

**THE FEDERAL HIGH COURT OF NIGERIA  
HOLDEN AT ENUGU  
ON MONDAY THE 24<sup>TH</sup> DAY OF FEBRUARY, 2014  
BEFORE THE HONOURABLE JUSTICE M. L. SHUAIBU  
JUDGE**

**SUIT NO. FHC/EN/30C/2009**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT**

**AND**

**JOSEPH OKORO - ACCUSED**

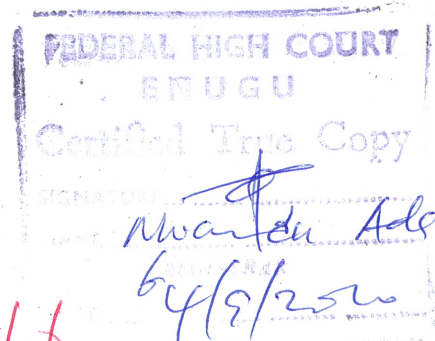
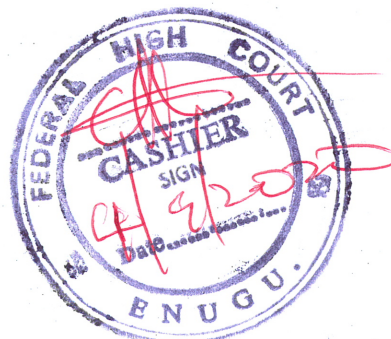
I. I. Mbachie for the prosecution

Alex Amujiogu for the Accused

**JUDGMENT**

By the amended charge dated the 25<sup>th</sup> day of September 2009 the above named Accused person and others (now at large) was tried on five counts charge of Conspiracy and obtaining various sum of money from one HRH Igwe Donald Nwochi by false pretences.

To establish the allegations against the Accused the prosecution called two witnesses and tendered Exhibits A, B, C, D, D1 E E1 F, F1. Also the Accused testified in his defence but called no other witness.



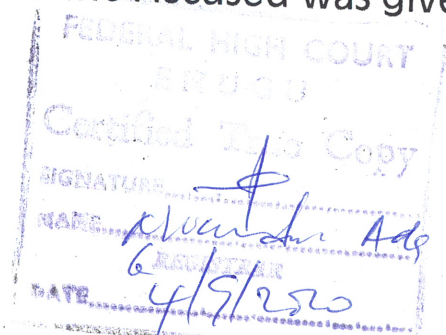
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Both counsel filed and adopted their final Address. On behalf of the defence a sole issue was identified for determination that is –

Whether having regard to the charge against the Accused person and the evidence led, has the prosecution proved his case beyond reasonable doubt as to warrant the conviction of the Accused person.

Learned defence counsel Mr. Amujiogu contends that the prosecution has a duty to show that there was actually a meeting of the mind of the Accused and any other person to defraud PW1. And neither PW1 nor PW2 present any evidence to the effect that the Accused represented himself as an official of NNPC. And that PW2 has even admitted under cross-examination that the Accused had denied working for or been a staff of NNPC. Thus, the prosecution has failed to establish any conspiracy as contended in count one of the charge.

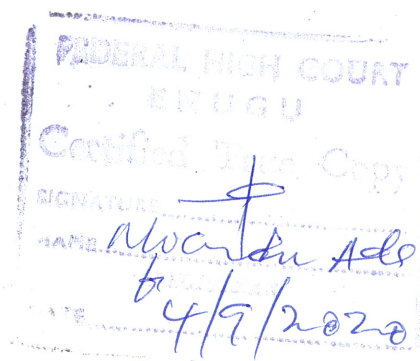
Respecting the allegation in Counts two and four of the charge, the defence contends that there is no where the Accused was given



N400,000 and that the sum of N115,000.00 was logged into the account Akujua Nicholas and the Accused is not Akujua Nicholas and the said Akujua Nicolas was never called as a witness by the prosecution. The same argument was advanced, in respect of the allegation contained in count three of the charge. Thus, the Accused is not the Account owner and he has nothing with the said account.

On the allegation in Count five it was argued that payment into the Accused's account of the sum N1,350,00.00 without proving his instruction or authority is not enough to make him liable. The prosecution has the burden of showing that the Accused has presented himself to PW1 that he is an official of NNPC. In all, the defence has submitted that the necessary ingredients of false pretence has not been established against the Accused person and that he is entitled to an acquittal.

Two issues were identified for determination on behalf of the prosecution and these are:-

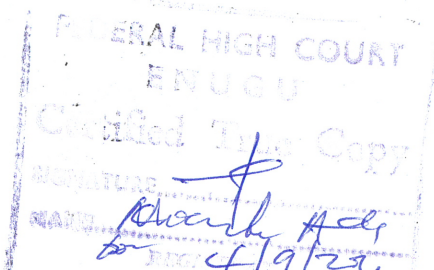




1. Whether the prosecution has proved the offence of obtaining money by false pretence against the Accused person beyond reasonable doubt.
2. Whether the prosecution has adduced sufficient evidence linking the Accused person with the offence in count five of the charge.

Learned counsel Mr. Mbachie on behalf of the prosecution has contended that they have conclusively established that the Accused by himself and in collaboration with others (at large) induced pw1 with false pretence of awarding him a contract to supply NNPC Kaduna with oil heading ring type A, purportedly used by NNPC for their machines and in the process the Accused fraudulently obtained from pw1 the monies as stated on the charge sheet.

It was further submitted that from the evidence before the Court the Accused had held himself as staff of NNPC and personal Assistant to the chairman of the Board of NNPC Adam Okilo a pretence he knew to be false. The Accused under cross examination has agreed that the sum of ₦1,350,000 was paid into his account by pw1 which he immediately withdrew. Thus pw1 was made to visit

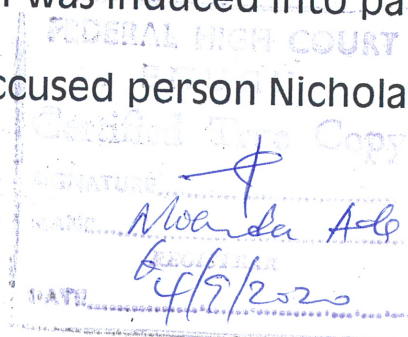




Port Harcourt in the belief that he was dealing with genuine NNPC officials and he would be awarded contract as held out by the Accused person and his allies. In effect, the prosecution according to Mr. Mbachie has proved that there was no Contract as represented by the Accused person to pw1. Also the Accused and his allies merely conspired to dupe pw1.

Respecting the second issue above the prosecution submits that they have proved all the essential elements of the offence in Count five of the charge beyond reasonable doubt. Reliance was placed to the evidence of pw1 who stated that he was induced into paying ₦1,350,000.00 into Bank PHB account Number 2050296965 with the Name Celestine Nwafo. That pw2 testified that the said account belonged to the Accused as same has his passport photograph and that the Accused was the person on the Account opening package. Thus, the evidence points to the Culpability of the Accused person.

On Counts two and three of the charge, the evidence according to the prosecution shows that pw1 was induced into paying different sums of money to the Accused person Nicholas and



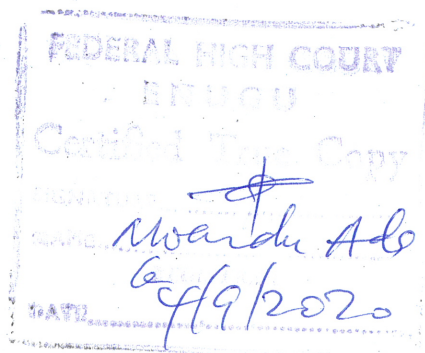
Kenneth both of Enugu and Port Harcourt respectively. The court was finally urged to convict the Accused person as charged.

The lone issue arising for consideration is –

Whether or not the prosecution has proved the guilt of the Accused person beyond reasonable doubt.

The Law is that in Criminal trial the burden is on the prosecution to prove its case beyond reasonable doubt in order to secure a Conviction. The standard of proof is one that cannot be compromised. In the recent cases of AL-MUSTAPHA .V. STATE (2013) 17 NWLR (prt 1383) 350 and SHOFOLAHAN .V. STATE (reported in the same report reasonable doubt was held to be the doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that the defendant is not guilty

The allegation in count one of the charge in the instant case is that the Accused and (others at large) conspired to obtain money from the Nominal complainant (pw1) by falsey representing



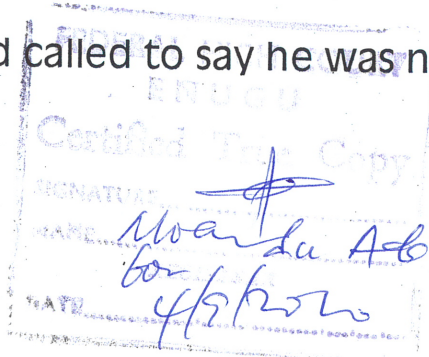
themselves as officials of NNPC. To sustain a charge of conspiracy the prosecution must prove the element of the offence viz:-

- (a) an agreement by two or more persons to execute an agreed act.
- (b) That the agreed act is unlawful.

Thus, there must be a consensus ad idem.

In the instant case, the Nominal Complainant (pw1) told the Court on how the purported Engineer Nnamani called him and introduced the business of oil head ring model "A" and directed him to the person who sells it in Okigwe. The purported Engineer Nnamani sent him Elder James Okeke's telephone Number. When the said Elder Okeke could not make it to Enugu as agreed, he sent a boy to pw1 and together they met at a place close to Government lodge in Enugu.

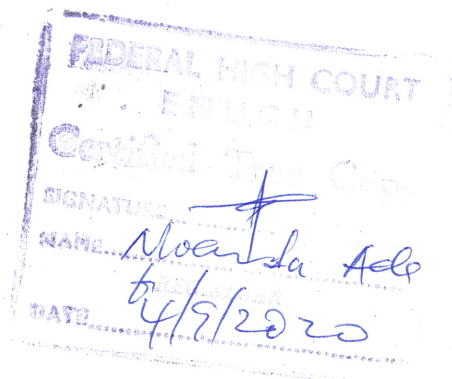
Pw1 went further to tell the Court that the said Engineer called him again that the chairman one Alh, Usman was coming to Enugu to see the sample and that pw1 should wait to for him at the Airport. Instead the said Alh. Usman Ahmed called to say he was no longer





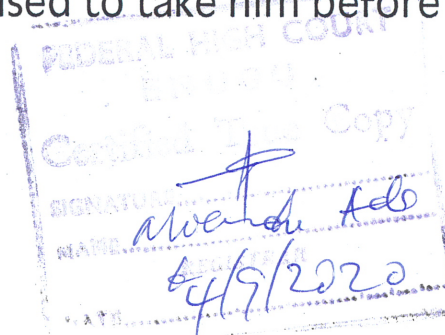
coming to Enugu but directed him to one Mr. Adams Okilo who this time around raised the issue of registration as a contractor with NNPC. And that on his arrival at Port Harcourt he met the accused who was introduced to him as P.A. to the Chairman of the Board.

In SHODIYA .V. STATE (2013) 14 NWLR (prt 1373) 147 at 165 the Supreme Court has recently held that proof of the offence of conspiracy is a matter of inference to be made from the acts or in actions of the parties concerned. Also in NWOSU .V. STATE (2004) 15 NWLR (prt 897) 466 at 486 it was held that conspiracy is established if it is shown that the criminal design alleged is common to all the suspects. And proof of how they connected with or among themselves is not necessary. Indeed the conspirator need not know each other. They need not have started the conspiracy at the same time. It is sufficient even though the conspiracy had been started and some persons joined at later stage. The bottom line of the offence is the meeting of the minds of the conspirators. That since it is a difficult offence to prove directly inference from the certain criminal acts of the parties concerned in pursuance of an apparent criminal purpose will suffice.



There is no gainsaying that the criminal design in the instant case is common to the Accused and others now at large. Thus, there was a conspiracy to defraud the Nominal Complainant (pw1) and thus the prosecution have proved the allegation in count one of the charge.

The cumulative substance of the allegations in counts two, three, four and five of the charge are that the Accused and others at large defrauded the Nominal complainant (pw1) by obtaining from him the sum of N400,000.00, N215,000.00, N115,000.00, and N1,350.000 respectively through false pretences. In his evidence pw1 said the N215,000.00 for the sample of the oil heading model type A and the money was collected by the boy purportedly sent by Elder James Okeke, the friend to Engineer Nnamani. The sum of N400,000.00 was collected by the accused being money for Registration as a Contractor with NNPC Port Harcourt and same was collected from pw1 by no other person but the Accused who presented himself as Celestine Nwaifo a P.A. to the chairman of the Board of NNPC. After collecting N400,000.00 from PW1 he took the purported chairman to pw1 and also promised to take him before the Board after also





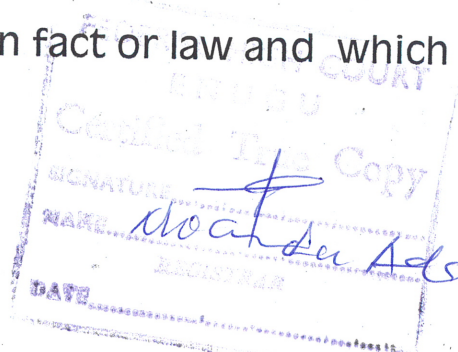
collecting the sample of the oil heading model type "A". it was when pw1 waited endlessly he was later informed by the Accused that the Board of NNPC had concluded its meeting and that he was required to settle each of the seven (7) member Board with the sum of N350,000.00 each or else, he will not get the supply. And that has to be done within two (2) days time. It was at that point pw1 called and intimated Engineer Nnamani who advised that he should pay the sum of N1,350,000.00 instead as he had no such huge amount to pay N350,000.00 to the seven member board each PW1 paid the sum of N1,350,000.00 into the account given to him which account belonged to Celestine Nwaifo, the present Accused. It is pertinent to note at this juncture that Exhibit A the Bank PHB Teller NT 108803 has confirmed the lodgment in to the account of Celestine Nwaifo the sum of N1,350,000.00 which lodgment was also reflected in the statement of account being part of Exhibit B series. Also the account opening package also confirmed that the said account 2050296965 of Celestine Nwaifor belonged to the Accused. The identification particulars namely the voters card and the photographs belonged to the Accused.





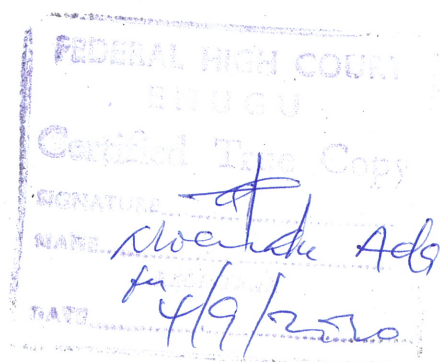
Pw2 also told the court that in the course of investigating this case he caused letters of investigation activities to both Bank PHB and Oceanic Bank wherein he got the said account opening packages and account particulars which conclusively proved that the accounts were operated by the Accused under the Names of Akojua Nicholas and Celestine Nwaifo. Earlier pw1 testified that the Accused also made him to settle the said Akojua Nicholas with ₦115,000.00 which he did by crediting same into Akojua Nicholas's account with Diamond Bank as shown in Diamond Bank letter No 747455. Also Exhibits D and D1 confirms that Account 0181-0010062904 belonged to the present Accused as the identification particulars ie multi-chris Energy identity Card and passport photographs belonged to the Accused. The statement of account also reflected the payment of the said ₦115,000.00.

The provision of the section 20 of the Advanced Fee Fraud and other Fraud Related Act 2006 defines false pretence to means a representation whether deliberate or reckless, made by word in writing or by conduct of a matter of fact or Law, either past or present which representation is false in fact or law and which the



person making it knows to be false or does not believe to be true.  
Refer to ALAKE .V. STATE (1991) 7 NWLR (prt 205) 567 prt 591.

In the instant case the Accused has represented himself as PA to the chairman of NNPC Board in which capacity he defrauded PW1 and knowing fully well that the said representation was false and he does not believe to be true. In Exhibit F the Accused said his real Name is Mr. Celestine Nwaifo but choose to use both Celestine Nwaifo Akujua Nicholas and James Okoro to defraud his unsuspecting victims. Also the Accused had admitted in his extra-judicial statement Exhibit F of defrauding pw1 to the tune of ₦1,500,000.00 to which he refunded ₦20,000.00 leaving balance of ₦1,480,000.00. Although, the Accused has retracted the said confession but the statements are direct and positive. In NSOFO .V. STATE (2004) 18 NWLR (prt 905) 292 at 313 it was held that an Accused may be convicted on his own confession alone as there is no law against it. Thus, if a man makes a free and voluntary confession which is direct and positive and is properly proved the court may if thinks fit to convict him of any crime upon it. In the instant case





aside from the confession there are overwhelming evidence linking the Accused with the offences charge.

I can not however be unmindful to the evidence of pw1 under cross examination wherein he said he paid ₦215,000.00 to the boy directed by James Okeke. There is apparently no linked on this payment with the Accused.

I have earlier in the course of this Judgment held that the prosecution have established the allegation, in count one against the Accused. The prosecution have also proved the allegations in counts two, four and five of the charge beyond reasonable doubt against the Accused Person. He is accordingly found guilty in counts one, two, four and five of the charge but discharged and acquitted on count three of the charge.

**SENTENCE:** The convict is sentenced to 7 years imprisonment on each Count with effect from today The sentence to run concurrently. In addition the convict shall restitute the Nominal complainant with the sum of ₦1,480,000.00.

*M. L. Shuaibu*

**M.L.SHUAIBU  
JUDGE  
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