostat and kept. The said ~~their~~ agent latter come and collected the original teller and gave him a receipt. After one month, he requested for payment from the Defendants but he was told that the company was having some problems and that he should see the Director of the company. Later the Defendants invites the witness for a meeting at one hotel, Barumba Hotel, Awka and he was surprised to find that the investors with the Defendants were up to 5000 people and the investors left the hotel without seeing the Director. They then decided to write petitions to the EFCC which they did and it was discovered that from among the 300 investors that signed the petitions, N169 million were invested and still in the hands of the Defendant, without the interest due.

Under Crosse-examination, the witness stated that he invested in the 3rd Defendant in 2011 and that he did not made any investigation/inquiry before investing. He added that he invested based on the presentations of the 3rd Defendant's agents and he was expecting payment for his investments. He added that he has

never heard of V. P. N. (virtual private network) phones and never asked for any phone. He further stated that he and others complained because they were not paid back by the Defendants despite repeated demands. The EFCC sealed the 3rd Defendant based on their petition.

In his testimony the Pw4 stated that he knew the Defendants and that the 3rd Defendant is a registered company with the Corporate Affairs Commission to operate services of General Merchandise and Communication accessories and the 1st and 2nd Defendant^s are its Directors but they operate as financial institution. He added that on 18/5/2011, ^{where is} a petition from one Ezeabasili Charles and one Iloh Neitan Okechukwu alleging that some staff members of the 3rd Defendant lured them into investing their money for investment at the rate of 30% to 34% per annum. That Mr. Ezeabasili invested N4.5 million while Mr. Iloh invested the sum of N1.7 million. The return for the investment is supposed to be paid within three (3) months i.e. $\frac{1}{3}$ of the investment every month. After the investment they neither got the investment nor the capital and they made efforts to see the managers to see how they will get their money back but to no avail and they reported to the EFCC.

In the course of the investigation, they (EFCC) found that the 3rd Defendants had offices in Enugu, Awka, Onitsa and Asaba. He added that himself and some staff of the EFCC assigned to investigate the matter distinguished as members of the public and visited the Defendant's office at Enugu to confirm the existence of the office and their activities.

At the said office, they were given pamphlets indicating slot payments for investment at 30% interest. They negotiated for higher interest and they were told that it would be considered by the higher authority and they went away. He added that the pamphlet, contained account numbers with some banks i.e First Bank, Diamond Bank, Intercontinental Bank and Eco Bank. So they wrote a letter of investigation activity for the Bank Statements.

He further added that in the course of investigation, they received over 100 petitions against the Defendants. Some petitioners wrote in groups itemising the names, the amount invested, payment of return on investment e.t.c. He added that he remembers Pw2 and 3 who represented different groups of petitioners.

From the responses of the Banks, the team of investigators saw huge deposits of money into those accounts. As the money come into the accounts, payments were made to customers and also some money moved to the account of the 1st Defendant. On 30th September, 2009, a sum of N20,000,000.00 (Twenty Million Naira only) was moved from the account of the 3rd Defendant to the personal current account of the 1st Defendant. They also saw payment for purchase of vehicles from the 3rd Defendant's account. In short there were constant depletion of money for personal use e.g. some properties were bought in the personal name of the 1st Defendant. Two of the properties are in Awka in the name of the 1st Defendant. From the analysis of these accounts there is no legitimate business engaged by the 3rd Defendant. It is payment of return owned customers from money gotten from, new

customers and some of these monies were used for personal purposes. He added that to further expand their fraudulent activities, the Defendant went ahead, used the sum of N20,000,000.00 (Twenty Million Naira only) and applied for a licence at the Central Bank of Nigeria (C.B.N) for a licence for Acjec Micro Finance Bank. The said N20,000,000.00 (Twenty Million Naira only) was gotten from the account of the 3rd Defendant. The team of investigators wrote a letter to the Central bank of Nigeria to confirm whether the 3rd Defendant is licenced to solicit for funds from the public at high interest rate and the response was in the negative. The team also wrote another letter to the Security and Exchange Commission and it was confirmed that the 3rd Defendant is not licenced to solicit for funds from the public.

Another letter was also written to the Nigerian Telecommunication Commission to find out whether the 3rd Defendant was licensed by them and it was confirmed that they were license only for sale and maintenance of terminal equipment. They were not license to solicit for funds from the public and to operate virtual private networks (V.P.N.). The team also found out that Defendants never conducted any Audit Report on the 3rd Defendant i.e the Adjec Global Services Limited.

From the statements of account of the 3rd Defendant, it is clear that the Defendants were merely robbing peter to pay Paul, by collecting money from new investors and paying old investors. He added that from the First bank of Nigeria Account of the 3rd Defendant Company, over N600 million was found at a particular

time and around August to October 2010 about N100 million was in the account. In Intercontinental Bank, over N100 million passed into the account. He concluded that when they aggregate the whole amount it was over N1 Billion. All these were customers' money and there was no legitimate business from the 3rd Defendant Company. The team also discovered that the 2nd Defendant also benefited from the money in the 3rd Defendant accounts. He added that the team also went further to look at the other business in Nigeria that gave 30 – 34% to its customers but could not find any.

Under Cross-examination, the witness stated that their investigation did not show that the 1st Defendant paid cash from his personal account to purchase the properties but it is from one of the accounts of the 3rd Defendant. He added that in his written statement the 1st Defendant has admitted that the 3rd defendant company money belongs to him and he (the witness) believed him. He further stated that they investigated the aspect of the 1st Defendant buying phones and there were no phones. He added that they investigated the investors and found that some of them were paid up to 30% and some got nothing. The account of the 3rd Defendant was not frozen during investigations but only attached post no debit which means anybody can deposit but not withdraw.

He added that he investigated this matter without witch hunting the Defendants. He also defined a subscriber to a company as someone who is interested in activities of the company which may not make him to have ownership of the company, while the directors are people who controls the day to day affairs of the

company and have shares in it. They act as signatories to company accounts. He further stated that the 2nd Defendant is a shareholder in the 3rd Defendant company and several monies of the company has entered into his personal account. He added that the 2nd Defendant told him about it and can be seen from his written statement. Even the corporate Affairs Commission confirmed in writing that the 2nd Defendant is one of the Directors of the 3rd Defendant Company. It is not true that he is only a paid employee of the 3rd Defendant Company. He took part in all the crimes/allegations against the other Defendants and had meetings with the investors. He was the first to be arrested and detained in this case.

➤ In his testimony, the Pw5, a staff of the Central Bank of Nigeria, stated that he knows the 3rd Defendant because in April 2011 there was a petition that it took deposit from a petitioner^s and refused to pay him. He added that he received the petition in his capacity as the secretary of a committee known as "the inter agency committee on illegal Funds Manager/Wonder Banks". The Committee was set up in 2008 to curb the activities of illegal funds Managers/Wonder Banks who were operating what is known as Ponzi scheme that were promising members of the public outrageous interest rates or returns on investment without investing the money in any physical business. The committee comprises of the Central Bank of Nigeria, Nigerian Deposit Insurance Corporation (N.D.I.C.), Corporate Affairs Commission, EFCC,

Security and Exchange Commission and an arm of the police special fraud unit.

He added that on receipt of the petition against the 3rd Defendant the committee visited Awka, Anambra state which is one of the Zonal Office of the 3rd Defendant to clarify the claims of the petitioner. The committee found that the 3rd Defendant was actually soliciting for deposit from the public by asking them to buy slots and promising them 34% of the interest in 90 days and also in addition the Investors/Depositors were made to buy telephone Handsets at N10,000.00. The Committee could not close the office because one of the staff at the said office told them that the Managing Director was not based there and there are other offices in other locations.

Based on the above, the EFCC was handed over the matter for further investigations and prosecution.

In the course of investigation, the EFCC wrote a letter to the Central Bank to confirm whether the 3rd Defendant was licence by them as a financial institution and to provide any other information on them. They responded that the 3rd Defendant was not licensed by them but a company known as "Ajec Microfinance Bank" was licensed around May 2011 and it is different from the 3rd Defendant Company, but they have common ownership and Directorship. Based on these, the licence of the Adjec Microfinance Bank was suspended on the grounds that the Owners and Directors of the Bank are not fit and proper persons to own or operate a financial institution as a result of their involvement in the activities of the 3rd

Defendant. Under Cross-Examination he stated that their committee started investigation in May 2011 and then handed over to the EFCC. The petition from the complainant was taken to the committee by the petitioner himself and the witness could not remember his name but he is a staff of the Security and Exchange Commission. He added that he could not remember the name of the owners of the 3rd Defendant and Adjec Microfinance Bank as it has been a long time i.e. more than 6 years. He added that nobody gave or showed him the licence of Adjec Microfinance. He further stated that it is not true that the defendants were into phones businesses. They were collecting money from investors without paying them.

- On the 21st day of March 2017, the prosecutor closed their case and the matter was adjourned to the 25th day of April, 2017 for adoption of written address in a No Case Submissions by the Defendant Counsels, which was eventually overruled by the Court on the 27th day of September, 2017. However, on the 29th day of November, 2017 the 1st Defendant opened their defence by calling DW1, (the 1st Defendant), DW 2 one Ekene Gabriel Naduator, DW3, one Mrs Edith Okonkwo, DW4, one Emiesiani Kingsley, DW5, one Uradu Cicilia, DW6, (the 2nd Defendant himself) and DW 7, one Nwoche Chinedu. The following Exhibits were also tendered through them:-

1. Exhibit S and S1 - flyers explaining the business of the Defendants
2. Exhibit T and T1 - Invoices of Globacom.

3. Exhibit U – Judgment of a High Court of Justice, Awka Division delivered by Hon, Justice J. C. Iguh dated 28/2/2011
4. Exhibit V - A licence from the Nigeria Communication Commission.
5. Exhibits V, V1 and V2 – Two VPN phones and their accessories.
6. Exhibit W, X, and Y – Three(3) written agreements.
7. Exhibits Z, Z1, Z2, Z3 – Z10 are 10 Globacom Nigeria Ltd receipts.
8. Exhibits AA and AB – are Memorandum and Article of Association of the 3rd Defendant and statement of share capital.
9. Exhibit AC – A cash receipt No:0005447 dated 19/8/2018
10. Exhibit AD – A written agreement date 19/8/2010 between the DW 3 and the 3rd defendant.
11. Exhibit AE – A receipt dated 16/9/2010.
12. Exhibit AF – A letter of employment dated 29/3/2010.

In his testimony the DW 1 stated that he knows the 3rd Defendant i.e. Adjec Global Services Limited and that he is one of the Manager/Directors of the Company and the 2nd defendant is his brother. He stated that he started his business in 2004/2005 when he was a student at the Nnamdi Azikiwe University Awka when few students were using phones. Many of his classmates gave his phone number to their parents or family members to be receiving calls through him and he was charging them N30 per call. The Business grew and he opened more calls centres at the hostel using security men. He later expanded the business inside Awka with one of the business centre operating at the front of the resident of Egwe

Awka, Obi Gipson Nwoso. The Egwe influenced him to open more call centres and he did, which led a business concern, named Zoom mobile to invite him to Enugu and made him their promotion agent in Awka, after completion of his studies in 2008/2009. He registered his own company i.e. the 3rd Defendant at the prompting of the zooms mobile. In all their centres they were selling phones and recharge cards.

In 2009 the Globa com came into the scene and offered him double offer of what zooms mobile was giving him. He accepted their offer and continue to be agent of zooms mobile and Globa com at the same time, until the time zoom mobile finally closed down. He added that Globa com does not have phones so they were only selling lines i.e. V.P.N (virtual private network). It allows a subscribers to make calls free of charge and pay only N1,500 at the end of the month. As the Globa com does not have lines and the Defendant incorporated the 3rd Defendant and also obtained a licence from the Nigerian Communication Commission. They have 2 Section of Business. One section is called phone section and the other is slot section. Under phone section a customer will only buy phone and be issued with a receipt. A customer can also buy a slot which means he want his phone to be lease to the 3rd party and will be receiving monthly payment from the 3rd Defendant. Most of the phones were used by companies or organization with two(2) or more staff as mobile intercom. At the end of each month Globa com will send invoice for the leased VPN phones.

As the time goes on, the business expanded until December 2010. At that time the Defendants had accounts with five (5) Banks i.e. First Bank, Diamond Bank, Eco Bank, Inter Continental Bank and F.C.M.B. Consequently other banks that the Defendants were not doing business with, became envious and started campaign of calumny against them. The customers of the Defendants started complaining against them and the police (C.I.B) attached to central police station, Awka started investigating them and arrested the 2nd Defendant who is a brother to the 1st Defendant. At that time the 1st Defendant was not around then and the office of the 3rd Defendant was closed down by the police.

When the 1st Defendant went to the police station, he was arrested and detained together with the 2nd Defendant until their counsel filed a fundamental right case at the High Court, Awka. He added that their problems started in 2011 when armed robbers burgled their office and made away with many of their phones. The issue was reported to the police and after investigation, a report was written and given to the 1st Defendant.

Under Cross-Examination by counsel to the 2nd Defendant, he stated that the 2nd defendant is an engineer and an employee of the 3rd defendant and was not part of the business nor took part in incorporating the 3rd Defendant. At the time of the arrest of the 2nd Defendant by the police, he was not owing the 3rd Defendant. Under Cross-Examination by the prosecution, he stated that the word "lease" in this context is when a customer purchases the phones and leased it through the 3rd party. He added that it is the

3rd Defendant that has business relationship with the 3rd party and cannot remember the name of people who bought phones from him. He further added that he knows the PW1 in this case and that it is not true that he paid over N502,000.00 to him, but it was only N492,000.00 for investment slots and N10,000.00 for the phone he is using. The phone^s were not leased to 41 people but to a 3rd party whose name is in the list with the EFCC. He added that the 3rd party is yet to return the 41 phones and as in all other cases, the 3rd parties are yet to return the phones in their possession.

➤ In his own testimony their DW 2 stated that he knows the 1st and 3rd defendants. In August 2010, a staff of the 3rd Defendant marketed their products to him and he got interested and subscribed 7 phones from them. The system is that you pay for the phones and they come with a monthly subscription. He added that he distributed the phones to his workers. He also used his own from August 2010 before he started having issues with his phone as he could no longer use the line. He complained to the 3rd Defendant and finally dumped the phone when the issue could not be resolved. He added that the line is from Globa com but the phone is from the 3rd defendant.

Under Cross-Examination by the prosecution he stated that he bought the 7 phone^s at the total cost of N84,000 i.e. N12,000.00 each. He was paying monthly subscription of N10,500.00. he added that he doesn't know what other subscribers are paying.

➤ In her testimony, the DW3 stated that she purchased 15 slots from the 3rd defendant in 2010 and leased them out to 3rd party who paid

her after 3 months. She was happy and wanted to invest more but she was told by the staff of the 3rd Defendant to hold on as the 3rd defendant was having problems and that some people are trying to spoil its name with the police. Under cross-Examination by the 2nd Defendant's Counsel, she stated that she knows the 2nd Defendant as a staff of the 3rd Defendant. Under Cross-Examination by the prosecution, she admitted that she knows the DW2 and added that she was present in Court when he gave evidence in the witness Box. But at a stage, she went out of the Court and come back again, she added that she heard about the problems of the 3rd defendant but weren't aware of it. She also doesn't know why the EFCC arrested the officials of the 3rd Defendant.

In his testimony, the DW4 stated that he knows the 3rd Defendant and that he invested in it from 2009 to December 2010. There are two packages i.e. investment and phones packages. He doesn't know about the phone package because he only invested in investment package and was due for collection of interest in December 2010. In 2011, the Defendants called all investors and told them about a problem with the police and that their accounts have been frozen by the EFCC. Under Cross-Examination he stated that the nature of the investment is that if you invest your money, you buy a slot – each slot is N12,000. The number of slot one buys, determine one's interest. After every three months, an interest will be paid to the investor. He added that he knows the 2rd defendant as a staff of the 3rd Defendant.

In his testimony, the DW5, stated that she and her husband are also investors with the 3rd Defendant, sometimes in July/August 2010. She picked interest in V.P.N. phones and leased 3 phones which she paid the subscription of N1,500.00 per phone and her husband also leased 26 V.P.N. phones. A lady who was the 3rd Defendant's marketer used to subscribe for the witness and her husband and at a certain time she stopped coming. The witness made inquiries at the 3rd Defendant's office and the 2nd Defendant told her that they have problems with the EFCC and that they should hold on till after the problem is solved. Under Cross-Examination, she stated that the 1st Defendant is the Director of the 3rd Defendant while the 2nd Defendant is a staff. She added that she and her husband leased 29 phones all in all. The phones are in her house presently without subscription and can't be use.

In his testimony, the DW6 (which is the 2nd defendant himself) stated that he is an employee of the 3rd Defendant as virtual private Network (V.P.N) manager and facility maintenance engineer. He also market the V.P.N. phones and branded phones to his customers. He added that he was arrested sometimes in 2011 by men of the Anti-Robbery Squad, Enugu and was kept at the SAR's office for 2 weeks before men of the EFCC office came and picked him. He added that he made a statement at the EFCC office and was released when the 1st defendant appeared at the EFCC office. He stated that all the allegations against the 3rd Defendant are not true.

- In his testimony, the DW7 stated that he is the marketer of the 3rd Defendant and that the 2nd Defendant is not a signatory to the account of the 3rd Defendant. He added that he is not aware that the 3rd Defendant is involved in any illegal activities.

* The Defendants closed their case on the 8th day of May, 2019 and the matter was adjourned for adoption of written addresses by the counsels. The Defendants adopted their own written addresses on the 7th day of October, 2019 respectively. The prosecution also filed his own on the 21st day of October, 2019 and adopted same on the 11th day of November, 2019.

In their written address, the Counsel to the 1st and 3rd Defendant raised 2 issues for determination i.e.

1. Whether from the facts and circumstances of this charge, the prosecution has proved the said charge against the 1st and 3rd Defendants beyond reasonable doubt.
2. Whether failure to take the plea of the 3rd Defendant did not rob the Court of jurisdiction to entertain the charge?

On issue No.1 – The Counsel submitted that the burden of proving the guilt of the Defendant lies on the shoulders of the prosecutor. He cited the case of **PEOPLE OF LAGOS STATE V UMARU (2014) 7 NWLR pt. 1407 at pg. 584 and Section 139(1) and (2) of the Evidence Act**. He argued that Counts 1 and 2 of the amended charge are offences found within the Banks and other Financial Institution Act, 2004. Counts 3 to 50 are offences within the Advance Fee Fraud and other Fraud related offences Act, 2004. The Counsel referred

to Counts 1 and 2 and their punishing Section i.e. Section 58 of the Banks and other Financial Institution Act and Section 44 (1) of the banks and other Financial Institution Act and argued that the prosecutor witnesses failed to established the offences in Count 1 and 2 against the 1st and 3rd Defendants.

The Counsel further submitted that the 1st and 3rd Defendants were also charged under Sections 1(l)(B) and 8 (a) of the Advance Fee Fraud and other Fraud Related Offences Act. While Count 3 is in respect of conspiracy to commit felony, count 4 to 50 look more of repetition deals with intent to defraud, that is obtaining money by false pretence. The Counsel argued that there are lots of contradiction in the evidence of the prosecution witness. He added that the DW2, DW3, DW4 and DW5 were all independent witnesses who testified that they were customers to the 3rd Defendant and have testified that the 3rd Defendant was never into financial business and were never defrauded. He urged the Court to resolve this issue in favour of the 1st and 3rd Defendants.

On issue No.2, the Counsel Submitted that in criminal trial the jurisdiction of the Court is activated the moment the Defendant takes his plea. The Court cannot proceed to trial without first taking the plea of the Defendant. Failure in that regard., robs the Court of jurisdiction to entertain the Charge. He cited the case of **GANIYU V STATE (2013) 10 NWLR (pt 1361) at pg. 31 Ratio 2.** The Counsel referred to the record of this Court and argued that the plea of the 3rd Defendant (company) was not taken, even though the plea of the 1st and 2nd Defendants were taken by the Court where they

plead not guilty. He added that the 1st Defendant is only a Director in the 3rd Defendant (Company). The onus is on the prosecution and not the Court, to take the 3rd Defendant through that part of arraignment which they failed to do. Failure to do this is lethal and catastrophic. He cited the case of **ABUBAKAR VS NASAMU (No.2) (2012) (pt. 1330), Section 36 (6) (a) and (b) of the Constitution and Section 271(2) (a) and (b) of ACJA 2015.**

He urged the Court to resolve this issue in favour of the 1st and 3rd Defendant and discharge and acquit them.

In his written address, the Counsel to the 2nd Defendant raised a sole issue for determination i.e. whether the prosecution has proved its case against the 2nd Defendant beyond reasonable doubt with regards having been had to the totality of evidence before this Court.

He submitted that the burden of proof in criminal matters is proof beyond reasonable. He cited the case of **ADEBESIN V STATE (2014) LPELR – 22694 (SC)** and argued that from the totality of evidence, the prosecutor has failed to adduced any evidence against the 2nd Defendant beyond reasonable doubt. The counsel referred to count one to fifty of the amended charged and argued that the evidence of the prosecution witnesses especially PW2, PW3 and PW5 never mentioned the 2nd Defendant nor linked him with any offence. It was only PW4 who mentioned that some payments were made to him from the account of the 3rd Defendant company. He added that there is evidence that he was only an employee of the 3rd Defendant, and the money paid into his

account were his entitlement and bonuses that accrued by virtue of his services rendered to the 3rd Defendant. In conclusion, the counsel urged the Court to hold that there is no evidence linking the 2nd Defendant with the offence charged and should acquit and discharge him.

✦ The prosecution also in their written address reviewed the evidence of PW1 to PW5 and raised a single issue for determination i.e. whether the prosecution has proved the offences charge against the Defendants beyond reasonable doubt.

In regards to counts 4 to 50 of the charge sheet, the counsel submitted that from the evidence adduced, they have proved beyond reasonable doubt, the guilt of the Defendants contrary to Sections 1(1) and Section 1(3) of the Advanced Fee Fraud and other Fraud Related Offence Act 2006. He also referred to the evidence of PW 1 to PW3 (and all the 3rd Defendant Company Investors). He submitted further that the Defendant had no legal authority or capacity to receive any fund or deposits from any member of the public through the 3rd Defendant Company. The false pretence on the part of the Defendant is that the time of so called transactions with the investors, the 3rd Defendant company was not licenced by the central Bank of Nigeria nor Securities and Exchange Commission to subscribe for funds from the public to manage such funds. Secondly, the victims money was not invested in any genuine business for this benefits but was converted to the personal use of the Defendants.

On the offence of conspiracy, the prosecution argued that it has been proved ^{that} the 1st and 2nd Defendants are the Owners, Promoters, Directors and Operators of the 3rd Defendant Company. The 2nd Defendant is the signatory to the 3rd Defendant Bank's Account into which the investors paid money. The money were traced to the personal account of the 1st and 2nd Defendants and there is proof that they used the money to bought vehicles and landed properties in their personal names. The 1st and 2nd Defendant used the 3rd Defendant to defraud the investors (complainant). He cited the case of **SHODIYA V STATE (1992) 3 NWLR (pt 230) 457 pg. 204** where the offence of conspiracy was defined. He urged the Court to hold that they have proved their case beyond reasonable doubt and to convict the Defendant.

These are the submissions of counsel to both Defendant and the prosecution. The issue for determination is whether the prosecution has proved his case beyond reasonable doubt. The Supreme Court has held times without numbers that the burden of proving that any person has been guilty of a crime or wrongful act is on the person who assert it, whether the commission of such act is or is not directly in issue in the action. Section 36(5) of the Constitution provides that every person who is charge with a criminal offence shall be presumed innocent until he is proved guilty. Following from the above therefore, the burden of proof in criminal cases is on the prosecution who must prove its case beyond reasonable doubt and a general duty to rebut the presumption of innocence constitutionally guaranteed to the accused person. This burden

never shifts. See the case of **MOHAMMED SARKI FULANI V THE STATE (2018) Vol. 74, NSCQR pt. 2** per P.A. Galinje JSC at pages 537 – 538 see also the case of **STATE V SHONTO (2019) Vol. 78 NSCQR** per A. A. Augle JSC at page 341. See also the case of **STATE V NURA BUHARI (2019) Vol. 78 pt 1 NSCQR** per S. D. Bage JSC at pg. 61.

It is trite law that conviction may be based solely on the confessional statement of an accused person without corroboration if it is positive, direct and properly proved. See the case of **STATE V NURA BUHARI (supra) per S. D. Bage JSC at page 63 – 64.**

Based on the above authorities, I have carefully considered the evidence before me and am of the humble opinion that the prosecution has proven his case beyond reasonable doubt. The evidence of PW1 to PW5 have sufficiently established the ingredients or elements of the offences charged against the Defendants who through themselves and agents collected a lot of money from the public without licences from the Central Bank of Nigeria, Security and Exchange Commission and Nigeria Telecommunication Commission.

The first and second Defendants who are brothers used the 3rd Defendant Company and collected money in the name of illegal investment. They never paid the investors back as there is evidence that they spent the money on buying landed properties in their names and lodging some in their individual Bank's accounts. I totally disbelieved the evidence of the 1st and 2nd Defendants as they are not witnesses of truth and whatever they stated is an after-

though. Likewise the evidence of other witnesses to the Defendants are weightless as they are innocent investors in the illegal business of the Defendants and are still under the illusion of collecting back huge amount of money from the Defendants as interest/returns.

The second leg of the counsel to the 1st and 3rd defendants argument is that this Court does not have jurisdiction to try the Defendants in the first place because the plea of the 3rd Defendant was not taken. I totally disagreed with the said arguments as the 1st Defendant and 2nd Defendants had admitted on record that they were Directors/Managers of the 3rd Defendant and were actually representing it throughout the trial and they never complained by themselves or their Counsel. One of the maxim of the law is that he who comes to equity must come with cleans. The Defendants do not have clean hands in this matter and are only fishing for loopholes or lacuna to escape justice. I hold that the plea of the 3rd defendant was duly taken and the Court has jurisdiction to hear and determine this case.

Consequently, I found the Defendants culpable and are hereby convicted accordingly.

Allocutus.

ALLOCUTUS

Emeka Nwankwo - The 1st & 3rd defendants had not been arraigned or convicted by any offence. The 1st defendant is a family man and little children in school. We urged the court to caution and discharge them or in the alternative give them option of fine.

C.F. Ifeabunike - The 2nd defendant has a clean record. This is the first trial he is facing. He is marriage with children and a sole provider for the family and if he is incarcerated the children will suffer. We urged the court to temper justice with mercy and order for restitution.

M.A. - No previous record.

SENTENCE

I have listened to the plea for mercy by the counsels to the convicts. In sentencing I considered the fact that the convicts are first offenders without any previous records. The 1st and 2nd convicts are family men with little children in school to take care of. However,



the offences with which they are convicted are serious ones and very rampant in the society. The 1st and 2nd convicts are sentence to one (one) year imprisonment on each of the 50 counts but should run concurrently. In the alternative the 1st and 2nd convicts should pay a fine of N1 million each. As regards, the 3rd convict being a corporate entity, it is sentence to a fine of N1 million. The convicts should also return all the monies collected from the Investors to the said Investors/complainant. The two landed properties and any other property recovered from the convicts should be forfeited to the Federal Government of Nigeria.

This is my decision. I so hold.

 2/12/19
M.L. ABUBAKAR
JUDGE
2/12/2019

APPEARANCES

- M.A. Ekué - Prosecution
- Emeka Nwanko - 1st & 3rd Defendants
- C.F. Ifeabunike - 2nd defendant

With C.E. Udealor Esq.

- Defendants present.