

170

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ADO-EKITI JUDICIAL DIVISION  
HOLDEN AT ADO-EKITI**

**ON TUESDAY THE 1<sup>ST</sup> DAY OF NOVEMBER, 2016  
BEFORE HIS LORDSHIP HON. JUSTICE D. U. OKOROWO  
(JUDGE)**

**CHARGE NO: FHC/AD/30<sup>C</sup>/2015**

**BETWEEN:**

**INSPECTOR GENERAL OF POLICE ..... COMPLAINANT**

**AND**

**AJIBOLA AYODELE ..... DEFENDANT**

**J U D G M E N T**

The Defendant was brought before this Court on one court charge dated and filed 3<sup>rd</sup> August 2015. The one count charge against the Defendant which is reproduced reads as follows:

**CHARGE**

**That you Ajibola Ayodele between November, 2014 and May 2015 at Ado Ekiti in Ado Ekiti Judicial Division under false pretence and with intent to defraud, obtained goods valued Five Million Naira (5,000,000:00), properties of Mrs Ilesanmi Bosede, a Distributor of Just Diapers, Ekiti State, and thereby committed and (sic) an offence punishable under Section 1 (3) and 11 of the Advance Free Fraud and Other Related Offence Act 2006.**

The Accused took is plea on 18<sup>th</sup> day of February, 2016 and pleaded NOT GUILTY to the one count charge. Hearing commenced on 7<sup>th</sup> day of March, 2016. The Prosecution called 3 witnesses and closed its case whereas the Accused person testified as lone witness for the defence.

PW1 is Ilesanmi Deborah Bosede, the Complainant. She testified that the defendant was employed as a Driver for business of the Complainant in November, 2014. The Defendant later approached her to open a Store for him. She opened a shop for him with goods worth N3,000,000:00. They maintained a communication and she checked up at the shop from time to time. He returned in February 2015 and she demanded for the money for the goods he took in November, 2014, the Accused responded that he sold the goods but wants to pay her in bulk.

The Defendant demanded for more goods and promised to pay in March 2015 and was given N2,000,000:00 worth of goods in February 2015 in addition to the one he was earlier given. When he was called in March to pay as promised, he could not pick his calls and a search in his house showed he had packed out. He was later arrested through an informant and taken to his shop but goods were nowhere to be found inside the shop.

PW1 stated that the various sums of goods were given to the Defendant through stock requisition form, duly signed by PW1, the Defendant and the Company Auditor. That the Defendant signed and collected the goods. She testified that she made statement to the police.

The following document were tendered through the witness and admitted in evidence as exhibits as follows:

1. Statement of PW1, Ilesanmi Bosede of 3/6/2015 Exhibit A
2. Stock requisition Form dated 27<sup>th</sup> November, 2014 Exhibit B
3. Stock Requisition Form dated 25<sup>th</sup> February 2015 Exhibit C.

Under cross examination PW1 stated that DW1 is her staff, employed in November, 2014. That she opened a business for the Defendant by an agreement witnessed by the mother.

PW1 also stated that the Defendant was given goods worth N3,000,000:00 based on general agreement that he will be selling and bringing the money. That the purpose of the requisition form filled by customer is to receive supply and when payment is made he is issued receipt.

PW1 stated that she gave the Defendant another sets of goods worth N2,000,000:00 In February 2015 despite not paying for the



previous goods because he pleaded that he will gather all the money together and pay once before he access other ones.

PW1 maintained that before the Accused was arrested after several calls he did not pay him any kobo out of the money he owed. That it is not true that when the Accused was arrested by the police, that the sum of N282,000:00 was retrieved from him with the help of her auditor and manager. That no cash of N3,000,000:00 was paid to her. That she is not aware that Mercedes Benz of the Defendant was sold at the Police Headquarters Ado Ekiti in the presence of the lawyer. Also she denied that her husband was given N250,000:00.

**PW2 is Mr. Falade Steven O**, the Auditor of Just Diapers Nig. Ltd. He testified that after much pleading, PW1 agreed to open a shop for the Defendant at Ojumose Area Ado Ekiti. The defendant filled Stock Requisition Form for goods worth N3,000,000:00 and signed, and he (PW2) and PW1 signed. That the Defendant took the goods to the new store at Ojumose and promised that in a short time he will pay back the money.

PW2 further stated that by February, 2015 the Defendant came back and requested for another set of goods. That N2,000,000:00 worth of goods was released to him and he signed for it whilst himself (PW2) and PW1 also signed as Auditor and Director respectively. That the Defendant promised to pay the total money amounting to N5,000,000:00 (Five Million Naira) March ending 2015.

That by the ending of March through to 1<sup>st</sup> week in April 2015 the Accused did not show up. That when PW1 visited the shop, it was locked up. It was also discovered that the Defendant packed out of his house and could not be found, until he was arrested by the police. PW2 stated that up till now the Defendant had not paid the money. PW2 stated that during the search for him, several calls were put to him on his phone but he was switched off.

PW2 stated that he made a statement to the police, which was tendered through him as Exhibit D. He also identified 2 requisition forms signed by him and tendered as Exhibit B & C.

Under cross examination, he stated that he was employed as Auditor of the Company in October, 2013 and holds HND in Accounting.

That he did not visit the shop opened for the Defendant before it was opened. That when the Defendant was supplied goods he visited the shop that he usually visits customers to whom goods were supplied.

PW2 also stated that he did not audit the account of N3,000,000:00 worth of goods before giving him another because they were not in the habit or practice of auditing customers. That the purpose of the requisition form is to ascertain the credit the customer took from them. And when he pays back he will be issued company's receipt.

PW2 further stated that why he looked for the Accused is because his account was in debit at the end of March and he failed to pay his debit, he could not pick his calls and the shop was locked up. That they had to look for him to collect their money. He stated that he has been an Auditor for 5 years. That the Company can audit its account at any time. That the Company can audit the customer's account if he does not run away but the Auditor can do nothing if he runs away. That fraud means in simple sense, misappropriation of funds.

PW2 stated that he made a statement at the police on 3<sup>rd</sup> June, 2015 the day the Accused was arrested. That he is not aware that the Accused paid some money that day to Mrs Ilesanmi Deborah Bosede.

**PW3 is Inspector Aloba Jimoh, of the Nigeria Police,** the Investigating Police Officer. That on 3/6/2015 himself and the team was assigned a case of obtaining goods by false pretences. His team followed the Complainant to Atikankan Area of Ado-Ekiti where the suspects the Accused was arrested.

That the Accused took them to his shop at Ojumose Area. When they opened, no goods were found inside. He was taken to the station. He volunteered statement under caution in his handwriting. That two requisition forms filled by the Accused person in November 2014 and in February 2015 requesting for goods were shown to him and he admitted signing them.

PW3 also stated that he obtained statement from the Complainant PW1 on 9/6/2015. That Complainant informed them on October 2014 that she employed the Accused as Driver but later told her that he could no longer drive the vehicle on ground of ill health and requested to open



a shop and sell the goods. That the shop was opened and Accused requested for goods worth N3,000,000.00 and N2 million respectively. He could not pay back and could not pick his calls. That through an informant the Accused was arrested at Atikankan Area on 3/6/2015.

That Accused told the Police that he used part of the money defrauded the Complainant to buy two plots of land at Orun – Ekiti, one plot of land at Housing Estate, Ado-Ekiti, one Honda Accord Car, one refrigerator, freezer, one LG plasma TV, one stabilizer. That some of the items recovered from his house were registered with the Exhibit Keeper at the State CID, Ado-Ekiti. That he found from his investigation that the Accused got employment from the Complainant to defraud him.

PW3, also testified that the Defendant made Statements to the Police 3/6/2015 and 9/6/2015. The following items and documents were tendered through the witness and marked exhibits as follows:

1. Statement of the Accused made on 3/6/2015 - Exhibit E1
2. Statement of the Accused made on 9/6/2015 - Exhibit E2
3. One plasma TV - Exhibit F1
4. One double door freezer - Exhibit F2
5. One home theatre appliance with four standing speakers and table speaker, - Exhibit F4(i) to (iv)
6. One home theatre appliance with four standing speaker and table speaker. - Exhibit F4 (i) to (iv)

PW3 further testified that he was informed by the Accused that he used part of the money to buy land and was taken to OrunOke Ekiti where he bought two plots of land. And was able to retrieve the photocopy of the purchase receipts. That his finding is that the Defendant used part of the money to purchase one Honda Accord Car valued N400,000.00, three plots of land with total value of N550,000.00, one plasma TV, one double door freezer, one home theatre set, one stabilizer. That he also used the money to pay for school fees of the children, feeding and some miscellaneous expenses. And that he was unable to recover the Honda Accord Car.

Under cross examination PW3 stated that the Accused was arrested at Atikankan Area of Ado Ekiti. That he recovered some house properties from the Defendant. PW3 also stated that during



148

investigation he visited the Defendant's shop at Ojumose Area but did not recover any item from the shop. That he did not visit any of the customers of the Defendant. That during the time, the Defendant was in their custody he did not pay any money through the police to the Complainant.

PW3 also denied that any Honda or Mercedes Benz Car was sold and proceeds paid to the Complainant. He also stated that he did not visit any of the customer of the Defendant or recover the sum of N282,800 from the customers of the Defendant. The properties recovered from the Accused were with receipts and that the Accused told him that the properties were bought with the money. That he returned the original receipts to the Accused. He maintained that the Accused did not pay any money to the Complainant through his office.

PW3 further stated that there was an argument between the Complainant and Defendant for Defendant to pay money for the goods collected from the Complainant. And the Complainant brought a report of a case of obtaining goods by false pretence against the Defendant when the Defendant ran away with the Complainant's money.

PW3 stated that he was able to discover that the goods were given to the Defendant twice through the requisition filled by the Defendant for goods of N3,000,000.00 and N2,000,000.00. That when he was shown the documents, he admitted he actually collected those goods from the Complainant. The witness also stated that the reason the Complainant gave for giving goods to the Defendant despite failing to pay for the goods he first collected is because he pays for the goods monthly. He stated that the money he remitted to the Complainant is not part of the worth of the goods that the Complainant gave to the Defendant in November 2014.

PW3 testified that the Defendant is not a customer to the Complainant but a sales boy. That he was employed originally as a Driver. That the duty of a sales boy is to sell the goods put into his care and remit the money back to the Complainant. That the Complainant opened a shop for the Defendant at Ojumose Area and requisition form is for sales boy.



At the end of the evidence of PW3 the Prosecution closed its case.

The lone witness for the defence is the Accused Ajibola Ayodele who testified for himself.

He stated that in November, 2014 he applied as a Sales Representative at Just Diaper Company, owned by the Complainant and was sent to branch shop at Ojumose. That Complainant gives her goods ranging from N30,000.00 to N500,000 and remits each money from goods sold to the company. By the end of every month an account is taken.

That in June 2015, two policemen came to the shop and took him to the station where he met the Complainant (PW1). There she was told that PW1 had a complaint against him that there was shortage in the company. They seized his two phones and from there they went to his house and seized the following items:

- i. 'C' class Mercedes Benz
- ii. Honda bullet car
- iii. Refrigerator
- iv. Set of home theatres
- v. Plasma TV
- vi. Two stabilizers and
- vii. One DVD

He stated that he denied that there was any shortage in the sales but that they should allow him (the Accused) with PW1 and PW3 to go to the shop and take account but was not allowed. He was detained at the Police Station and the next day PW1 came up with alleged shortage of N1,875,000.00. That he admitted truly there were some money. Credits sold to customers, because they sell on credit, that these credits were held by some customers.

That himself in company of PW1 with two other policemen, one Mr. Adeyemo Muyiwa and the Company Manager, went to some customers within Ado-Ekiti and recovered the sum of N282,800.00. That the names of the customers were listed with their phone numbers. That they realised the sum of N282,000.00 and gave to PW1 and she also signed for the listed names and phone numbers. That while in police custody his Honda car was sold for N300,000.00 and given to PW1.

Also his Mercedes Benz 'C' class was sold for N300,000.00 by his lawyer and the wife.

That in addition to this PW1 used to send her boy or driver with a written note for him to release money to them. That those notes are in his custody.

The following documents were tendered through the witness namely:

1. Letter of Appointment of DW1 - Exhibit G
2. Names of customers and the amount recovered from them 'ID 1'
3. Document dated 23/05/2015, IOU signed by Complainant 'ID 2'
4. Document dated 25/5/2015, IOU, signed by Complainant 'ID 3'
5. Document dated 1/6/2015, IOU, signed by the Complainant 'ID 4'

DW1 denied that he defrauded PW1, he also denied that he ran away and switched off all his mobile phones. He stated that he was not arrested at Atikankan but at JUST DIAPERS Shop, Adebayo, during normal business.

Under cross-examination, he admitted that he is aware that JUST DIAPERS NIG. LIMITED is a Registered Company but is not aware that it has a headed paper with registered number.

DW1 also stated that, the shop he carried on business was rented and paid for by the Company Manager. That he heard of requisition form for the first time in the Court Room. He stated that he was not employed as a Driver to the Company but as a Sales Representative as indicated in the letter of appointment. He stated that all that he said in Court were same with his statement to the Police.

DW1 stated that the letter of appointment was with him before he was arrested by the police. That he does not know Fashakin Olaosebikan family in Ado Ekiti and did not buy a plot of land from the family on 8/5/2015. That he does not know Gabriel Ogundare family at Omuo-Ekiti and did not buy two plots of land at the rate of N400,000 from the Ogundare family.

He also stated that he bought 'C' class Mercedes Benz before he started working with JUST DIAPERS while working with Obajana in



2013. That the police seized his two cars and sold them while he was at police custody. That he cannot remember the dates they were sold.

That he knows Mr. Olusola Olayinka and Owoeye Oluwafemi both of whom bailed him from police station on 5/6/2015. That he was not arrested on 3/5/2015 but sometime in early June. That he only made statement the very day he was arrested. That while he was in custody his two cars were sold and he was able to find out why.

The Defendants formulated two issues in the final address namely:

1. Whether prosecution has proved the case beyond reasonable doubt in view of the nature and quality of evidence adduced by the prosecution.
2. If the issue one is answered in the negative, whether the Defendant is entitled to be discharged and acquitted.

On issue one, it was submitted that the case of the defendant is that he was employed as a sales representative for which he was given goods by PW1 to remit money on monthly basis and did not defraud or obtain goods under false pretence. That the prosecution have failed to adduce credible evidence to controvert the assertion and is seemed to have admitted same. See **OZAKA VS. THE STATE (1990) 1 ALL NLRP AND EYO V THE STATE (2010) 38 WRN 157 CD.**

That the Prosecution did not place necessary ingredients to prove the case of obtaining goods by false pretence before the Court namely:

1. That there was pretence
2. That the pretence emanated from the Accused.
3. That it was false.
4. That the Accused knew of the falsity.
5. That there was intention to defraud.
6. That the thing is capable of being stolen
7. That the Accused induced the owner to transfer his whole interest in the property.

See: **STATE V. AJULUCHUKWU (2011) 5 NWLR (PT 1239) P. 78 C.A.**



It was submitted that what transpired between PW1 and the Defendant was from a contract. That the Defendant was unable to pay for the goods given to her due to shortage and debts of customers. That there was no pretence from the Defendants to defraud PW1, It was submitted that proof in criminal case is beyond reasonable doubt of each element of the offence charged and failure to prove one element, the prosecution is said to have failed to prove its case. See: **OBI V THE STATE (PT. 1346) P.84 PARA D – F.** That where there is no significant evidence linking the Accused with the statutory element and ingredients of the offence which he is charged, the trial Court must discharge him. See: **UTUK V THE STATE (2010) 34 WRN 171 CA.**

On the second issue, it was submitted that the burden of proof is on the prosecution to prove his case beyond reasonable doubt . see Section 135 Evidence Act 2011, see also **EYO V. THE STATE (2010) WRN P 152 @4.** That the Prosecution has failed to discharge the burden in this case. It was submitted that the Defendant was arrested inside the shop at Adebayo Street in course of his work with DW1. That the Defendant did not deny that the goods were given to him but he was unable to remit the money because most of the goods were sold to customers on credit. That this fact was confirmed by PW 1 & 2 when they said they were looking for the Defendant, when he refused to pay the money for the goods given to him by the Company. That PW2 also testified that he used to visit the shop of the Defendant to show that the Defendant did not induce PW1 in collecting the goods and he did not defraud her.

The Court was urged to discharge the Accused on ground that the Prosecution has failed to prove the case.

The lone issue formulated by the Prosecution is whether the Prosecution has discharged the onus on him in this case? That the Prosecution in proving its case established that the Defendant tricked PW1 by entering her employment as a Driver and after a month, under false pretence complained of ill health and requested a shop to be opened for him and with intent to defraud collected goods worth five million naira from PW1, sold same, ran away to another location and refused to pick her call again.



153

That Exhibit G, letter of employment tendered by DW1, as allegedly issue by PW1 was not on a letter headed paper of the Company which is registered and ought to have registration number on it. That the signatory Mr. Muiyiwa is not in the employment of PW1 and was not called to testify for the Defendant hence it is a fictitious name. That Exhibit G should be expunged.

It was also contended that, even where relationship is contractual, the Accused will be punished for the offence where there is element of pretence. See Section 1(c) of the Advanced Fee and Other Fraud Related Offences Act, 2006.

For ingredients of the offence of obtaining by false pretence I was referred to case of **ODIAWA V. FRN (2008) ALL FWLR (PT 438) 436 CA**. It was submitted that the Defence established the ingredients of the offence charged, going by the facts presented before the Court. That the onus on the prosecution to establish a crime is proof beyond reasonable doubt and not beyond every iota of doubt. See **BABARINDE V STATE (2013) ALL FWLR (PT 662) PG 1731 CA**.

It was also submitted that the guilt of an Accused charged with the commission of an offence can be established by:

- (a) Confessional statement of the Accused
- (b) Circumstantial evidence and
- (c) Evidence of an eye witness.

See: **OKANLAWON V STATE (2015) E.JSC (VOL. 20) 1SC RATIO II PAGE 33 PARA A – B**. That evidence of Prosecution witnesses corroborate each other and fixed the Accused to the crime. Also that exhibit E2, statement of the Accused made on 9/6/2015, which he did not deny tied the Accused to the crime.

It was also submitted that the assertion by the defence in their address that they recovered some properties from the Defendant which includes Honda accord car is contrary to the record of the Court and misleading as no accord car was recovered and what were recovered were the Exhibits F1 – F4 (i-v) .



It was also submitted that there is no contradiction on the testimony of witnesses. But where there is, that the type of contradiction that can affect the case is as presented in the case of **EKE V THE STATE (2011) ALL FWLR (PT 556) PG 430 AT 432 R 4.**

That fraud does not emanate from enmity but begins with friendly or contractual relationship with intention to defraud. That the Defendant had exhibited the act of crime intentionally escaping afterwards, the Court was urged to convict and sentence the Defendant accordingly.

In reply on points of law, the Defendant contended that Prosecution did not cross examine the Defendant on the content of the letter of employment. Exhibit G. That when a party to a suit fails to contradict or controvert an assertion, he is deemed to have admitted it. See **OZAKA VS. THE STATE (1990) 1 ALC NLRP.75.**

It was further submitted that the relationship between the Defendant and PW 1 is purely contractual and the contract did not emanate from false pretence. That PW1 employed the Defendant as Sales Representatives with goods supplied and money to be remitted on monthly basis before the Defendant defaulted. That they entered into contract with Letter of Agreement. See: **JOSEPH V KWARA STATE POLYTECHNIC (2014) ALL FWLR (PT 750) 1215 CA**

It was also submitted that contrary to the submission of the prosecution, the Defendant denied making Exhibits E2 dated 09/06/2015 but only Exhibit E1 dated 03/06/2015. That when confessional statement is served or retracted, it is desirable for the Court to look at corroborative evidence, no matter how slight before convicting on the confessional statement. That the Court has a duty to test the veracity of the statement by comparing it with other facts and circumstances outside the statement in order to see whether they support, confirm or correspond with the statement. See **KAZEEM V STATE (2009) ALL FWLR (PT 465) 1749.**

On contradiction the Defence maintained that PW1 and PW3 contradicted each other. That PW1 said the Defendant did not remit any money since he collected goods, PW3 stated in his evidence that PW1 told him that the Defendant used to remit money to her on monthly basis. That this contradiction is material and Court should place reliance



on it. See **USEN V THE STATE (2013) ALLFWLR PART 689P.1131 CA**

Also that whereas PW3 in his testimony on 14/04/2016 stated that he recovered some items in which he mentioned Honda Bullet Car but on 12/05/2016 claimed that he recovered the said car.

The Court was urged to discharge and acquit the Accused.

The foregoing are the evidence of the parties, that the summary of their respective submissions in the charge. The Defendant was charged with offence of obtaining goods worth N5,000,000.00 (five million naira) under false pretence and with intent to defraud under Section 1(3) and II of the Advanced Fee Fraud and Other Related Offences Act 2006.

In every criminal trial, the burden of proof of guilt of wrongful act or crime is on the person who asserts it. See section 135(2) of Evidence Act, 2011. In this case the prosecution who asserts has the burden to prove that the Accused committed the offence charged. And where commission of crime is directly in issue in any proceedings civil or criminal, it must be proved beyond reasonable doubt. See Section 35(1) of the Evidence Act 2011. **OGUNDIYA VS THE STATE (1991) 3 NWLR (PT 181) 519 PER OBASEKI JSC; (1991) L PERL 2333 (SC)**. The 1<sup>st</sup> issue for determination by the defence and lone issue formulated by the prosecution are discerned from this common principle. That is the common issue for determination is whether the prosecution has proved the case against the Accused beyond reasonable doubt.

In respect of this case the question for determination is whether the prosecution has proved beyond reasonable doubt that the Defendant obtained goods valued N5,000,000.00 (five million naira) under false pretence and with intent to defraud under Section 1(3) and II of the Advanced Fee Fraud and Other Related Offences Act 2006.

The relevant provision of the law which are here reproduced, reads as follows:

1. (1) Notwithstanding anything contained in any other enactment in law, any person, who by false pretence and with intent to defraud



- (a) Obtains from any other person in Nigeria or in any other country, for himself or any other person; or
- (b) Induces any other person, in Nigeria or any other country to deliver to any person or
- (c) Obtain any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence commits an offence under the Act

(2) .....

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

In the **STATE V CHIEF SEBASTIAN AJULUCHUKWU (2010) LPELR – CA/C/46/2009, PER I.O. AKEJU JCA**, the Court stated “that the following are the ingredients to be established by the prosecution in an allegation of obtaining by false pretence under **Section 419**.

1. That there is pretence
2. That the pretence emanated from the accused person
3. That it was false
4. That the accused knew of its falsity;
5. That there was an intention to defraud
6. That the thing is capable of being stolen
7. That the accused person induced owner to transfer his interest in the property

See also **HARRISON ODIAWA V. FEDERAL REPUBLIC OF NIGERIA (2008) LPELR CA/L/124/2016** The provision of Section 419 of the Criminal Code is in parimateria with Section 1 (1) of the Advance Fee and other fraud Related Offence Act. The principle in these cases therefore applies.

The case of the Prosecution is that the Defendant tricked PW1 (the Complainant) by entering her employment as a driver and later a shop



121  
was opened for him and with intent to defraud collected goods worth Five Million Naira from her and absconded, refused to pay for goods and also could not pick his calls.

The Defence on the other hand maintained that the Defendant was employed as a Sales Representative and was supplied goods by PW1 to sell, make his gain and remit money to her on monthly basis. That there was no pretence or intent to defraud PW1 but that contract existed between them. DW1 in support of this assertion tendered Exhibit G, a letter of employment from the company of PW1 (Just Diapers Nig. Ltd). The prosecution in the address urged the Court to expunge Exhibit G on ground that PW1's company is a registered company with a letter headed paper and ought to have a registration number on its headed paper. That on this ground, the document does not emanate from PW1's company.

The document Exhibit G was tendered by Defendant to show that there is a contractual relationship between him and PW1. Besides the document, Exhibit G, PW1 and PW2 admitted that a shop was opened by PW1 for the Defendant to sell goods for PW1's Company. PW1 under cross examination said that there was a general agreement with the Defendant's mother that Defendant will be selling goods for her and bringing the money. PW1 admitted that there was a agreement but did not admit that it was in writing. PW3 corroborated the fact that Complainant PW1 employed DW1 (the Defendant) as her sales boy. Also PW1 and PW2 respectively tendered and identified Exhibits B & C requisition form, evidence of supply of goods to the Defendant. Moreover, PW2 stated that he visits the Defendant shop as other customers in the business in course of his duty as Company's Auditor. There is no better inference than that DW1 was selling goods for PW1's company at the shop rented for that purpose by the company? There is a contractual relation between them. These facts sufficiently verifies Exhibits G as proof of that relationship.

Nevertheless, as a result of that relationship, goods were supplied to the Defendant as shown in Exhibits B & C. They were duly collected by him. The Defendant accordingly to the Complainant did not return the goods and failed to pay for them at the due time as agreed. The Defendant claimed that he was making remittance to the Complainant



but could not fulfil the obligation due to the facts that there was shortage and creditor defaulted. The list of alleged creditors and recoveries from them were tendered as "ID1". I observed that in ID 1 a resemblance of signature of PW1 with the one in Exhibit A her statement to the police. And DW1 had alleged that PW1 was aware of recoveries from creditors which PW1 and PW3 denied. The fact that there are list of monies recovered from creditors with phone numbers and signed by PW1 shows that there were recoveries accounted for by the defendant and the denials cannot be sustained.

The evidence of PW1 and PW2 is that defendant after signing for and collecting the goods in Exhibit B & C did perform his own obligation by remitting the proceeds of sales to the company. He did not show up to pay as agreed, the shop was locked and it was later discovered that he left the town without knowledge of PW1. And when calls were made, he could not answer his calls.

By the time the defendant was arrested and the store searched no goods were found and when asked about the proceeds of the requisition he could not account for the money. In Exhibit E1, DW1, extra judicial statement of the Defendant, he stated that he had only converted the sum of N600,000 :00 belonging to PW1 without her knowledge and spent N400,000:00 to buy Honda Bullet Car while the remaining was for purchase of household items, his feeding and some miscellaneous expenses.

In Exhibits E2, the Defendant admitted that he converted the sum of One Million, Eight Hundred and Seven Three Thousand, Five Hundred and Twenty Naira for his personal use. From there he bought a plot of land at Omuo Oke at the rate of N400,000:00 in November 2014 and another plot of land at Housing area, Ado Ekiti in February 2015 at N300,000:00. He bought altogether 3 plots of land. He also admitted that he bought home theatre N25,000:00, plasma TV at N25,000:00, one Stabiliser and spent the sum of N542, 722 for feeding and other sundry expenses.

Although the Defendant entered the service of the Complainant as a Driver and later Sales Representatives, he wilfully took and converted proceeds of the sales on goods supplied, to himself for personal use



without knowledge of or consent of the Complainant. The Defendant induced PW1 and her Company to supply him goods under pretence to remit the sales to her Company but converted the money to his use. DW1 after converting the proceeds of sales left nothing in the shop, absconded, refused to account for or return the goods or money worth, and avoided calls from the Complainant until his eventual arrest.

Notwithstanding that the relationship between the Complainant and the Defendant is found on contract, the Defendant took advantage of the trust reposed on him by the Complainant, Sales Representative to defraud the Complainant. By **Section 1(1) of the Advanced Fee and Other Fraud Related Offences Act**, it is immaterial that the relationship between the partners is found on contract, the Accused/Defendant will be liable where there is proof of commission of the offence.

The Defence alleged contradiction in evidence of PW3 and PW1. That PW3 stated that he recovered a Honda in examination in chief and denied same under cross-examination. I have perused my records, I found that the Prosecution witness never stated that he recovered any HONDA car from the Accused.

The finding of this Court is that the evidence of prosecution witnesses coupled with confessional statements of the Accused in Exhibits E1, and E2 fixed the Defendant with the commission of the alleged crime.

The Defendant defrauded the Complainant of goods and money worth of N1,873,522 as admitted by him.

I hereby hold that the Prosecution has discharged the burden of proof under Section 135 of the Evidence Act. That the Prosecution has proved beyond reasonable doubt that the Defendant under false pretence defrauded the Complainant her goods and converted the proceeds to his own use. The Defendant is hereby found guilty of the one count charge against him and is accordingly convicted. I now call on the convict to plead his allocutus if any.



## ALLOCUTUS

**Ayeni Shittu Iyeonu Oluwa (Mrs.) for the convict.**

The convict is a first time offender and he has a dependant. He has a little child, a wife and aged parents. For this reason we plead that the Court will temper justice with mercy because since his incarceration he has not been able to perform his duties. There are lots of hardships. We urge the Court to temper justice with mercy.

**Prosecution:** No previous conviction.

**Court:** The convict is first time offender. He has no record of previous conviction. He is a young man of about 32 years. He is a young person and has to be given another opportunity in life. This will be taken into consideration in coming to sentence.

**When was the Accused arrested and detained.**

**Prosecution:** He was arrested on 3/6/2015 and granted administrative bail. Later he was arraigned at Magistrate Court on 8/7/2015 and remanded for about 3 months before he was granted bail again.

**Shittu:** I want a very short adjournment to obtain proper records on the periods the convict was in custody.

**Court:** The information to be supplied on this question will assist this Court in considering the sentencing of the convict. I shall consider the application for adjournment for the conclusion of the issue of sentencing for the convict.

By consent of both counsel case adjourned to 2/11/2016 for confirmation on allocutus and sentencing.



**HON. JUSTICE D. U. OKOROWO**  
**JUDGE**  
**01/11/2016**



152  
167

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ADO-EKITI JUDICIAL DIVISION  
HOLDEN AT ADO-EKITI**

---

**ON WEDNESDAY THE 2<sup>ND</sup> DAY OF NOVEMBER, 2016  
BEFORE HIS LORDSHIP HON. JUSTICE D. U. OKOROWO  
(JUDGE)**

**BETWEEN:**

**CHARGE NO: FHC/AD/30<sup>C</sup>/2015**

**INSPECTOR GENERAL OF POLICE ..... COMPLAINANT**

**AND**

**AJIBOLA AYODELE ..... DEFENDANT**

**CASE CALLED UP**

Accused present in Court.

S. O Osobu Esq for the Prosecution.

Olanrewaju Oluwasola Esq. For the Defendant.

**Olanrewaju:** The facts supplied by the Prosecution on the period of his detention before arraignment is the position. Trial commenced on 18/2/2016. He had been in custody since then.

**Court:** The convict is a first time offender. He has no record of previous conviction. From the question put to him by this Court, he is a young man of about 32 years.

I was informed that he was in remand for a period of 3 months in respect of this case before he was arraigned. He has been in custody since 18/2/2016 when the hearing in this matter commenced.




I shall consider this in coming to a conclusion in sentencing.

I recon also that the Act under which he was charged Section 11 of the Advanced Fee Fraud and Other Related Offences Act, provides for restitution in addition to the sentence.

The Judgment of this Court reckoned that the convict defrauded the Complainant of goods valued at N1,873,522 as admitted. The convict is to pay the said amount to the Complainant. The Complainant can recoup the said sum through the landed properties the convict admitted were bought through the same funds in addition to any other properties the sheriff may in course of execution, access to make up the said amount.

The Convict is sentenced to 3 years imprisonment with hard labour. Sentence to take into account the period of his detention before arraignment and the period he was remanded in custody until the delivery of the Judgment of this Court.

This is the Judgment of this Court.

  
HON. JUSTICE D. U. OKOROWO  
JUDGE  
02/11/2016