

**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 ARINZE AKABUA
 ON MONDAY THE 14TH DAY OF OCTOBER, 2019.**

HID/14^c/2016

BETWEEN

THE STATE

AND

DESMOND NWODO

JUDGMENT

Defendant on record is charged with the offence of obtaining by false pretences contrary to Section 1(3) of the Advance Fee Fraud and other Related Offences Act.

The particulars of the offence are that;

“You Desmond Nwodo between the period of 11th February 2014 to 10th September 2014 at First Bank Plc Ogidi and Access Bank Plc within Idemili Judicial Division did fraudulently obtain the sum of Four million Naira (N4,000,000.00) from one Chukwuma P. Chima, on the pretence that you will send two of his brothers John Chima and Chibuzor Daniel abroad”.

Plea was taken on 29/11/16 and trial commenced on 07/02/17. Prosecution called two witnesses and tendered eight exhibits whereas defence called two witnesses and tendered one exhibit.

The case of prosecution as presented by the nominal complainant **Pw1**, is that him and his relations heard about the defendant in 2012 when his in-law told them that the defendant by the name Pastor Johnson Eze Peter had prayed for his wife,

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consequent upon which she survived a ghastly motor accident that claimed several lives. According to **Pw1**, they were impressed by this feat and decided to find out about, and know this pastor better. In 2014, his sister called him and told him that "Pastor" said he should call him on phone. When he inquired who "pastor" was, his sister informed him that he was the one that prayed for their sister that enabled her survive the accident. He did not call pastor because he did not have pastor's phone number. Later, pastor called him and told him that he had seen in the spirit world that his efforts were not yielding positive results because some forces were pulling him down. Pastor asked him to persevere in prayer and that he will eventually overcome.

Shortly after this conversation in January 2014, pastor called him and informed him that his car had an accident on the Benin Lagos express way, and pleaded with him to pay N10, 000.00 into the account of his mechanic in Access Bank by name Desmond Nwodo, to enable him affect repairs on the car. He gladly did. Shortly afterwards on 11/02/14, pastor called him again requesting for a loan of N70,000.00 to enable him make up for a shortfall in the money he was using to travel to UK for his daughter's wedding. Pastor gave him a First Bank Account in the name of Johnson Eze Peter. He went to the bank and paid in this money. On 03/03/14, Pastor called him and informed him that he had just returned from UK and that he should loan him another N55, 000.00 to enable him pay the school fees of his children. Pastor also told him to calculate all these sums, so that he will refund him all of it at once. Pastor nominated an Access Bank account to which he paid into.

On 15/03/14, pastor called him and informed him that his son in the lord in China by name Justin, had requested him to provide two good boys to join his said son in the lord in his business in China. According to **Pw1**, pastor told him that he did not

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want to send his son because he wants his son to take over from him in the ministry. However, in consideration of all the help **Pw1** had rendered to him, pastor asked him to provide the two good boys. According to **Pw1**, he gave pastor the names of his brother and cousin; John Chima and Chibuzor Daniel. Pastor advised that these boys get international passports which they did.

On 13/04/14 after the boys had processed their international passports, pastor called **Pw1** on phone and informed him that the visa and travel fees for the boys amounts to one million two hundred thousand Naira. When **Pw1** protested that he was not informed at the time he was asked to provide the boys that he would pay any fees, pastor told him to go on and pay, that his son in the lord in China would refund all expenses in due course, when the total amount expended is known.

Pw1 went ahead to pay one million seventy thousand Naira into defendants First Bank account. On 06/05/14, defendant sent a text message to **Pw1** that the travel of the boys was in jeopardy if a further one million, three hundred thousand Naira was not paid in. After initial reluctance, **Pw1** paid in, between May and August 2014, a total sum of one million, three hundred thousand Naira into defendant's account at First Bank.

On the day defendant was supposed to meet with the two boys in Lagos to take them to the Chinese Embassy for their visa interview, he did not show up. It was at that point according to **Pw1**, that he realised he had been duped. He made a report to the Ogidi police station and eventually defendant was arrested in Minna vide a sting operation.

Answering questions put to him in cross-examination by **J.O. ODUONYE ESQ** of counsel for defendant, **Pw1** admitted that he had heard of Justin China from defendant. He also admitted that he knows Nweze James Chukwu an immigration

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officer that helped one of his brothers get his international passport. However, witness insisted that he never paid any money to any clearing agent or any other person and that all the monies he paid for the purposes of his boys traveling to China, were paid into defendant's accounts. Finally witness disclosed that all through his dealings with defendant, he knew him as Pastor Johnson Ezeh Peter and that it was only after defendant's arrest by policemen from Ogidi Police station that his other identities including Desmond Nwodo, came to his knowledge.

Sgt. Martin Oruku testified as **Pw2**. He testified that he was the IPO from Ogidi police station assigned to investigate this case consequent upon a report by **Pw1**. **Pw2** testified that since **Pw1** (complainant) had never met defendant face to face, he wrote a letter to First Bank Ogidi. That First Bank Ogidi advised him that since the account into which the monies were paid was opened at Minna, he should proceed to Minna. That he consequently did, together with **Pw1**, taking along with him, the Police Authority and a Bankers Order; Exhibits P5A and P5B.

On getting to Minna, the Branch Manager of the Bank got Head Office to freeze the account of defendant. Defendant was subsequently lured to the branch under the guise that he was coming to correct a small problem with his account. He was arrested and his premises searched, and items recovered and later released to him, vid release Bond; Exhibit P7.

Before **Pw2** and **Pw1** left Minna, the Bank Manager gave them statement of account of defendant from 01/01/14 – 10/09/14 with a covering letter; Exhibit P6. On getting to Ogidi, **Pw2** wrote Police Investigation Report; Exhibit P8. Before this time, statement of Pw1 had been admitted as Exhibit P1, and the two statements of defendant after trial within trial admitted as Exhibit P2 and P3 respectively. An agreement between **Pw1** and defendant was admitted as Exhibit

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P4. Exhibit P4 was made earlier, after defendant had agreed to refund to **Pw1** the amount obtained from him. Defendant later resiled on this agreement.

Answering questions in cross examination put to him by **O.J.C. CHIKAELO ESQ.** defence counsel, witness admitted that he heard from defendant of Justin and James Nweze but could not conduct any further investigation on them because defendant refused to show him these persons. In further cross-examination witness stated and I quote;

“In the course of my investigation, I discovered that defendant is not a travel agent, defendant does not work in the embassy, and the account defendant opened in First Bank with a different name from that in his passport told me that defendant is a fraudster. Furthermore, all the monies transferred to defendant by complainant was withdrawn by the defendant using ATM card, suggesting to me that contrary to defendants story about being part of a company processing visas, he was working alone as a fraudster”.

After the cross examination of **Pw2** defence opened. Defendant testified in person as **Dw1**. **Dw1** testified that he connected complainant with Justin for the purposes of complainant’s two brothers travelling to China. Defendant testified that it was Justin China that gave complainant the contact of his visa person; James Nweze. Defendant testified that it was complainant that insisted that all monies going to anybody for the purposes of this transaction must pass through his account, as he trusted him absolutely as he was the person that introduced him to Justin China. Defendant testified that the agreement between complainant and Justin China was that Justin would refund all the monies expended to complainant in due course. Complainant testified that all the sums allegedly paid, were paid into his account, but that he passed them on to the relevant persons for the purposes of the visa and travel of complainant’s brothers. Witness tendered his Access Bank statement of

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Account in the name of Desmond Nwodo. Document was admitted and marked Exhibit D1.

During cross examination by prosecution counsel **T.C. IKENA ESQ DDPP**, witness admitted that he operates two accounts; one in his name, and the other in the name of his dead brother; Johnson Eze Peter. Witness admitted that monies were paid into these accounts. Finally witness stated that Exhibit P4, the agreement for refund made with complainant was made under duress. Dw2 also testified along these lines.

On 17/07/19, parties adopted their final written addresses. The sole issue for determination raised by both parties was whether prosecution has proved its case beyond reasonable doubt. Both parties outlined the conditions precedent for conviction in a case of obtaining by false pretences.

The story line of this case is fairly straight forward. Defendant won the trust of complainant in him as a powerful man of God. Subsequently defendant suggested to complainant about sending complainants two brothers to China vides a certain Justin China. Between the months of May and August 2014, complainant paid into the account of defendant in First Bank Plc operated under the name of Johnson Eze Peter, the sum of four million Naira for the actualisation of this project.

This project never materialised. When complainant realised he had been duped, he brought in the police. Of course, defendant had stated in his defence that the project has not/did not fail, only that complainant lost patience with Justin China. Furthermore defendant stated that all monies paid into his account were transferred to the relevant persons for the purposes of the project.

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The law is trite, see **APUGO V FRN (2017) 8 NWLR (PT. 1568) 46** that for a conviction for obtaining by false pretences to be sustained, the following elements must exist;

1. There was pretence
2. Pretence emanated from accused person
3. The pretence was false
4. The accused knew of the falsity and did not believe in its truth
5. There was an intention to defraud
6. That the thing is capable of being stolen
7. That accused induced the owner to transfer his whole interest in the property.

The narrative of this case is that defendant induced complainant to transfer into (defendant's) account, four million Naira for the purposes of enabling complainant's brothers' travel to China to join a certain Justin in his business there. All through this case, even though Justin China is severally mentioned by defendant, no iota of evidence exists to show that this person actually exists. Defendant did not present to court any correspondence between him and Justin China either in paper or electronic form. No call recording or call log of communication between defendant and Justin China was presented to court and indeed, if the travel to China is genuine and still on-going as alleged by defendant, court wonders why Justin China did not come to court to testify or send correspondence to court via deposition, affidavit or otherwise.

This court is convinced that there was never any arrangement with any Justin to send complainant's brothers to China and that defendant was all along pretending to complainant that such arrangement existed.

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Secondly it is not in doubt from the narrative that the pretence emanated from defendant. It is also not in doubt in view of the preceding paragraph that this pretence was false and that the defendant knew of its falsity and carried on with it, with an intention to defraud. Furthermore, the thing obtained is money which is capable of being stolen. Finally, defendant induced the complainant to transfer his whole interest in the property to him.

A close study of Exhibit P6; the statement of account of defendant in the name of Johnson Eze Peter with the First Bank Plc will show that between 11/02/14 and 05/09/14, complainant transferred to defendant a total sum of about four million Naira. These monies if they were meant for the purposes of procuring visas and other travel documents for complainants brothers, would have been moved on to these other functionaries in the value chain. This was not done. Instead, these monies were withdrawn personally by defendant using his ATM card.

In these circumstances, I find and so hold, that prosecution has proved beyond reasonable doubt, that defendant Desmond Nwodo fraudulently obtained the sum of four million Naira from Chukwuma R. Chima on the pretence that he will send two of his brothers John Chima and Chibuzor Daniel abroad.

Consequently defendant is found guilty as charged. Defendant is sentenced to seven years in prison with hard labour.

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APPEARANCES:

T.C. IKENA DDPP for Prosecution

U.C. OKOLI for defendant

certification #202
certification of 8
folios at #30 each =
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