

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
BEFORE HIS LORDSHIP HON. JUSTICE D.A. ONYEFULU
ON THURSDAY THE 19TH DAY OF APRIL, 2018

CHARGE NO: A/34^C/2016

THE STATE

AND

MOGBANA KELVIN NDUBUISI
NNAMDI ENUKA

JUDGMENT

The defendants are standing trial on a three count charge for the following offences as proffered by the state:

COUNT 1

STATEMENT OF OFFENCE:-

Conspiracy to commit felony to wit; obtaining money by false pretence contrary to section 8[a] of Advance fee fraud and other related offences Act CAP A6 Laws of the Federation of Nigeria, 2006 as amended.

COUNT 2

STATEMENT OF OFFENCE:-

Obtaining by false pretence contrary to section 1(1)(a) and punishable under section 1(3) of Advance Fee fraud and other fraud related offences Act Cap A6 Laws of the Federation of Nigeria 2006 as amended.

COUNT 3

STATEMENT OF OFFENCE:-

Illegal sale of land; contrary to Section 3(b) of The Prohibition of Fraudulent Practices on Lands and Property Law of Anambra State, 2012.

The State arraigned the defendants before this honourable court on 28/9/2017. Both defendants entered a not guilty plea on all the counts proffered against them by the state on that day.

It is pertinent to note that the hearing of this matter was delayed as 1st defendant was absent from the court on the 4/4/17 being the date for their arraignment. This made the court to issue a bench warrant against 1st defendant and his surety made to show cause in charge number A/34^C/2016. Upon the appearance of the 1st defendant, the surety was discharged as the defendant entered a plea of not guilty to the contempt charge against him as he told the court that he was in prison custody on the days he was being sought for which eventually led to the order of bench warrant against him and the following contempt charge. This court in the circumstance, disposed off the contempt charge against 1st defendant.

In the course of trial, three witnesses testified in this matter. The prosecution led by J.C. Emebie Esq; Senior State Counsel called one witness who testified on oath and was fully cross examined. On 30/10/2017, one Hon. Ifeama Vincent called by the prosecution testified on oath as **Pw1**. It is his evidence in chief that on 24/8/15 Mr. Nnamdi Euka, the 2nd defendant called him on phone and later came to his house to inform him that his (**Pw1's**) friend who he knows very well was in need of N500,000 to fix his father's lorry. **Pw1** refused. The next day, the defendants came back and pleaded with him. The 1st defendant showed him a

land document which he said he bought from one Peter Okonkwo from Orofia Village and that he was willing to give out the land. **Pw1** refused and the 2nd defendant pleaded with him. Due to his humanitarian gesture, he demanded to see the land and the lorry. They took him to the land situate at Eziowelle Abatete with the document he used to buy the land, and thereafter to the mechanic workshop to see the lorry. He gave the defendants the sum of N500,000 which was received by the 1st defendant after they signed an Irrevocable Power of Attorney and a Memorandum of Understanding.

On 8/9/15 the 2nd defendant called him again and demanded for money to fix the tyres of the lorry which he reported to have been fixed. He then parted with the sum of N180,000 after an agreement in a 20 leaves was prepared by the 1st defendant in his handwriting and signed by them. After the deadline, the defendants failed to co-operate with him instead the 1st defendant called him and told him that he wanted to sell the land to which he (**Pw1**) told him, he was not interested. He (**Pw1**) later found out that the land belongs to the father of the 1st defendant and not the 1st defendant, and they did not use the money for the lorry. He was not aware of this fact at the time he signed. Up till this moment, the defendants have not returned the money to him.

Through **Pw1**, documents were tendered and admitted as Exhibits A and B. The Memorandum of Understanding and Notebook titled 'letter of agreement' were admitted as Exhibits C and D respectively.

On 27/11/17, **Pw1** was cross examined by K.C. Obiefuna Esq, learned counsel for the 2nd defendant. **Pw1** confirmed that the defendants borrowed the sum of N680,000 from him with the promise to pay back. It was a friendly loan. **Pw1**

further confirmed that he gave them the money on 26th August to be paid back on 26th October.

He admitted making enquiries before the agreement. He was convinced because of the documents presented to him and his enquiries, before he paid.

He denied knowing the person who planted the sign post he saw on the plot of land, and admitted that he called the number written on the sign post and the person told him to stay clear of the land as it belongs to him. He later saw the person, who is the father of the 1st defendant. He admitted that he gave a brief statement to the Police and the Police invited the father of the 1st defendant.

He admitted that the 2nd defendant was the person that brought the 1st defendant to him. He admitted that he met Peter Okonkwo who told him that he was the person that sold the land to the 1st defendant.

He admitted that Exhibit B was made on 7/6/16 and admitted making a statement to the Police.

His cross examination ended here. The 1st defendant who was unrepresented by counsel, had no cross examination for **Pw1**.

Thereafter on 19/4/18, learned counsel for the prosecution informed the court that the matter is for **Pw2**, who is the IPO but they have been having challenges getting him, and there is also a development. One E.E. Molokwu Esq, counsel for the 1st defendant informed the court that he was briefed two days ago and after a discussion with the complainant, that they have settled.

This court in the overall interest of justice re-called **Pw1** who admitted under oath that following his agreement with the defendants, his demand has been fulfilled and he no longer wants to go on.

There was no cross examination and the prosecution formally closed their case.

DEFENCE opened the same day. The learned defence counsel called the 1st defendant who testified on oath as **Dw1** and denied committing the offence. He further stated that they have settled with the complainant. There was no cross examination.

Thereafter learned defence counsel called the 2nd defendant who testified on oath as **Dw2**. He denied committing the offences as charged and admitted that they have settled the dispute. There was no cross examination. Counsel for the Defendants at this stage closed their case.

The same day, J.C. Emebie Esq, the prosecuting counsel addressed this court. He applied on the basis of the evidence before the court and Section 163(1) of the Administration of Criminal Justice Law 2010, to allow them to withdraw the matter.

In the same vein, the counsel for the Defendants urged the court to strike out the matter.

This is the entire matter before me. I shall raise an issue for determination thus –

*“Can this matter be withdrawn, evidence of
Pw1 having been taken”*

As stated above, in this case **Pw1** had testified and fully cross examined. The prosecution owing to the challenges of getting the IPO, their intended **Pw2** to

testify in this case and the settlement, on their own chose to withdraw this matter, after closing their case.

The prosecution rightly relied on Section 163(1) of the Administration of Criminal Justice Law 2010, as the trial had already commenced.

I shall advert my mind to the provisions of Section 163(1) of the ACJL and Section 36(5) of the Constitution of the Federal Republic of Nigeria. The presumption of innocence covers the defendants in this regard.

This matter is hereby dismissed. The defendants are discharged and acquitted as the offences have not been proved against them.



D.A. ONYEFULU

JUDGE

19/4/18

APPEARANCES:

J.C. EMEBIE (Senior State Counsel) with C.C. OKPALAEKE for the Prosecution

E.E. MOLOKWU for the 1st Defendant

K.C. OBIEFUNA for the 2nd Defendant.