

IN THE COURT OF APPEAL
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE

ON FRIDAY THE 8TH DAY OF DECEMBER, 2017

BEFORE THEIR LORDSHIPS:

HON. JUSTICE MUHAMMED AMBI-USI DANJUMA

HON. JUSTICE OBANDE FESTUS OGBUINYA

HON. JUSTICE RIDWAN M. ABDULLAH

JUSTICE, COURT OF APPEAL (PRESIDING)

JUSTICE, COURT OF APPEAL

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APPEAL NO: CA/AK/205^{CA}/2014

CHARGE NO: HOS/6C/2011

BETWEEN:

ABDULGAFAR OLUWARINU YUSUF

.....

APPELLANT

AND

THE STATE

.....

RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE RIDWAN MAIWADA ABDULLAHI, JCA)

The Appellant, ex-police man, with his acquaintances, Babatunde Ogunjobi and Kelvin Igha Ighodalo, were arraigned before the High

Court of Osun State sitting at Osogbo on 28th May, 2012 for the following six offences.

COUNT 1

STATEMENT OF OFFENCE

Conspiracy, contrary to Section 8 (c) and Punishable under Section 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 27th November, 2010 at about 4pm at Osun State Technical College, Osogbo Sports Ground, within Osogbo Judicial Division did conspire to commit a felony to wit: Obtaining property by false pretence.

COUNT 2

STATEMENT OF OFFENCE

Court of Osun State sitting at Osogbo on 28th May, 2012 for the following six offences.

COUNT 1

STATEMENT OF OFFENCE

Conspiracy, contrary to Section 8 (c) and Punishable under Section 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 27th November, 2010 at about 4pm at Osun State Technical College, Osogbo Sports Ground, within Osogbo Judicial Division did conspire to commit a felony to wit: Obtaining property by false pretence.

COUNT 2

STATEMENT OF OFFENCE

OBTAINING PROPERTY BY FALSE PRETENCE contrary to Section 1 (1) (c) and 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 24th May, 2011 using a GSM number 080-39404966 stolen with a Sony Ericson phone from Engr. Rauf Adesoji Aregbesola on 27th (sic) at Osogbo with intent to defraud and under false pretence did obtain the sum of ₦200,000.00 (Two hundred thousand naira) from Shenge Rahman.

COUNT 3

STATEMENT OF OFFENCE

OBTAINING PROPERTY BY FALSE PRETENCE contrary to Section 1 (1) (c) and 1 (3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 3rd June, 2011 at about 10.00am using a GSM number 080-39404966 stolen with a Sony Ericson phone from Engr. Rauf Adesoji Aregbesola on 27th November, 2010 at Osogbo with intent to defraud and under false pretence did obtain the sum of ₦500,000.00 (Five hundred thousand naira) from His Royal Majesty Oba Adekunle Aromolaran, the Owa Obokun of Ijeshaland.

COUNT 4

STATEMENT OF OFFENCE

STEALING, Contrary to Section 390 and punishable under Section 390(9) of the Criminal Code Law Cap. 34 Laws of Osun State 2002.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 27th November, 2010 at Technical College Sports Ground, Osogbo within Osogbo Judicial Division stole a Sony Ericson phone with GSM No. 080-39404966 worth over ₦50,000.00 (Fifty thousand naira) belonging to Engr. Rauf Adesoji Aregbesola.

COUNT 5

STATEMENT OF OFFENCE

IMPERSONATION, Contrary to Section 484 of the Criminal Code Law Cap. 34 Laws of Osun State 2002.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 24th May, 2011 within Osogbo Judicial Division and with

intent to defraud Shenge Rahman falsely represent yourselves to be Engr. Rauf Adesoji Aregbesola.

COUNT 6

STATEMENT OF OFFENCE

IMPERSONATION, Contrary to Section 484 of the Criminal Code Law Cap. 34 Laws of Osun State 2002.

PARTICULARS OF OFFENCE

KELVIN IGHA IGHODALO, BABATUNDE OGUNJOBI AND ABDULGAFAR OLUWARINU YUSUF and others at large on or about 24th May, 2011 within Osogbo Judicial Division and with intent to defraud His Royal Majesty Oba Adekunle Aromolaran, falsely represent yourselves to be Engr. Rauf Adesoji Aregbesola.

Upon arraignment, Kelvin Igha Igbodalo pleaded guilty and was convicted and sentenced accordingly. The Appellant and Babatunde Ogunjobi pleaded not guilty and their case went to trial. The prosecution

called three witnesses and closed their case. Each of the two accused testified for himself and called no other witness.

SUMMARY OF FACTS

A Sony Ericson Model cell phone with GSM NO. 08039404966 belonging to the incumbent Governor of Osun State, His Excellency Engineer Abdurauf Adesoji Aregbesola was stolen in the frenzy of his inauguration as the Governor at Government Technical College play ground, Osogbo on 27th November, 2010. The cell found its way to Kelvin Igha Ighadalo, who was at that time an inmate at Ikoyi prison and was awaiting trial for a capital offence. He had earlier been an inmate, after his conviction for another offence between year 2005 and 2007, during which he met and struck friendship with Babatunde Ogunjobi, the 2nd accused who was a Warder at kitchen section of Ikoyi Prisons and so was selling gari to Kelvin Igha Ighodalo in addition to being his friend.

However, by the time Kelvin Igha Ighodalo came back to Ikoyi Prison for the second time, the 2nd accused, Babatunde Ogunjobi had been transferred to Alagbon Headquarters Prisons, at Dog Section.

Nonetheless, Kelvin Igha Ighodalo re-established communication link with Babatunde Ogunjobi, who let his salary account he maintained with Diamond Bank, Awolowo road, Ikoyi Account No: 054-1050010086 to Kelvin Igha Ighodalo in May 2011 for use to launder proceeds of crime. Vide the assistance of the Babatunde Ogunjobi, Kelvin Igha Ighodalo then commenced fraudulent extortion of money from the names he found on the cell phone and SIM card of His Excellency, Engineer Abdurauf Adesoji Aregbesola in his possession. Kelvin Igha Ighodalo posed as the real owner of the cell phone and directed his victims to be paying money into the account provided for him by Babatunde Ogunjobi.

Pw1, one Shenge Rahman, who described himself as a lawyer and old school mate of Engr. Abdurauf Adesoji Aregbesola gave evidence on how he first received a call from Kelvin Igha Ighodalo, who posed as his friend, Engineer Abdurauf Adesoji Aregbesola, asking him to pay the sum of ₦200,000 into the account of Babatunde Ogunjobi, for an emergency he, the Governor cannot personally attend to. Pw1 paid the

said amount into Babatunde Ogunjobi's account through a teller which he tendered in evidence. When the money kept coming and it became too much for Babatunde Ogunjobi to handle or for whatever reason known to him, he brought in the Appellant herein and sent his account number 1007440399 maintained with Intercontinental Bank, Moloney Branch, Lagos, to Kelvin who began to use same to launder proceeds of crime. His Royal Majesty, Oba (Dr.) Gabriel Adekunle Aromolaran II was a victim and through one Mrs. Alaba Abosedo, his secretary, the sum of ₦500,000.00 was paid into the account of the Appellant on June 3rd 2011 via a bank teller which was also tendered in evidence.

It is noteworthy that as the Appellant and Babatunde Ogunjobi were receiving the money into their accounts, they were withdrawing it on the instruction of Kelvin Igha Ighodalo and handed part of the money to third parties as directed by kelvin Igha Ighodalo and whose identities have also not been disclosed, while keeping the other part for themselves. The crime was busted when Kelvin Igha Ighodalo made a second request for money from Pw1, posing as usual as Mr. Governor.

Coincidentally, Pw1 was in the same state function with Mr. Governor who was reading an address when Pw1 received the call. The Directorate of State Security then stepped into the matter, resulting on the arrest of the Appellant at the point of withdrawing of the illegal money paid into his bank account. And through him, Babatunde Ogunjobi and Kelvin Igha Ighodalo were arrested, investigated and charged. While Kelvin pleaded guilty, the Appellant and Babatunde Ogunjobi pleaded not guilty. The matter went to trial and at the end of trial, the learned trial judge in a considered judgment delivered on 28/02/2014, convicted and sentenced Babatunde Ogunjobi to 10years, 7years and 7years for counts 1, 2 and 3 respectively, but discharged him on counts 4,5 and 6. The Appellant herein was also convicted and cautioned and discharged on counts 1 and 2 but sentenced to 7 years on count 3. He was also discharged on counts 4, 5 and 6.

Dissatisfied with his conviction and sentence the Appellant filed a Notice of Appeal, dated 21/12/2015, on 22/3/2016, containing 8 grounds of appeal. The parties duly filed and exchanged Brief of Argument in

compliance with rules of this court. Appellant's Brief of Argument dated 31/5/2016 and filed 1/6/2016, was settled by **Remi Ayoade Esq.** who distilled the following three (3) issues for determination:

1. Whether the prosecution had proved the alleged commission of the offences for which the Appellant was found guilty, convicted and sentenced beyond reasonable doubt as required by law. (*Grounds 1, 2 and 4*).
2. Whether the learned trial Judge was right in the invocation of the provisions of *Section 7 of the Criminal Code Law of Osun State* in finding the Appellant guilty of the alleged offences in the light of the facts and circumstances of the case before him (*Ground 6*)
3. Whether the trial Judge properly evaluated the evidence led at the trial by both the prosecution

and the defence before convicting the Appellant.

(Grounds 5 and 7).

On the other hand, the Respondent's Brief of Argument dated 30/3/2017 and filed on 8/5/17 was settled by **Adedapo Adeniyi Esq.** who raised a lone issue for resolution of the appeal, thus:

Whether the prosecution proved the offence for which the Appellant was found guilty, convicted and sentenced beyond reasonable doubt.

Since the lone issue raised by the Respondent is subsumed in the three issues raised by the Appellant, I shall resolve the appeal on the three issues raised by the Appellant, the owner of the appeal.

ARGUMENT OF ISSUES

ISSUE 1

Arguing his issue1, Learned Appellant's Counsel relied on the cases of

Oduneye v. The State (2001) 13 WRN 100-101 and Kaza v.

State (2008) 32 WRN 96 for the meaning and ingredient of the offence of conspiracy. Furthering, Counsel relied on **Dr. Edwin Onwudiwe v. Federal Republic of Nigeria 26 NSCQR 257 at 306 (sic) and Micheal Alake & Anor. v. The State (1991) 7 NWLR (Pt. 205) 567 at 591** on the meaning and ingredients of obtaining property by false pretence, to submit that the ingredients of conspiracy and obtaining by false pretence must be proved beyond reasonable doubt by the prosecution, since the courts are not allowed by law to take judicial notice of those ingredients and the onus does not shift. He further relied on **Cyril Areh v. C.O.P (1959) WRNLR 230 at 231** for the submission. He submitted that the prosecution led no evidence to prove that the Appellant conspired with anybody to obtain property by false pretence from Pw1 and Pw2. He argued that Exhibit K – Appellant's extra-judicial statement, cannot be said to qualify as a confessional statement in view of the fact that the Appellant did not therein admit the commission of the alleged offence. He placed reliance on **Milla v. State (1985) 3 NWLR (pt. 11) 89**. He posited that there is no direct evidence of the alleged conspiracy by the Appellant and

Babatunde Ogunjobi and/or Kelvin Igha Ighodalo before the trial court. He referred to pages 166, 167 and 168 of the record of appeal, to submit that the learned trial Judge wrongly applied the provision of Section 7 of the Criminal Code Law of Osun State as an open-ended drag net to find the Appellant guilty at all cost.

Counsel referred to page 167 of the record of appeal in particular to submit that the findings of the trial court therein are not borne out of proper evaluation of the evidence led at trial. He relied on **Okoko v. State (1964) 1 ALL NLR 423 at 428** and **Felix Nwosu v. State (1986) 4 NWLR (Pt. 35) 348 at 359** to the effect that a judgment of court should be based on evidence led and of sound logical thinking. He is of the opinion that the Appellant's evidence that he received money into his account only on the instructions of his brother and that he never know the source of the money or the purpose for which it was paid has not been contradicted by the prosecution. He furthered that the finding of the court at page 168 that the Appellant (2nd Accused) " **neither knew the prisoner nor the game that was being played**" would

have exonerated the Appellant instead of summersaulting as it were to hold that the **"Appellant too was conscious that money was coming to his account illegally and was benefitting from it"**

Counsel conceded that the property of the Pw1 and Pw2 were obtained by false pretence but submitted that there is no evidence that the Appellant was part of the criminal enterprise of Kelvin Igha Ighodalo since the Appellant only gave his account through which the money was received without his knowledge of the source or purpose of the criminal intention of Kelvin Igha Ighodalo. It is also not in evidence, said Counsel, that the Appellant knew of the false representation of Kelvin Igha Ighodalo or induced Pw1 or Pw2 to obtain their property through payment into his bank account. He relied on **Micheal Alake & Anor. v. The State (supra)** to submit that an honest belief such as that of the Appellant herein which later turns to be false cannot found conviction for false pretence.

On issue 2, Counsel is of the opinion that the trial court only invoked Section 7 of the Criminal Code Law of Osun State to convict the

Appellant without clearly demonstrating the specific application of same to the facts of the case, since no evidence on record directly linked the Appellant to the offences he was convicted for. He submitted that it was Pw2's evidence at page 123 of the record to the effect that ₦500,000 was paid to the account of the Appellant that linked the Appellant to the offence charged and that the Appellant's testimony at pages 143-144 of the record clearly exculpated the Appellant from liability since he only gave his bank account to his brother without more. He argued that for Section 7 of Criminal Code Law of Osun State to apply, there must be evidence that prior to or at the time of the commission of the offence, the Appellant did some thing in the nature of encouragement to assist in the commission of the crime with the full knowledge of the crime being committed. He submitted that since the Respondent has failed to establish such intention, the aid or assistance given by the Appellant for the lodgement of any money into his account cannot be said to be an intentional aid. For these submissions he relied on Enwoeonye v. The Queen (1995) 15 WACA 2 at 3, R. v. Solomon (1959) QDR 123 at 128 and R. v. Bainbridge (1959) 43 CAR.

On issue 3, Counsel submitted that the trial Judge abdicated his duty to properly evaluate the evidence of both parties because he was in a hurry to convict the Appellant as can be seen at pages 167 -168 of the record of appeal. He referred to the case of **Osetola v. State (2012) 50 NLCQR 598 at 628**, to the effect that in a charge for conspiracy and a substantive charge, the substantive charge should first be resolved to determine the fate of the conspiracy charge. He further placed reliance on **Mogaji v. Cadbury Nigeria Ltd (1985) 2 NWLR (Pt. 7) 393** to the effect that courts are not at liberty to pick and choose evidence from its record but should evaluate same together and the requisite probative value attached therein since it is the exclusive duty of the trial court to so do. He submitted that the learned trial Judge has failed to properly evaluate the totality of evidence adduced at trial but in a haste to convict the Appellant shifted the burden on the Appellant to establish his innocence. He invited this court to properly evaluate the entire evidence led by parties which according to him will create a reasonable doubt as to Appellant's commission of the offences

charged. He urged that the appeal be upheld and the judgment of trial court set aside.

Reacting vide his only issue, Learned Counsel for the Respondent submitted that proof beyond reasonable doubt does not mean certainty of doubt but a high degree of probability of the accused's commission of the alleged offence. He relied for this submission, on the cases of **Miller v. Minister of Pensions (1947) 2 ALL E. R 372 at 373; Lori v. State (1980) 12 NSCC 269 at 279 and Adebayo v. State (2008) 6 ACLR 372 at 395.**

Furthering, Counsel argued that "**doubt**" that will avail an accused person must not only have evidential basis but also the mind of the court must by it be thrown into a state of unsureness as to the true circumstances as it occurred and in particular as to whether the suspect had committed it. For this, he relied on **State v. Akpabio (1993) 4 NWLR (pt. 286) 204 at 2244.** He submitted that the offence the Appellant was charged for can be proved by confessional statement of the Appellant, circumstantial evidence and evidence of the witness of

the crime. He relied on **Njovens & Ors v. The State (2004) 1 CAC 255 at 257** to submit that the ingredient of the offence of conspiracy is an agreement to prosecute an unlawful purpose. He further relied on **Balogun v. A. G. Ogun State (2004) 1 CAC 17**, to submit that the fact that the conspirators are dissuaded or abandoned the fulfilment of the unlawful project mid way does not disprove the commission of the offence since the offence is deemed completed once there is an agreement to pursue an illegal purpose or carry out an unlawful act and that all conspirators need not start off at the same time, because conspiracy started by some can be joined later by others.

He recounted that it is in evidence that a Sony Ericson Cell phone with GSM No. 08039404966 property of Engnr. Abdulrauf Adesoji Aregbesola was stolen and that Kelvin Igha Ighodalo, impersonated Engnr. Aregbesola and call Engnr. Aregbesola's associates and duped or defrauded them of various sums of money such as the sum of ₦500,000 paid into the Appellant's bank account. He pointed out that the Appellant admitted in his statement, Exhibit K that he collected money

for Kelvin Igha Ighodalo through his bank account, that he had a share of the proceeds and that at that material time that Kelvin Igha Ighodalo was in prison but was able to defraud the victims through the Appellant, using his bank account. He relied on Section 8(1) of Evidence Act, 2011, to submit that the acts of impersonating the victim, the calling of the victims associates to drop money in the accounts of the Appellant and the voluntary and willing surrender of their (the Appellant and Ogunjobi) bank accounts to be used to receive the money and subsequent withdrawals and sharing of the proceeds show the actions of each of the conspirators in the instant case which are relevant facts as against each of the conspirators. He furthered that these are facts from which it would be inferred the agreement of the co-conspirators to prosecute an illegal or unlawful purpose.

Counsel submitted that the defence of the Appellant that he never knew Kelvin Igha Ighodalo and that he merely and innocently handed over his bank account to his brother, Babatunde Ogunjobi cannot fly in the face of his evidence in count in paragraph 2 line 11-15 at page 144 of the

Record, where he testified that when he went to the bank to collect another money paid into his account and he encountered some hitches with the bank officials and he left the bank, he heard "Kelvin" shouting on the other side when his brother called the person that owns the money. The question, said Counsel is how did he know that it was Kelvin that was talking when he has never met him before.

Counsel relied on Section 100 of Advance Fee Fraud and Other Related Offences Act, 2006 and the case of **Onwudiwe v. FRN (2006) QCCR 99 at 142**, on the meaning and ingredients of obtaining by false pretences to submit that the ring leader in this case Kelvin Igha Ighodalo, had pleaded guilty to similar charges, convicted and sentenced. He reiterated the undisputed facts of this case to rely on Section 7 of Criminal Code Law of Osun State to submit that the Appellant had facilitated and encouraged the commission of these offences by Kelvin Igha Ighodalo and therefore caught by Section 7 (b) and (c) of the said Criminal Code Law of Osun State and **ip so facto**, culpable. He placed reliance on **George v. FRN (2011) 10 NWLR (Pt.**

1254) 1, to submit that the Appellant by his act or omission of willingly giving his bank account number to Kelvin Igha Ighodalo to use, without knowing him or the kind of business he does, thereby facilitating the commission of fraud and the withdrawals of various sums paid by victims, running errands to deliver the money to specific people still at large and ultimately benefiting from the proceeds of fraud without raising any question, indeed renders him culpable under Section 7 (b) and (c) of Criminal Code Law of Osun State. Counsel submitted that it cannot be true that the Appellant never know or met Kelvin Igha Ighodalo because the Appellant cannot give his bank account number to an unknown person to use to launder millions of naira. He furthered that the Appellant who willingly gave his bank account to an "unknown person" to be used and acted as a conduit to dupe people and run errands to deliver the money while keeping part of the money cannot claim ignorance of the transaction, as same will only amount to wilful blindness. He submitted, quite strongly, that the Appellant assisted in the commission of the offences and by his act of commission or omission the offence was made possible. He argued that Section 7 CCL

of Osun State did not state that intention must be proved in the application of subsections (b) and (c) and that assuming without conceding that such intention is required, that the intention of the Appellant in enabling or aiding Kelvin Igha Ighodalo to commit the offence can be inferred from the actions of the Appellant. He called in aid the case of **Ligali & Anor. v. Queen (1959) NSCC 4 at 9** to the effect that a person can be convicted under Section 7 (b) and (c) without proof of any agreement either expressly or impliedly, between him and the person who actually did the act constituting the offence. He submitted that there is nothing in pages 167 – 168 of the Record that suggest that the learned trial Judge shifted the burden on the Appellant to prove his innocence. He is of the opinion that a dispassionate evaluation of the entire evidence and circumstances of this case will show that the Appellant was part of the syndicate that defrauded Pw1 and Pw2. The finding of fact, said Counsel, by the trial Judge at page 168 of the record that the Appellant did not at the time of being introduced into the criminal activities know **"the game that was being played"** does not mean that he was innocent of the crime;

resulting in the court going ahead to evaluate the facts and circumstances of his participation and concluded that he was aware that money was coming into his bank account illegally and was benefitting from it and therefore did not report same to law enforcement agents. He urged that this appeal be dismissed for lacking in merit and the judgment of the trial court be affirmed.

RESOLUTION

It is unarguable in law that proof beyond reasonable doubt does not mean proof beyond all shadows of doubt or all iota of doubt. All that is required is proof that will reasonably establish the guilt of the accused person with compelling and conclusive evidence. See **Adewale Joseph v. The State (2011) 6 SCNJ 222**, **Rabi Ismail v. The State (2011) 7 SCNJ 102**, **Adebayo v. State (2008) 6 ACLR 372 at 395** and **State v. Akpabio (1993) 4 NWLR (Pt. 286) 204 at 224**.

It is not in dispute that the ringleader in this case, Kelvin Igha Ighodalo had pleaded guilty to these offences and had been convicted and sentenced accordingly. It is equally not in dispute that the said offences were committed against Pw1 and Pw2. What is in issue in this appeal is whether the part played by the Appellant in the circumstances of this case, renders him culpable of these offences.

For the offence of conspiracy to be established it must be proved beyond reasonable doubt that the accused agreed with another person to prosecute an unlawful purpose. The apex court had occasion to expatiate on the offence of conspiracy in the case of **Njovent & Ors v. The State (2004) 1 CAC 255 at 257**, when it held as follows:

"It is not necessary to prove that the conspirators like those who murdered Julius Caesar, was seen together coming out of the same place at the same time, and indeed conspirators need not know each other..... They need not all have started the conspiracy, because conspiracy started by some persons may be

joined at a later stage or later stages by others. The gist of this offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof..... Hence conspiracy is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them and in proof of conspiracy the acts or omission or omissions of any of the conspirators in furtherance of the common design may be and very often given in evidence against any other or others of the conspirators."

To be deciphered from the above, *interalia*, is the fact that all conspirators need not start off at the same time since a conspiracy already started may be joined at a later stage and the fact that conspirators are dissuaded or abandoned the completion of unlawful purpose half way are of no moment as to the existence of the offence of conspiracy. It is worthy of note that parties are *ad*

idem on the fact that a Sony Ericson model cell phone with GSM 08039404966 belonging to Engnr. Abdurauf Adesoji Aregbesola was stolen and same was used by Kelvin Igha Ighodalo, who impersonated Engnr. Aregbesola to obtain property of Oba Adekunle Aromolaran through Pw2 (his secretary) and that the said property was obtained through the Appellant's bank account. It is in evidence that at all times material to this transaction, that Kelvin Igha Ighodalo was an inmate at Ikoyi prison.

On this score, it can rightly be said that the Appellant, assisted Kelvin Igha Ighodalo to obtain the property of Pw2 albeit the Appellant claimed that he neither knew, nor seen Kelvin Igha Ighodalo. Since there is hardly any direct evidence of the offence of conspiracy, recourse is usually made to the conduct of parties and surrounding circumstances to determine whether or not there was conspiracy. In his examination in chief before the court, the Appellant at page 44 of the record of appeal, testified as follows:

"So on Monday 6th June, 2011, I went back to my office where I worked, my brother called me to go and collect the money. I told him I was busy working. I later went to the bank. There was a queue, some people were busy collecting money. They told me I could not collect the money except I told them who paid it in. They asked me when the money was paid, I told them it was on Friday. They collected my withdrawal booklet and started staring at me. I became agitated, I went out. I then called my brother that I was been delayed. The 1st accused then told me he would call the man who owned the money. The man at the other end told me to go back to the bank. That I should give the phone to the teller cashier inside the bank. I did as he instructed me. The teller said he would not speak with the person that I should hold the phone. Then kelvin started shouting from the

other end insisting that I should wait. But I later returned to my office.

An appraisal of this piece of evidence reproduced above show that the man at the other end of the phone that wanted to speak with the teller cashier was "Kelvin Igha Ighodalo" and that the Appellant knew it was Kelvin Igha Ighodalo that he spoke with and that gave him instructions which he followed. This point is further buttressed by the Appellant's testimony under cross-examination at pages 145 and 146, wherein the Appellant testified as follows:

"On the day I went to collect the sum of N300,000 over which I was arrested, my brother was at kirikiri Prison, his office and not at Ikoyi Prison. I know because we live in the same room. He travelled for about one hour from our Awolowo Road, Residence to his office at Kirikiri."

His brother (Babatunde Ogunjobi) cannot be at kirikiri prison and Ikoyi prison at the same time. The combined effect of these pieces of

evidence is that the Appellant knew Kelvin Igha Ighodalo and *ip so facto* joined the conspiracy started by Kelvin Igha Ighodalo with, Babatunde Ogunjobi. He identified the man at the other end of the phone to be "Kelvin Igha Ighodalo" in his testimony.

There is no doubt that by giving his bank account to Kelvin Igha Ighodalo who at the material time was an inmate at Ikoyi prison, who used the said account to obtain the property of Pw2 by false pretence amounted to act of assistance. The Appellant thereby assisted or facilitated the commission of the said offence of obtaining property by false pretence. On that score, Section 7 (b) and (c) of Criminal Code Law of Osun State, clearly fixed the Appellant with the actual commission of the offence. For ease of appreciation, I shall reproduce Section 7 (a) (b) and (c) of the Criminal Code Law of Osun State hereunder, thus:

"When an offence is committed, each of the following persons is deemed to have taken part in committing

the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:

- (a) Every person who actually does the act or makes the omission which constitutes the offence**
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence.**
- (c) Every person who aids another person in committing the offence.**

I have held earlier on in this judgment that the Appellant joined the conspiracy to obtain property of Pw2 by false pretence at a later stage and did discuss directly with the ring leader, Kelvin Igha Ighodalo when he encountered a hitch while withdrawing the proceeds of crime.

To that extent, the learned trial Judge was right to have invoked Section 7 of the Criminal Code Law of Osun State and also rightly applied same.

There is no gainsaying the fact that the evaluation of the totality of evidence adduced at trial by parties and ascription of probative value therein is within the exclusive domain of the trial court that had the privilege of watching and observing the demeanor of the witnesses during trial. Therefore, the appellate court rarely interferes or substitutes its own views for those of the trial court when it has properly discharged its duty in that regard. See: Sule Anyegwu v. The State (2009) 1 SCNJ 91 and Joseph Oyewole v. Karimu Akande & Anor (2009) 7 SCNJ 225.

In Joseph Oyewole v. Karimu Akande & Anor (supra) at 238, paragraph 10-15, the Supreme Court, opined thus:

"It is now settled law that if there has been a proper appraisal of evidence by trial court, a court of appeal ought not to embark on a fresh appraisal of the same evidence in order merely to arrive at a different conclusion from that reached by the trial court. Furthermore, if a court of trial unquestionably

evaluates the evidence, it is not the business of court of appeal to substitute its own views for the views of the trial court."

Conversely where the trial court failed to properly evaluate the pieces of evidence adduced at trial, an appellate court is eminently empowered to re-evaluate same and make appropriate findings.

In Iheonunekwu Ndukwe v. The State (2009) 2 SCNJ 223, at 257 paragraph 20, the Supreme Court reiterated the position of the law succinctly thus:

"In other words where a trial court fails in evaluating facts found by it, an appellate court can re-examine the whole facts and come to an independent decision as the trial court."

It is unfortunate that the Learned Appellant's Counsel only made blanket reference to pages 167 to 168 of the record of appeal, to submit without more, that the learned trial Judge failed to dispassionately evaluate the totality of evidence adduced by parties at trial. He failed to specifically

mention and demonstrate how the learned trial Judge failed in the evaluation of those pieces of evidence.

I have carefully gone through the evaluation of all pieces of evidence adduced at trial by the learned trial Judge at pages 167 to 168 and did not see anything suggesting that the trial court shifted any burden on the Appellant to prove his innocence or that the trial court was in a hurry to convict the Appellant for the offences charged.

Indeed, the learned trial Judge appreciated the facts of this case vis-à-vis the evidence led at pages 167 to 168, of the record to find as a fact and conclude at page 168, as follows:

"Again when the 1st accused realised that money was coming too much he enlisted the 2nd accused who neither knew the prisoner nor the game that was being played. However, he too was conscious that money was coming to his account illegally, and was benefiting from it. It was unfortunate that non of the

two accused reported the commission of the crime to security agencies before they were apprehended."

A dispassionate perusal of the learned trial Judge's evaluation of the evidence adduced by parties at pages 167 to 169 of record, would show that same is unassailable.

In the light of the above, all the issues in this appeal are resolved against the Appellant.

Having resolved all the issues in this appeal against the Appellant this appeal lacks merit and is accordingly dismissed.

The conviction and sentence imposed on the Appellant by the High Court of Osun State, sitting at Oshogbo in Suit No: HOS/6C/2011, in the judgment delivered on 28th February, 2014 are hereby affirmed.


HON. JUSTICE RIDWAN MAIWADA ABDULLAHI
JUSTICE, COURT OF APPEAL.

APPEARANCES:

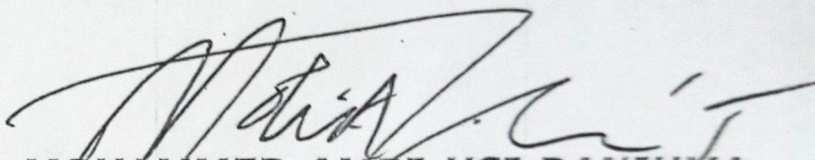
1. Remi Ayoade Esq. with K. E. Ngwoke Esq. and Luqman Adeleke Esq. for the Appellant
2. Abiodun Badiora Esq. (ACSC) Osun State, with I. T. Alarape Abdulraheem (S/C). for the Respondent.

MOHAMMED AMBI-USI DANJUMA, JCA

My learned brother, **Ridwan Maiwada Abdullahi, JCA** had availed me the benefit of a preview of the leading judgment in draft; and a perusal of same alongside the record of Appeal brings the conclusion arrived at by His Lordship that the appeal is one devoid of merit, inevitable.

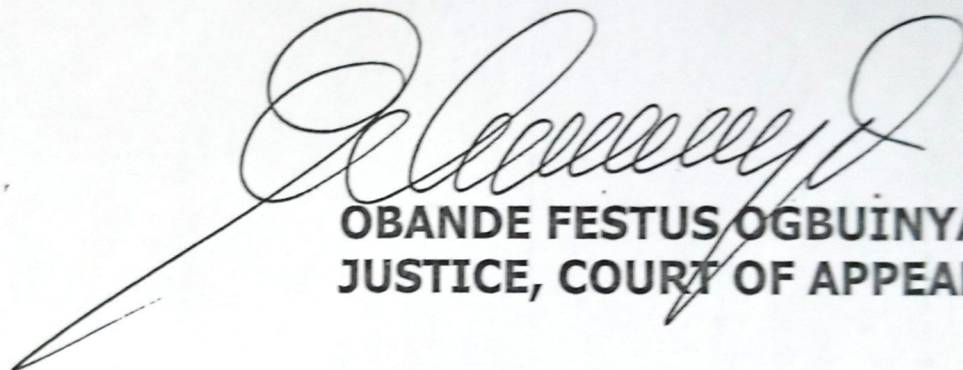
The chain of conspiracy and inferences for culpability is obvious.

I endorse the reasoning of His Lordship and also dismiss the appeal.


MOHAMMED AMBI-USI DANJUMA
JUSTICE, COURT OF APPEAL

APPEAL NO: CA/AK/205^{CA}/2014
OBANDE FESTUS OGBUINYA, JCA

I had perused the leading judgment delivered by my learned brother:
Ridwan Maiwada Abdullahi, JCA. I endorse, *in toto*, the reasoning and
conclusion in it. I, too, penalise the appeal with a deserved dismissal. I
abide by the consequential orders decreed in it.



OBANDE FESTUS OGBUINYA
JUSTICE, COURT OF APPEAL.