

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF IDEMILI JUDICIAL DIVISION
HOLDEN AT OGIDI

BEFORE HIS LORDSHIP, HON. JUSTICE CHUDI NWANKWOR
ON TUESDAY THE 28TH DAY OF JANUARY, 2020

CHARGE NO: O/13C/2011

BETWEEN:

STATE
AND
PAUL NWAOBASI

CERTIFIED TRUE COPY
C. U. EKWE
ASST. CHIEF REGISTRAR
26/1/2020

JUDGMENT.

The defendant was initially standing trial with four (4) other persons on a twenty-five (25) count charge of conspiracy, obtaining by false pretences, etc.

On the 20th day of February, 2013, the prosecution withdrew against the 2nd, 3rd, 4th and 5th defendants in the said charge, leaving only the present defendant in the charge. Plea was on the said 20th day of February, 2013, taken by the defendant and he pleaded not guilty to the counts of the charge. In the course of trial of the charge, the prosecution further amended and reduced the charge to three (3) counts contrary to Section 1 (3) of Advance Fee Fraud and Other Related Offences Act Cap. A6, Laws of the Federation of Nigeria, 2006 and the defendant also pleaded not guilty to the said amended charge.

It is the prosecution's case, in brief, that the defendant, without approval, opened and operated an illegal university, known as and called Atlantic International University (AIU) with three (3) campuses at Okija, a Farm near Nsugbe and Uli, without the permission or approval of the National Universities Commission (NUC) and with false representation and intent to defraud, gave admission to undergraduates when he knew that his act and representation were false.

HON. COURT OF JUSTICE
OGIDI
IDEMILI JUDICIAL DIV.
DATE 26/1/2020



On his own part, it is the defendant's case, also in a nutshell, that he did not collect any money from anybody or the defendants under false pretences and pretended that he was running a university. That he was appointed to represent the Atlantic International University (AIU), USA, by Global Educational Services. That he made inquiries about the university and a document from the said university was shown to him. That Best Choice Consultancy Limited is his consultancy firm of which he is the Director. That he used the proposed Atlantic Intercontinental University to apply to the NUC for the registration/approval of his own university. That he assisted students in gaining admission into the Atlantic International University which ran an online programme. That he knows one Ugochukwu Onyeka who applied for the Atlantic International University's on-line admission and was admitted. That he does not know Ukah Uchechukwu Stainless. That he worked for the Atlantic International University USA to enable him to apply for his own university, that is, the Atlantic Intercontinental University. That documents in respect of same (Atlantic Intercontinental University) had been submitted to the NUC for the registration/approval of the said university and payments in respect of same had also been made to the said NUC. That he also obtained bank guarantees to enable him to process the registration of the said university. That he would have got the approval for the university, but for the disturbance of the Okija people in the proposed site of the university, who used the said site to apply for their own university.

In proof of its case, the prosecution fielded five (5) witnesses, while in defence of the charge, the defendant called four (4) witnesses.

In his evidence, the PW1, a student of the said Atlantic International University told the court that the defendant is the Director of the said Atlantic International University. That he made inquiries about the said school and was told that the school was registered and he applied for an admission into same, was admitted and then paid her school fees in 2007 and started school at the Ezekuna Ebonyi State campus of the

CERTIFIED TRUE COPY
 C. U. EKWEGZU
 ASST. CHIEF REGISTRAR
 DATE 26/8/2020

SHS COURT OF JUSTICE
 OGIDI
 JUDICIAL DIV
 DATE 26/8/2020

university. That after sometime, some people from the NUC visited the school to tell them that the school was not registered. That they confronted the defendant on this development who promised to put everything in order and asked them to go on break and that he was going to call them back which he did and that they were in school till 2009 when the NUC officials came back and drove them away and told them that the school was not registered.

Under cross-examination, she told the court that she and other students confronted/accosted the defendant for the refund of their money but that he refused to do anything about the refund of their money. This witness tendered photocopies of Students Admission Application Form and Admission Test as **Exhibits A and A1**. That she attended the Atlantic International University. That she does not know that the defendant was forced to abandon courses they were taken in the university. That the NUC said that they should vacate the premises because the university was illegal and not registered. That the defendant asked them to leave the premises after the NUC officials left, in that he wanted to go and settle with the NUC officials and get the university registered.

The PW2, another student of the university, on his own part, told the court that he knows the defendant and that he gave him admission into the Atlantic International University and that he was offered admission to read Political Science in the said university. That he did not complete his course of study in the said university. That they started school in 2007 and that he paid his school fees. That in 2008, they started seeing some publications to the effect that the school was not registered by the NUC. That they never bothered them until towards the end of the year when security officers drove into the school premises and told them that they were from the NUC and instructed them to vacate the premises as the school was not approved. That after the NUC officials left, he and other students came together and decided to confront the defendant and he ordered the school security people to put him into the school

CERTIFIED TRUE COPY
C. U. EKWEGWU
ASST. CHIEF REGISTRAR
DATE 26/8/2020

WEST AFRICAN COURT OF JUSTICE
DGI/1
IDENTITY JUDICIAL DIV.
DATE 26/8/2020

cell. That the defendant later called them to tell them that the name of the school had been changed from Atlantic International University to Atlantic Intercontinental University. That in 2009, he (defendant) came up with another signpost bearing Best Choice University.

This witness tendered his Letter of Admission as **Exhibit B**.

He was cross-examined and he told the court, among other things, that he has never heard of Legacy University. That he does not know that the Atlantic International University remitted the school fees paid by them to the parent university in the United States (US). That at the time he was admitted, he did not know that there was a parent university in the US. That he has never heard about the Atlantic International University of America.

At this point, **Exhibits C and C1 – Students’ Receipts** were tendered through this witness.

The PW3, another student of the said university, gave evidence along the same line with the PW1 and PW2. He said that on hearing about the university through a friend, he went to the Okija campus of the university with his mother to inquire about same. That he was offered admission to read Accounting in the said institution. That after a year and half in the said institution, he noticed that the sign post of the university was changed from Atlantic International University to Atlantic Intercontinental University. That this made them to be suspicious and approach the defendant on the development who told them that everything was under control. That thereafter, they started to see publications from daily newspapers that their school had been blacklisted by the NUC and on 14/2/2008, officials of the NUC with mobile policemen and the defendant, came to the school premises, assembled the students and told them to go home until further notice.

CERTIFIED TRUE COPY
C. U. EKWEGBO
ASST. CHIEF REGISTRAR
DATE 26/8/2020

COURT OF JUSTICE
DEPT. OF JUSTICE
DETAILS OFFICIAL DIV.
DATE 26/8/2020

The statement of this witness to the police was tendered through him as Exhibit D.

He was cross-examined, and he told the court that he has never heard nor knew of any university called Legacy University. That he left the Okija campus of the Atlantic International University in 2008/2009. That eversince he left, he has never visited the said university again. That he knows that there is a university in America the Atlantic International University represents and that at the time he was admitted he knew that the defendant was representing the said American University in Nigeria.

The PW4, a Police Officer, formerly serving with the State Intelligence Bureau, Police Headquarters, Awka, and at the time of giving evidence, with the State Intelligence Bureau, Uyo, Akwa Ibom State, told the court that she and her team investigated the case reported by the NUC against the defendant. That sometime in January, 2009, the NUC wrote a petition to the Inspector General of Police (I.G.P.) against the proliferation of illegal universities and other higher institutions in the country. That the NUC went further to request the assistance of the said I.G.P. in the closure of the said illegal and unapproved institutions. That in the course of their investigation of the matter, her team visited the Okija site and discovered that the Atlantic International University had relocated to Ball Farm, Nsugbe and that the Atlantic Intercontinental University and Best Choice Institute, Nsugbe, were being propriated by the defendant. That they also went to No. 21 Oguta Road, Onitsha, the Administrative Office of the institution where they conducted a search and recovered receipt booklets, students ID cards of both institutions, school files containing results of students, official stamps and stamp pads, booklets for writing examinations and a sign board/signpost. That at the conclusion of their investigation, they found out that the defendant's institution was indeed unapproved by the NUC and that the defendant had a lot of students in the institutions who truly believed that they were genuine institutions. That they also discovered, through the receipt booklets, that the

CERTIFIED TRUE COPY
C. U. EKWEZU
ASST. CHIEF REGISTRAR
DATE 26/8/2020

COURT OF JUSTICE
JUDICI
JUDICIAL DIV.
DATE 26/8/2020

students paid various sums of money as fees to the institutions operated by the defendant and that by the list of the approved and unapproved institutions of the NUC, the defendant's institution was not registered and that he only succeeded in defrauding the entire students who had secured admission into the said Illegal Institution.

Statement of the defendant to the police was admitted in evidence through this witness as **Exhibit F**, Photostat copy of the petition dated 13/1/2009 as well as the list of the Illegal Universities in Nigeria thereto annexed as **Exhibit E**, letter dated 10/12/2009 headed: Report of Financial Extortion of Unsuspecting Nigerians by the Illegal Atlantic International University as **Exhibits G, G1, G2, G3, G4, G5, G6, G7, G8, G9, G10, G11 and G12**, 7 Receipt Booklets of Atlantic International University as **Exhibits H, H1, H2, H3, H4, H5 and H6**, 7 Receipt Booklets of Best Choice Consultancy firm as **Exhibits J, J1, J2, J3, J4, J5 and J6**, Booklet of Akwa Ibom Polytechnic as **Exhibit K**, 1 stamp and its pad as **Exhibits L and L1**, a bag of students' identity card as **Exhibit M**, 1 signboard/signpost of Best Choice Institute as **Exhibit N**, 17 files of completed results of different faculties of Best Choice Institute and Atlantic International University as **Exhibits O, O1, O2, O3, O4, O5, O6, O7, O8, O9, O10, O11, O12, O13, O14, O15 and O16**, 2 bundles of examination booklets as **Exhibits P and P1**, 3 enlarged photographs as **Exhibits Q, Q1 and Q2** and 1 signboard/signpost of Atlantic International University as **Exhibit R**.

This witness was cross-examined and she told the court, among other things, that the defendant informed her at the time she was investigating the case that he had applied for the approval of the Atlantic Intercontinental University but that his application had not been approved and that the NUC also confirmed so. That when they visited the Okija campus of the university, they saw a full blown university in session with a lot of students who were busy with their academic activities in their various departments. That she did not take particular note of buildings in the campus

COURT OF JUSTICE
OGIDI
DEPUTY JUDICIAL DIV.
DATE: 26/8/2020



CERTIFIED TRUE COPY
C. U. EKWELU
ASST. CHIEF REGISTRAR
DATE: 26/8/2020

but that there were over 4 buildings thereat. That she did not take particular note of any bank structure. That they entered the Administrative block where they saw the Administrative officer and Registrar. That they also visited the staff room as well as the Bursary Department.

Exhibit S was at this stage, tendered through this witness. That there were many students in their classrooms at the time they visited the university, but that they took statements from few of them. That the Federal Government proscribed outpost or satellite universities in 2008.

On his own part, the PW5, head of the Legal Department of the National Universities Commission (NUC) and secretary to the NUC committee on the Closure of Illegal Universities in Nigeria, told the court that sometime in 2007, they received reports of the activities of the defendant in respect of operation of an illegal university outfit, called Atlantic International University with campuses at Okija and a farm near Nsugbe and Uli. That on receiving the said report, they gave the defendant 60 days notice to close down the said university, but despite the said notice, he continued with the operation of the said university and this made them to report the matter to the police for the police to support the closure of the university in line with the enabling Act.

This witness identified **Exhibits E, G – G12** as documents they submitted to the police for investigation. That the defendant only obtained forms for the registration of his university and had other 13 steps to take which he did not take.

This witnesses' statement was tendered in evidence as **Exhibit H**.

He was cross-examined and he told the court, among other things, that they met students taking classes or lectures in various disciplines at Uli and Nsugbe campuses of the university. That they also saw a signboard/signpost bearing the name of the university as well as documents such as students' ID cards. That they followed

CERIFIED TRUE COPY
C. U. EKWELLE
ASST. CHIEF REGISTRAR
DATE: 20/8/2020

HIGH COURT OF JUSTICE
JERUSALEM
IDENTIFICATION DIV.
DATE: 20/8/2020

the procedure prescribed by law in closing down the defendant's university. That the defendant only obtained application forms after paying the required fee for the form and upon having information that he was already operating by way of having students and running courses, they cancelled further processing of his application and communicated same to him accordingly in line with the policy of the commission.

At this stage, letter dated 2/12/2010 was tendered through this witnesses as **Exhibit J**, Guidelines for Cross-Border Provision of University Education in Nigeria of the National Universities Commission as **Exhibit K**.

At the conclusion of the cross-examination of the PW5, the prosecution closed its case, warranting defence to open.

DW1 in his evidence, told the court that the defendant was his coordinator in respect of the Distant Learning Programme or On-line Learning Programme at the Atlantic International University, Hawaii, USA. That he gave enabling environment to them by providing lecturers that lectured them in all their courses. That he helped them in gaining admission in Atlantic International University. That he obtained MSc Accounting from the institution. That he completed the programme along with members of his set who passed the examination.

Certificate issued to the witness at the conclusion of his programme was tendered through him and marked as **Exhibit L**, while the Statement of Result also issued to him was tendered as **Exhibit M**. That he has heard about Mercado who is the Vice President of the Atlantic International University and will recognize him if he sees him.

This witness was cross-examined and he said, among other things, that he did not make statement to the police. That **Exhibit L** was handed over to him at Onitsha. That he has not heard about Atlantic Intercontinental University and that he does not know the difference between Atlantic International University and Atlantic

Handwritten notes in red ink: "26/10/2020" and "26/10/2020".
Vertical stamp: "G. U. EKWE...", "SST. CHIEF REGISTRAR", "DATE: 26/10/2020".

Stamp: "HIGH COURT OF JUSTICE", "FEDERAL CAPITAL TERRITORY", "IDENTITY REGISTRATION DIV.", "DATE: 26/10/2020".

Intercontinental University. That his programme with the Atlantic International University lasted for two (2) years, that is, from 2005 – 2007. That he heard that the defendant has a site at Okija for the school known as Atlantic International University.

The DW2, on his part told the court that he knew the defendant in 2002 – 2006 when they were running an on-line programme of the Atlantic International University, USA, in Anambra State and that the defendant then played the role of a coordinator of the said Atlantic International University, Anambra State. That he was a student in the said university underwent a course of study. That he completed the said course and was issued with a certificate.

He tendered a photocopy of the said certificate issued to him as **Exhibit N**, Statement of Result issued to him as **Exhibit O**. That he has heard about Dr. Mercado, who is the Vice President of the mother school in Honolulu, United States of America, who visited Nigeria sometime in 2006 to familiarize himself with the students.

Under cross-examination, this witness told the court, among other things, that there is a difference between Atlantic International University and Atlantic Intercontinental University. That Atlantic International University was the first university to come into being before it was later replaced by the Atlantic Intercontinental University, after the Atlantic International University left Nigeria. That the defendant was trying to accredit the Atlantic International University. That he knows the NUC and that it is the commission that determines which university is legal and which one is not legal. That the defendant got accreditation from the NUC before embarking on the establishment of the Atlantic International University. He further told the court that the document dated 13/5/2004 and headed: Accreditation and Recognition of Our Degree Certificates by Your Ministry is the document to evidence the said accreditation.

He tendered the said document as **Exhibit P**. That he is not aware that the NUC has not given the defendant the approval to run a university.

CERTIFIED TRUE COPY
C. U. EKWE
ASST. CHIEF REGISTRAR
DATE 26/8/2020

COURT OF JUSTICE
GIDI
LEGAL DIV.
DATE 26/8/2020

In the same vein, the DW3 said that he knows the defendant and that he gave him admission to study in an on-line programme in the Atlantic International University. That he began the course with the study centre in Okija.

This witness tendered photocopies of Bank Tellers as **Exhibits Q and Q1**.

He was cross-examined and he told the court, that there is no need for approval to run an on-line programme. That he is not aware that the defendant had applied to the NUC for approval for accreditation before his arrest and prosecution. That he is not aware that before procuring the said approval, the defendant went on to establish a degree awarding university. That in the advert he saw before he came into the university, it was stated that the defendant was running an on-line programme. That the university ceased to exist in 2008. That he has no personal documents to show that the university ran an on-line programme before it ceased to exist. That he was given admission letter before he was admitted into the Atlantic International University but that he did not come to court with it. That he did not make statement to the police in respect of this case.

Under cross-examination, this witness tendered two (2) documents respectively headed: Distance Learning as **Exhibits S and S1**.

The DW2 was later recalled and in the course of his further evidence, tendered Atlantic International University Master of Science (MSc) Certificate dated 11/9/2008 and Atlantic International University Doctor of Science (DSc) Certificate dated 11/6/2009 as **Exhibits CC and CC1**, Notices of completion of course in respect of two (2) higher degrees as **Exhibits DD and DD1**.

This witness was further cross-examined in respect of his further evidence and he told the court that he is not aware that the Atlantic International University is an illegal university and that he does not think that any on-line programme requires approval from the government.

CERTIFIED TRUE COPY

C. U. EKWEGWU

ASST. CHIEF REGISTRAR

SIGN

DATE 26/8/2020

COURT OF JUSTICE

OGIDI

DEPUTY JUDICIAL OFFICER

DATE 26/8/2020

The defendant in his evidence told the court that in 2005, he was appointed to represent the Atlantic International University, USA, by Global Educational Services. He tendered a letter dated 13/5/2004 to the Vice President, Atlantic International University and another document thereto annexed as **Exhibits EE and EE1**. That Best Choice Consultancy Ltd. is an educational consultancy firm of which he is the Director and that it is the name he used to apply for the approval/registration of his own university at the NUC. That he assists students to gain admission into the Atlantic International University which is an on-line programme. That he knows the PW3 but does not know the PW2. That the PW3 applied for the Atlantic International University on-line admission and it was granted to him and in the process, they had a problem at Okija campus. That he has heard about Legacy University. That it was the university the Igwe of Okija was using to deceive the students. That he has also heard about Golden Gate University as well as United Nigerian University. That the said Igwe used the names of the above said universities to apply for recognition from the NUC.

This witness tendered IDs **6, 7 and 8** in evidence as **Exhibits FF, FF1 and FF2**. He further stated that he worked for the proposed Atlantic International University, USA. That he used the proposed Atlantic Intercontinental University to apply for his own university with the NUC. That documents were submitted to the NUC for the registration of the said Atlantic Intercontinental University and payment had also been made to the said NUC.

This witness tendered a letter dated 18/7/2006 as **Exhibit GG**, another letter dated 21/12/2006 as **Exhibit HH**, letter dated 3/11/2006 and the annexure thereto as **Exhibits JJ and JJ1**, letter of 16/5/2007 as **Exhibit KK**, Treasury Receipts respectively dated 16/5/2007 and 17/11/2006 and letter dated 27/2/2007 as **Exhibits LL, LL1 and LL2**, letters respectively dated 18/1/2007, 3/4/2007, 12/12/2006 and 28/5/2009 as **Exhibits MM1, MM2 and MM3**. That three (3) banks gave him guarantee of N200 million which is one of the requirements for approval by the NUC and that one of the

CERTIFIED TRUE COPY
 C. U. EKWEZU
 ASST. CHIEF REGISTRAR
 SIGN _____ DATE 26/8/2020

113 COURT OF JUSTICE
 OGIDI
 GENERAL JUDICIAL DIV.
 DATE 26/8/2020

banks built its branch in the proposed site of his said university. That he would have got the approval for the said university but for the disturbance of the Okija people in the proposed site of the university.

He further tendered Offer Letter of 1/8/2007 as **Exhibit NN1**, Bank Guarantee No. 836 as **Exhibit NN2**, letter of 14/4/2005 as **Exhibits OO1 and OO2**, another letter of 25/2/2010 as **Exhibit OO3**, letter of 5/5/2009 as **Exhibit OO5**, letter of 10/4/2007, 9/10/2006, 13/12/2006 and 8/11/2005 respectively as **Exhibits OO6, OO7, OO8 and OO9**, letters of 17/8/2005, 17/3/2005, 11/7/2006, 12/4/2005, 10/6/2009 respectively as **Exhibits OO10, OO11, OO12, OO13 and OO14**, letters of 18/7/2005, 23/11/2005 respectively as **Exhibits OO15 and OO16**, Communication letter of 23/9/2006 as **Exhibit OO17**, letter of 28/2/2017 as **Exhibit PP**, letter of 15/12/2009 as **Exhibit PP1**, letter of 23/5/2016 and the documents thereto annexed as **Exhibits PP2, PP3 and PP4**. That Atlantic International University is an on-line study programme centre. That they assist students in getting admission into it. He further tendered Certified True Copy of Notice of Discontinuance in Suit No. AG/Misc.4/2008 as **Exhibit RR**, letter of 27/10/2008 as **Exhibit SS**, photocopy of Certified True Copy of Order in Suit No. FHC/AWK/CS/153/2009 as **Exhibit TT**, Judgment in Charge No. HIH/11C/2011 as **Exhibit UU**, certified true copy of Vanguard Newspapers of 16/6/2009 as **Exhibit VV**, National University Commission Guidelines for Cross Border Provision of University Education in Nigeria as **Exhibit WW**, Atlantic International University document headed: Accreditation as **Exhibit XX**, Home page of Atlantic International University as **Exhibit YY** and photographs as **Exhibits ZZ1, ZZ2, ZZ3 and ZZ4**.

The defendant was cross-examined and he told the court, among other things, that he assisted the PW2 in gaining admission to study for a degree in his school. That he also assisted one Onu Elizabeth Ogonnaya (PW1) in gaining admission into the said Atlantic International University. That he assisted the named person in gaining admission between 2006/2007. That he was not running any on-line programme

CERTIFIED TRUE COPY
C. U. EKWEZU
ASST. CHIEF REGISTRAR
SIGN _____ DATE _____

COURT OF JUSTICE
GIDI
DEPUTY JUDICIAL DIV.
DATE 26/8/2020

personally but that the Atlantic International University was doing so. That the Federal Ministry of Education must authorize every running of degree programme on-line or not and that there was a letter from AIU to the Ministry and there was a reply to that letter. That the NUC did not close his AIU as he had no school yet but represented schools. That the students at Okija campus were students of AIU. That it is not true that the AIU disassociated itself from all his activities in Okija and elsewhere because so many students obtained their degrees from the AIU.

At the conclusion of the cross-examination of the defendant, the defence closed their case, warranting the court to order for the filing of written addresses by parties.

Parties, in compliance with the said order of court, duly filed their respective written addresses.

I have carefully gone through the parties' processes before the court which include the charge before the court, evidence of witnesses, exhibits tendered by them and their respective written addresses.

In his written address, the defendant distilled two (2) issues for determination.

On its own part, the prosecution also propounded two (2) issued for determination. To me, the issues formulated by both sides are basically the same. They point to the same direction and that is as to whether the prosecution has proved the instant charge against the defendant beyond reasonable doubt. This is the case or position in almost all criminal trials. Be that as it may, I am inclined to and I hereby adopt the defendant's second issue as the sole or solitary issue for determination in this judgment. All other issues here are encapsulated or subsumed in the said issue and will be adequately and sufficiently treated or discussed in the course of the discussion of the said sole issue.

I now proceed to deal with/discuss the said issue for determination.

CERTIFIED TRUE COPY
C. U. EKWE
ASST. CHIEF REGISTRAR
DATE 26/8/2020

COURT OF JUSTICE
JUDGE
JUDICIAL DIV.
DATE 26/8/2020

a. Issue No. 1. Whether all the essential elements in the alleged offences as contained in the charge are proved beyond reasonable doubt.

It is the contention of the defence that there are certain elements or ingredients the prosecution must prove before it can secure conviction in the case of obtaining money/property through false pretence. That they include that there is pretence; that the pretence emanated from the accused person; that the pretence was false; that the accused person knew about its falsity; that there was an intention to defraud; that the thing is capable of being stolen; that the accused person induced the owner to transfer his whole interest in the property. They relied on the case of **Obikere vs FRN (2017) LPELR 43240** in the above submission. That in the instant case, out of six (6) ingredients or elements of the offence outlined above, at the very least, five (5) number were not proved. That by the *vivo voce* evidence of the prosecution witnesses and the exhibits tendered by them, there is no evidence suggesting that the defendant was running an NUC unapproved or unregistered university. They further contended that there is no evidence both *vivo voce*, statements made to the police and documentary evidence, suggesting that the defendant was running an NUC unapproved university or that AIU was an NUC unapproved university. That the programme at the AIU is one the NUC do not regulate.

On its own part, it is the contention of the prosecution that an offence of obtaining by false pretence is committed where a person fraudulently represents as an existing fact that which is not an existing fact and as such obtains money or property. It relied on the cases of **State vs Bassey Endy & anor. 8 ENLR 41 at 49, Alake & anor vs State (1991) 7 NWLR (Pt. 205) 567** and **R vs Sullivan 30 CR APP 13**. It is important to note here that these cases also enumerated or itemized the ingredients or elements to be proved by the prosecution in order to secure conviction in an offence or charge of obtaining money by false pretence. The prosecution further contended that it has

CERTIFIED TRUE COPY
C. U. EKWEZULI
ASST. CHIEF REGISTRAR
DATE 22/8/2020

COURT OF JUSTICE
JIGIDI
JUDICIAL DIV.
DATE 20/8/2020

proved the said ingredients or elements in the instant case. That a carefully examination of the evidence of PW1, PW2, PW3, PW4 and PW5 showed that the above ingredients or elements have been roundly and clearly proved beyond reasonable doubt.

Section 1 (1), (a), (b) and (c) of the Advance Fee Fraud And Other Related Offences Act Cap. A6, Vol. 1, Laws of the Federation, 2006 states as follows:

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

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

Section 1 (3) of the said Act (supra) is the punishment section thereof and it states as follows:

“A person who is guilty of an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of 10 years without option of fine”.

CERTIFIED TRUE COPY
 C. U. EKWELU
 ASST. CHIEF REGISTRAR
 DATE 26/8/2020

HIGH COURT OF JUSTICE
 OGI
 IDENTIFICATION DIV.
 DATE 26/8/2020

In the case of **Alake vs FRN (supra)**, it is stated that for the prosecution to secure conviction in the offence of obtaining by false pretence, it must prove the following elements or ingredients as follows:

- (a). that there is pretence;
- (b). that the pretence emanated from the accused;
- (c). that the pretence was false;
- (d). that the accused person knew of its falsity;
- (e). that there was an intention to defraud;
- (f). that the thing is capable of being stolen; and
- (g). that the accused person induced the owner to transfer his whole interest in the property.

See also the cases of **State vs Ajuluchukwu & anor. (2010) LPELR 5028**, **Onwudiwe vs FRN (2006) ALL FWLR (Pt. 319) 774**, **Odiawa vs FRN (2005) ALL FWLR (Pt. 439) 301**, **Aguba vs FRN (2014) LPELR 8853** and **Amadi vs FRN (2008) 12 SC (pt. 111) 55**.

The law is still that for the prosecution to secure conviction in any allegation of crime, it must prove same beyond reasonable doubt. See the cases of **Uwagboe vs State (2007) 6 NWLR (Pt.1031) 606**, **Musa vs State (2007) 11 NWLR (Pt. 1045) 202**, **Okoh vs State (2016) 10 NWLR (Pt. 1521) 455** and **Pincent vs State (1997) 1 NWLR (Pt. 480) 234**. The law is also still that it is not the duty of the defendant to prove his innocence. In order to know or determine whether the prosecution has proved the guilt of the defendant beyond reasonable doubt or has proved the ingredients or elements of the charge in the instant case as required by law, the court has to critically look at the charge and the evidence presented or adduced by the prosecution in proof same.

CERTIFIED TRUE COPY

C. U. EKWEZULI

ASST. CHIEF REGISTRAR

DATE

26/8/2020

COURT OF JUSTICE
 IGIDI
 FEDERAL JUDICIAL DIV.
 DATE 26/8/2020

From the prosecution's allegations against the defendant, as represented in the amended charge before the court and the evidence laid before the court in proof of same, the prosecution is saying that the defendant represented to some persons that he was running an NUC approved or authorized university, that is, Atlantic International University (AIU) and by virtue of which representation he gave admission to the said persons when he knew that the said representation was false as the said university was an illegal university, not recognized or approved by the said NUC. The PW1, PW2 and PW3 claimed to be the persons who were given admission in the said university, registered therein and paid school fees but never completed their respective courses in the said university because at a point, they started seeing publications to the effect that the university was not registered or recognized by the NUC and eventually the officials of the said NUC, with security officers, stormed the university and closed same down on the ground that same was not approved and this made them to leave the university without graduating or without certificates. The PW1 specifically stated that she paid her school fees in 2007. That after few months the school was split into two and that one campus was at Ebonyi State and that she switched over to the one in Ebonyi State and that after sometime, some people visited the school and told them that the school was not registered. That they reported this to the defendant who promised that he was going to get back to them and that she was in the school between 2007 – 2009. That during the period she was in the said school, she paid her school fees before the officials of the NUC came and drove all of them away.

To me, the implication of the evidence of this witness is that, on being offered admission by the AIU, she came to reside in the school and was taking lectures or undergoing her course of study before the school was split into 2 and she now went to the Ebonyi campus of the university where she continued her course of study before the NUC officials closed the school down. The PW1 tendered the students Admission/Application Form and Admission Test as Exhibits A and A1. The said

CERTIFIED TRUE COPY
C. U. EKWEGWU
ASST. CHIEF REGISTRAR
DATE 26/8/2020

HIGH COURT OF JUSTICE
JGIDI
IDENTIFICATION DIVISION
DATE 26/8/2020

Application Form was filled by the PW1 on 12/3/2007. This witness further told the court, under cross-examination that she has a letter of offer of admission in respect of her admission into the university but that same was later changed to Best Choice Institute and that she has not got back the said letter because she submitted same when she was given admission into the Best Choice Institute. She further said that she paid fees on her admission, not personally to the defendant but to one Mr. IK and one Amaka and that she was issued receipts of payment accordingly. She further said that throughout the duration of her study in the said university, she met the defendant twice, first when they were robbed at the Ebonyi campus and second in 2009 when the school was closed down and they vacated the school.

It appears a bit strange and difficult to understand or comprehend that the PW1 only met a person who is the proprietor of the institution she attended from 2007 to 2008 and who gave her admission to study in the said university only twice in the course of her study thereat as a student.

Again, the PW1 did not tender any receipts with which she paid school fees in respect of her sojourn at the AIU even when she admitted that she was issued with such receipts for such payment. This witness stated that the name of the university she attended was Atlantic International University and that she neither knew that the defendant represented the university in Nigeria nor where the headquarters of the university is located. She agreed that there was a bank in the university as well as students hostels therein. That there were classroom blocks and batchers in the said institution. By the above evidence of the PW1 under cross-examination, she confirmed that students live on campus and attend lectures in the classroom blocks thereat.

The PW2 also claimed to be a student of the AIU and said that he was given admission in the institution and started school in 2007. He also claimed that he paid school fees up to N250,000.00 in his first year and that it was at a point in 2008 that the NUC officials came to school with security officials to drive them away and told

CERTIFIED TRUE COPY
C. U. EKWEGZ
ASST. CHIEF DEPT.
DATE 26/8/2020

HIGH COURT OF JUSTICE
OGIDI
IDENTITY DIVISION
DATE 26/8/2020

them that the school was not approved by them. That this was towards the end of 2008. That after the closure of the institution by the NUC officials, he never saw the defendant again, until a week later when he appeared and told them that the university had been changed from Atlantic International University to Atlantic Intercontinental University and that they should start paying their school fees for the 2009 session and that in 2009, he came with another signpost/signboard of Best Choice University in the school. That he also demanded that they should bring or submit their receipts of payment so that they should be changed from Atlantic International University to Atlantic Intercontinental University but that he refused to submit his own. He tendered his Letter of Admission as **Exhibit B**.

I have closely examined or looked at the said Letter of Admission (**Exhibit B**) and it showed that the PW2 was given admission for 2006/2007 session, that the defendant signed the said Letter of Admission as Programme Director and that the said admission was given in respect of Atlantic International University, USA and never or not in respect of Atlantic Intercontinental University or Best Choice University or institute. The said letter stated "Okija Ihiala L.G.A." as the Nigerian campus of the university. Does the defendant know anything about the Atlantic Intercontinental University and Best Choice University? The defendant told the court that Best Choice Consult Limited is an educational consultancy firm of which he is the Director. He agreed that he knew something about the proposed Atlantic Intercontinental University which is the name he used to apply for the registration of his own university. In my understanding, I think that the implication of this position is that the defendant applied to register his own university while as the programme Director of the Atlantic International University and assist students to gain admission into the said Atlantic International University through his Best Choice Consultancy firm. As I pointed out earlier, **Exhibit E** talked about Atlantic Intercontinental University which is distinct from Atlantic International University. Atlantic Intercontinental University is the defendant's own personal university. Like I also said earlier, the PW4 by his own

CERTIFIED TRUE COPY
 C. U. EKNE, 2020
 ST. CHIEF REGISTRAR
 DATE 26/8/2020

COURT OF JUSTICE
 GID
 JUDICIAL DIV.
 DATE 26/8/2020

admission in **Exhibit E** is talking about the Atlantic Intercontinental University and not the Atlantic International University. The defendant further stated that the Atlantic International University is only running or offering an on-line programme in its campus. He further stated that he may not know all the PW1, PW2 and PW3 physically but that he knows the PW3. As I also pointed out earlier, what is before me in the instant charge is the representation of the Atlantic International University to students by the defendant as an approved or registered university when it is not. The charge is not in respect or does not talk of any other university. The defendant claimed that the PW3 applied for the Atlantic International University on-line admission and that same was given or granted to him. The PW2 tendered **Exhibits C and C1** – student's receipts issued to him in respect of the school fees he paid as a student. The said fees were respectively paid in 2007 and 2008. The said receipts bear Atlantic International University, USA, Nigeria main campus, Okija. They don't bear Best Choice University or Atlantic Intercontinental University. In his evidence, the PW3 said he knew the defendant as the Director of the Atlantic International University. That he was given admission in the said university to study Accounting and that after one year and half of study, they noticed that the signpost/signboard of the said university was changed from Atlantic International University to Atlantic Intercontinental University. That later, they were told to submit their admission letters and receipts of payment of school fees. In essence, what the PW3 is saying is that the university he was admitted into was the Atlantic International University and remained so until it metamorphosed or changed to Atlantic Intercontinental University. The defendant owned up the said Atlantic Intercontinental University and said that he applied for its registration/approval as his own personal or private university. In his statement to the police – **Exhibit D**, the PW3 said that he gained admission into the Atlantic International University in 2006 to study Accounting only to discover that the said university was not registered or approved by the NUC and that after spending three

CERTIFIED TRUE COPY
 C. U. EKWELU
 SST. CHIEF REGISTRAR
 DATE 26/8/2020

COURT OF JUSTICE
 JUDGE
 JUDICIAL DIV.
 DATE 26/8/2020

(3) years thereat, they discovered that the Director of the school was a fraudulent man.

It appears a little inexplicable/unexplainable to me that it took the PW3 three (3) whopping years to discover that the institution he attended was not approved by the NUC. As I stated earlier, he said that after about 1^{1/2} years, they discovered that the signpost/signboard of the institution was changed from Atlantic International University to Atlantic Intercontinental University. This means that after the change of signpost from Atlantic International University to Atlantic Intercontinental University, it took him another one year and half to discover that the institution he was attending was not registered. But which institution is he talking about now? Atlantic International University or Atlantic Intercontinental University? The same thing goes to the PW1 and PW2. Why did it take them such a long time to discover that the university was not approved? Under cross-examination, this witness (PW3) told the court that there is a university in Nigeria called the Atlantic International University. His further evidence under cross-examination is interesting as follows:

"Que: At the time you were admitted, you were admitted as a student of that university. It is correct that he changed the name twice. At the time you were admitted, you know that the defendant was representing the university in Nigeria.

Ans: Yes.

Que: All the fees you said you paid were paid to the Atlantic International University.

Ans: Yes.

CERTIFIED TRUE COPY
C. U. EKWEZU?
ASST. CHIEF REGISTRAR
DATE 26/8/2020

COURT OF JUSTICE

JGIDI

JUDICIAL DIV.

26/8/2020

Que: Are you aware that the defendant before commencing the running of the site of the university wrote to the Federal Ministry of Education and they replied him that the university was recognized.

Ans: I am not aware.

Que: But you saw approval in the Brochure.

Ans: Yes".

To me, this piece of evidence by the PW3 is in accord with **Exhibits B, C and C1**. The said exhibits not only confirmed that the defendant is not only the Programme Director of the Atlantic International University but that the said university is a USA based university and that he is the representative of the said university in Nigeria. It may well be that the defendant later changed the name of the institution to some other name or university as he even admitted but he is not standing trial before me in respect of any other university except the Atlantic International University. Again, this is also in consonance with the defendant's case before the court that he assisted students in gaining admission into the Atlantic International University which is an on-line programme. The said piece of evidence also shows that all the fees paid by the PW1, PW2 and PW3 were paid to the Atlantic International University and not to any other university. The PW3 confirmed this. He said that the defendant is the Programme Director of the said university. This piece of evidence is in accord with the defendant's claim that he is the representative/Programme Director in the said university. The PW4, the Investigating Police Officer (IPO) in the matter, told the court that she was detailed to investigate the petition of the NUC to the effect that the AIU was an illegal or unapproved university. The NUC's petition is **Exhibit E**. The said petition was addressed to the Inspector General of Police (IGP). She further stated that

CERTIFIED TRUE COPY

G. U. EKWEZULI

ASST. CHIEF REGISTRAR

TCN

DATE

26/8/2020

COURT OF JUSTICE
GIDI
ALL JUDICIAL DIV.
DATE 26/8/2020

there were thirty (30) illegal universities operating openly or clandestinely in Nigeria and requested the kind assistance of the said IGP to sanitize the Nigerian University system by directing the State Commissioner of Police to effect the closure of all Illegal Universities operating in Nigeria. As I said earlier, in the document headed: list of Illegal Universities in Nigeria annexed to the said **Exhibit E**, the Atlantic International University was not mentioned. Rather, what we have as No. 3 under **Category 3** of the list of illegal universities is Atlantic Intercontinental University. This witness further told the court that she and her team visited the site of the university at Okija where they arrested one of the staff and they volunteered statement to them under caution and from their said statements, they gathered that the institution had relocated to Ball Farm, Nsugbe, where they operated under the name of Best Choice Institute. That the Rector of Best Choice Institute made statement to them and confirmed to them that both Atlantic Intercontinental University, Okija and Best Choice Institute were being appropriated by the defendant. As I said earlier, the defendant did not disown Best Choice and Atlantic Intercontinental University. He claimed to be the Director of the Best Choice Consultancy firm and the proposed Atlantic Intercontinental University as his own university. He used the said university to apply for approval/registration from the NUC. I think that could be the reason why the said Atlantic Intercontinental University is one of the illegal universities in **Exhibit E** but the charge before me here, is not in respect of the Atlantic Intercontinental University or even any other university. The PW4 was not told or directed to investigate any Best Choice Institute or even Atlantic International University. The PW4 further stated that the NUC through one Barrister Aweh and one Ugonna made statement to the police in respect of this case "indicating that Atlantic Intercontinental University, Okija, Anambra State as one of the illegal and unapproved universities". That at the conclusion of their investigation, they discovered that the defendant's university was indeed an unapproved university as alleged by the NUC and that the defendant had a lot of students in the institutions who truly believed that they were genuine institutions. She

CERTIFIED TRUE COPY
 C. U. EKWE
 ASST. CHIEF REGISTRAR
 DATE 26/8/2020

COURT OF JUSTICE
 OJIDE
 JUDICIAL DIV.
 DATE 26/8/2020

further told the court that these students paid various fees to the institutions operated by the defendant. That they also discovered that "through the list of approved and non-approved institutions by the NUC that the defendant's institution having not been registered only succeeded in defrauding the entire students who had secured admission in the illegal institution". Again, for the umpteenth time, the charge before the court is at variance with the evidence of the prosecution witnesses proffered in proof of same. The charge and the evidence are not talking of the same offences or charges in issue here. They are at cross purposes. While the charge is talking about the Atlantic International University, the evidence is talking about Atlantic Intercontinental University and other institutions.

The PW4 tendered the statement of the defendant to the police as **Exhibit F**. In his said statement, made on 11/5/2009, the defendant stated clearly that he registered his Best Choice Consultancy firm in 2004. That they represented many institutions including Akwa Ibom State Polytechnic, RSA Institute, AIU Honolulu, Hawaii, etc. That he planned to have his own university under his Best Choice Consultancy firm and applied to the NUC for approval of same in 2006 with the name, proposed Atlantic Intercontinental University, Okija/Ezekuna, and has submitted all the requirements to the NUC in respect thereof. That the students he had belong to other institutions that he represents of which some students had graduated from the said institutions.

In the defendant's said statement to the police, he raised a lot of issues/defences in respect of the allegations against him which I think that the prosecution ought to have thoroughly and discreetly investigated. For example, the plaintiff stated that he, through his firm, represents Atlantic International University, Honolulu Hawaii, USA. This has been the main thrust of the defendant's defence in this charge. This line of defence has been confirmed by the PW3 when he told the court that, at the time he was admitted, he knew that the defendant was the representative

CERTIFIED TRUE COPY
 C. U. EKWE
 ASST. CLERK
 26/8/2020

COURT OF JUSTICE
 OJIDI
 IDE'ILL JUDICIAL DIV.
 DATE: 26/8/2020

or Director of the AIU in Nigeria. I have searched the evidence of the PW4 and I am unable to see the evidence of the investigation of this crucial aspect of the defendant's defence. This would have afforded the court the opportunity to know whether the defendant set out from the beginning to defraud his students by representing to them that his said university was approved when it was not or that he has no connection with the AIU's mother institution in America or that the said AIU was contrived by him to defraud unsuspecting students. But, rather, the prosecution assisted the defendant in his said defence by telling the court through the PW3 that the defendant played straight from the beginning by stating to his students that he was only representing the AIU, Honolulu, USA, and that the said university never belonged to him and that what they were doing was an on-line programme. The said investigation would have also afforded the court the opportunity to know whether the said AIU, USA is in existence or not and whether the defendant is using the said institution to scam unsuspecting students. The police ought to also have investigated the defendant's defence that his students also belong to other various institutions that he was also representing at the time and that some of his said students had graduated from those institutions. I have not seen evidence of such investigation in this case. The DW1 told the court that he knows the defendant and that he came to know him as the Coordinator of a Distant Learning Programme or on-line Learning Programme at the Atlantic International University, Hawaii, USA. That the defendant assisted them in doing the on-line programme. That he gave them enabling environment by providing lecturers that lectured them in their courses. That he studied for his Master's and PHD degrees in the said institution. He tendered his Msc degree certificate as **Exhibit L**, his Statement of Result issued to him by the same institution as **Exhibit M**. This witness talked about study centre as where you don't have formal educational setting and where people are brought to assist students to pass their examinations. That he has had course to use such study centers in the past. That through his professional examinations, he studied through a study centre. This witness further stated that he

CERTIFIED TRUE COPY
 C. U. EKWEZU
 ASST. CHIEF REGISTRAR
 26/8/2020

COURT OF JUSTICE
 OGBI
 DEPUTY CLERK DIV.
 DATE 26/8/2020

had heard about Dr. Mercado, the Vice President of the Atlantic International University. That the students requested to see the said Vice President and he came to the institution and all of them saw him when he came. The same thing goes for the DW2 who told the court that he knows the defendant and he came to know him between 2005 – 2006 when he was running a course of study. That they were running an on-line programme of the Atlantic International University, USA, in Onitsha, to be precise, and that the defendant played the role of a Coordinator of the Atlantic International University in Anambra State. This piece of evidence is in consonance with the prosecution’s evidence as per PW3. This witness (DW2) further told the court that he completed his course in the institution and was issued with a certificate. He tendered his Master Degree certificate from the university as **Exhibit N**, Statement of Result issued to him by the said institution as **Exhibit O**. This witness further stated that Atlantic International University was the first university that came into being, while the Atlantic Intercontinental University replaced the Atlantic International University. That the Atlantic International University left Nigeria in 2009. This witness further told the court that the defendant is the facilitator of the Atlantic International University in Onitsha campus. That the said Atlantic International University is owned by the Board of Trustees of the university in Honolulu. That the defendant started having problem with the mother institution in Honolulu in late 2008. Likewise the DW3, who said that the defendant gave him admission into the Atlantic International University’s on-line programme and that he began his study in the Okija study centre. He said that his programme in the said institution was still ongoing when the Igwe of Okija invaded the institution with armed men, mostly villagers and vigilante men and the students on seeing them, ran for their lives and since the said invasion, the school and its operation ceased in Okija.

There is no doubt that the PW1, PW2 and PW3 mainly gave evidence to the effect that the defendant ran an unapproved/unregistered university, the DW1, DW2 and DW3’s evidence is to the effect that what the defendant ran was an on-line

CERTIFIED TRUE COPY
 C. U. EKWEZU
 ASST. CHIEF REGISTRAR
 26/8/2020

COURT OF JUSTICES
 DEPT. OF JUSTICE
 FEDERAL CAPITAL DIV.
 DATE 26/8/2020

programme in study centers of the Atlantic International University, USA, and that they got admission into the said on-line programmed and graduated from the said centre and were duly issued with statements of result and degree certificates. As I pointed out earlier, the evidence of the said prosecution witnesses have thrown up the importance of evidence of thorough and discreet investigation in this case especially, on the status of the said university or the defendant's connection with same as to whether he was running same as a study centre in respect of the on-line programme on behalf of the mother institution – Atlantic International University as a coordinator or facilitator or that the said institution has no connection or affiliation whatsoever with the said mother institution. To me, there is no evidence upon which the court can make such finding. Again, what of the documents the defendant said he submitted to the NUC in respect of approval of the Atlantic Intercontinental University? Was investigation carried out to unravel the fact that the documents were actually for the Atlantic Intercontinental University or for the Atlantic Intercontinental University? No such evidence is before the court. But the prosecution agreed that the defendant applied to the NUC for the approval/registration of the Atlantic Intercontinental University but could not meet up with all the steps or requirements for the said approved registration. It is this Atlantic Intercontinental University that prosecution branded as an illegal university. The defendant tendered documents with respect to his said application. The defendant said that some of the students in the study centers he ran had graduated. Again, this defendant's claim was not investigated by the prosecution to know whether he was saying the truth or not. However, the DW1, DW2 and DW3 gave evidence to the effect that they went through the said study centers of the Atlantic International University ran by the defendant and two (2) of them said they graduated, while one (1) said he could not make it because of the disruption of academic activities in the Okija centre by the Okija people. The defendant gave evidence of the invasion of the institution by the Igwe of Okija. It is his further evidence that he was called on the phone that the said Igwe was at the site of

CERTIFIED TRUE COPY
 C. U. EKWE
 ASST. CHIEF REGISTRAR
 26/8/2020

COURT OF JUSTICE
 JUDGE
 'E'LLI JUDICIAL DIV.
 ATE 26/8/2020

university, addressing the students, telling them that if they graduated from the institution, that they would not take part in the youth service. That this brought a lot of confusion in the institution. That he (Igwe) told them that he was going to establish a university that would help them to do their youth service on graduation. As I pointed out earlier, the DW3 also narrated the invasion of the institution by the Okija people that disrupted academic activities in the said institution. In his said statement to the police, the defendant expanded on the issue of disruption of academic activities in the institution. He stated that some students ran into the hands of the "Okijas" of which they promised them approval under the new name of Unity University also, called "Unity Arts and Science College, Okija" of which they were having problems with them because the site belongs to his Best Choice Consultancy firm and also the proposed site for the Atlantic Intercontinental University, Okija. That the students did not join the institution they are studying in but joined the Okija people in their Unity University. That the Okija people had changed the name of their university severally, from Unity University to Golden Gate University, then to Igwe University, then to United Nigeria University and finally to Unity University which they said had been approved but was not approved. That he has not operated his said Atlantic Intercontinental University but was still in the process of securing approval of same from the NUC . That there are cases pending in court and the police in respect of the ownership of the land of his university. That the Igwe of Okija and his cohorts broke into his said university and are still operating an illegal university on his land. These to me, are salient issues or points or defences raised by the defendant in his said statement to the police which the police ought to have thoroughly investigated and present the outcome or result of their investigation before the court for the court's assistance in this case. But I have not seen such evidence before the court.

It is important to know at what point the Okija people came into the university to disrupt academic activities if they indeed did so. It is also important to know the status of the said institution at the time or point the Okija people allegedly came into

CERTIFIED TRUE COPY
 C. U. EKWE
 ASST. CHIEF REGISTRAR
 26/8/2020

COURT OF JUSTICES
 DEPT. OF JUSTICE
 DEPT. JUDICIAL DIV.
 DATE: 26/8/2020

same. But the prosecution did not avail the court of these very important/crucial evidence. It is also important to know, through the result or outcome of investigation, the owner of the institution at the time, the Okija people or the Igwe of Okija or the defendant through his Best Choice Consultancy firm, in order to know who was running an illegal university or institution on the site at the time. The defendant also said that damages were done to his property at the site and that the Okija people are still running an illegal university on his site. In his said statement to the police, the defendant stated further as follows:

“...I am Dr. Paul Nwaobasi I was honoured with honorary causa. I ones represented Atlantic International University, Honolulu Hawaii, USA. I joined Global Educational Services in the year 2004 that later gave my company appointment letter to represent them on behalf of Atlantic International University in Anambra State in the year 2005 which I invited the vice-president Dr. Jose Mercado from the mother campus America in the year 2006 to discuss some issues about the university over the accreditations and vital issues...”

(Underlining mine for emphasis).

In the above excerpt which is consistent with the defendant's case in this charge, he had maintained that he, through his firm, Best Choice Constancy firm has been the representative of the Atlantic International University in Anambra State. What was the reaction of the PW4 to this? She talked about her team obtaining statements from the staff of the illegal university, invited one Mrs. Nneka, the Rector of Best Choice University, who volunteered statement to them and confirmed that

CERTIFIED TRUE COPY
C. U. EKWE...
ASST. CHIEF REGISTRAR
26/8/2020

COURT OF JUSTICE
JGIDI
IDENTITY JUDICIAL DIV.
DATE 26/8/2020

both Atlantic Intercontinental University and Best Choice University belong to the defendant. That the said Mrs. Nneka took them to the institution where they recovered receipt booklets, ID cards, files, official stamp pads, examination booklets and signpost/signboard. She followed the above evidence by saying that at the conclusion of their investigation, they discovered that the defendant was indeed running an unapproved institution as alleged by the NUC. With all due respect to the PW4, I am yet to comprehend how she arrived at the above said conclusion. To me, the said conclusion is based on nothing or no investigation whatsoever. Like I pointed out earlier, the university being talked about in the charge before the court is the Atlantic International University and not Atlantic Intercontinental University. Both universities are not the same. It is also not about Best Choice University. The issue of invitation of the Vice President of the AIU and the reason he was invited are very crucial here. This is against the backdrop of the contents of **Exhibits G and G1**, through which the prosecution is trying to show that the AIU disassociated itself and disapproved what the defendant was doing in its name. I will still come to this point later. Investigation is very crucial and important in criminal cases as I pointed out earlier. See the case of **Aigbadion vs State (2000) 7 NWLR (Pt.666) 360**. The essence of investigation is, among other things, to discover how plausible or disingenuous the case or defence an accused person is putting up in a criminal trial is and for the court to consider or look at such defence and either believe same or reject same. It is the law that the defence of an accused person, no matter how foolish, disingenuous, stupid, unfounded and untenable it may be, must be considered or looked at by the court. See the cases of **Mafa vs State (2013) 13 NWLR (Pt. 1342) 607**, **Jeremiah vs State (2012) 14 NWLR (Pt. 1320) 248**. The court has to look at the said case or defence, based on the evidence of investigation of same before the court. But in the instant case, the prosecution failed or neglected to present evidence of all the defences/case raised by the defendant in his said statement to police to enable the court to look at them and consider whether they enure in his favour or not. For

CERTIFIED TRUE COPY
 C. U. EKWEGZU
 ASST CHIEF REGISTRAR
 26/8/2020

COURT OF JUSTICE
 OGI
 FILED
 JUDICIAL DIV.
 26/8/2020

example, if it is shown that the defendant is just a representative or coordinator of Atlantic International University, particulars of whose Vice-President was duly supplied to the police at the earliest opportunity, why should the defendant be charged to court for claiming that the university was approved when it was not, or offering admission to students when the owners of the institution are known? From what the defendant is saying in his said statement, he is only an agent of a known or disclosed principal. Nothing has been presented before the court to show that the investigation of this charge was extended to the said mother institution to know whether they authorized the defendant's act or not. The PW4 further concluded that through the receipt booklets, the students paid various sums as fees to the said institution. But the PW4 tendered Exhibits G – G12, H – H6, K, L, L1, M, O –O16, P, P1, Q –Q2 and R. Exhibit G is letter from the NUC to the Economic and Financial Crimes Commission intimating it of the activities of some private agencies, using the name of some foreign universities to unlawfully run degree courses after extorting money from students. It further stated that the Atlantic International University has disclaimed the activities of these illegal agencies in Nigeria. That despite the measures of the NUC, these agencies still persisted in their illegal activities. The NUC asked the EFCC to investigate the activities of these illegal agencies. In view of the above, why didn't the prosecution extend its investigation to mother institution? In Exhibit G1, the Atlantic International University claimed that a company in Onitsha was offering academic programme on its behalf, without its approval, that the AIU does not have any official representative in Onitsha nor did they approve any organization to offer degree programmes on their behalf. They specifically mentioned that the defendant's Best Choice Consultancy firm was selling AIU admission forms through Fidelity Bank Plc and First Bank Plc in all states in Nigeria. That the AIU does not recognize any academic programmes offered by the said Best Choice Consultancy firm in Nigeria. To me, the implication of the said Exhibits G and G1 is that the defendant's Best Choice Consultancy firm was not mandated or authorized by the AIU to represent it or coordinate its programmes in

CERTIFIED TRUE COPY
 C. U. EKNE...?
 ASST. CHIEF REGISTRAR
 -IGN

[Handwritten signature]

26/8/2020

COURT OF JUSTICE

OGIDI

DEPUTY JUDICIAL DIV.

ATE 26/8/2020

Nigeria and does not recognize any academic programme offered by the said Best Choice Consultancy firm on its behalf. The said **Exhibit G1** was signed by Dr. Jose Mercado, whom the defendant said is the Vice President of the AIU. Again, this runs counter or contrary to the defendant's claim that his firm and by extension him is the representative of the AIU in Anambra State. The AIU's position was also made clear in the Nigerian Tribune Newspapers of 25/1/2007 as per **Exhibit G3**. Again, to me, the combined effect of **Exhibits G – G3** is that the AIU did not sanction or authorize what the defendant was doing with its name, in offering academic programmes on its behalf, whether it's on-line or off-line. In his evidence before the court, the defendant told the court that in 2005, he was appointed to represent Atlantic International University by this consulting firm, Global Educational Services. That he made inquiries about the school and that there was a document shown to him by the Federal Ministry of Education as well as the reply to it. The documents were tendered by the defendant as **Exhibits EE – EE1**. **Exhibit EE** is a response or reply to **Exhibit EE**. **Exhibit EE** is an application by the AIU to the Ministry of Education for recognition and accreditation. The defendant also tendered **Exhibits FF – FF2**. **Exhibit GG** is an application by the defendant to the NUC for the establishment of his Atlantic Intercontinental University in Okija. In the said application, the defendant stated that his firm, Best Choice Consultancy Ltd. had been running educational services for a long time. The said **Exhibit GG** and **Exhibits HH – MM3** he also tendered show efforts he made to fulfill the conditions or steps laid down by the NUC in order to secure approval or recognition of his said Atlantic Intercontinental University. If the defendant could tender the above documents to support his case, I don't understand why he could not also tender any document showing that he was appointed to represent the AIU in Anambra State by either the said AIU itself or the Global Educational Services. This is against what appears to be an overwhelming evidence by the prosecution vide **Exhibits G and G1**, to the effect that the AIU never authorized the defendant to represent it in Nigeria and does not recognize any academic programmes offered by

CERTIFIED TRUE COPY
 C. U. EKNE...
 ASST. CHIEF REGISTRAR
 DATE 26/8/2020

COURT OF JUSTICE
 OGIDI
 DEPT. OF PHYSICAL DIV.
 DATE 26/8/2020

him and his Best Choice Consultancy firm. Was **Exhibits G and G1** investigated by the prosecution in view of the defendant's position in his evidence before the court and his position in his statement to the police on his connection with the AIU?

It is the further submission of the prosecution that the defendant raised the defence of running the AIU as a Nigerian representative of the said AIU. That **Exhibits G - G12**, annexed to the petition against him showed that the AIU published a disclaimer, disclaiming the activities of the defendant through his Best Choice Consultancy firm. That despite the said disclaimer, the defendant still went ahead and offered admission to unsuspecting students under the name of AIU, who accepted same and paid various sums of money to the defendant as school fees and other sundry fees. To me, it may be argued that the above submission appears to have the backing of **Exhibits G and G1** as well as that of **Exhibits G2, G3, G4, G5, G6, G7, G8, G9, G10, G11 and G12**. Exhibit **G9** specifically is the list of the approved universities in Nigeria and neither the Atlantic International University nor Best Choice University made that list and even if the Atlantic International University made the list, the defendant ought to ground or concretize his claim of being its representative and authorized to run programmes on its behalf in order to successfully debunk the said **Exhibits G and G1**. I may be tempted to agree with the prosecution that the defendant's defence/claim that he was the representative of the AIU and ran the said AIU programmes on on-line basis and gave admission to the PW1, PW2, and PW3 and DW1 and DW2 and others is not supported. It may also appear that even if the programme ran by the defendant is an on-line programme, that it has to be registered or approved by the NUC. But the fact still remains that it is the duty of the prosecution to prove the guilt of the accused person and not for the accused person to prove his innocence. Again, the stand of the defendant in this charge is that he never ran an unapproved or unregistered institution and that the on-line programme he is running through his Best Choice Consultancy firm belongs to the AIU as he was appointed as representative or agent of the said school in Anambra State, a disclosed principal, by

CERTIFIED TRUE COPY
C. U. EKNE...?
ASST. CHIEF REGISTRAR
SIGN _____ DATE 26/8/2020

113H COURT OF JUSTICE
GID
RECORDS DIV.
DATE 26/8/2020

the Global Educational Services. As I pointed out earlier, an investigation of the involvement of the AIU in this matter would have greatly helped or assisted the court in unraveling the defendant's complicity in this charge. For example, if it is shown that the AIU and its programmes were not registered or approved, it is the AIU that will be held responsible and not the defendant, but if it is shown that the AIU has no hands whatsoever in the whole saga, the defendant has to go in for it. I think that the prosecution simply dumped **Exhibits G and G1** into court to prove that the defendant was running an illegal and unapproved institution. It intended by this to show further, through the said exhibits, that the AIU disowned the academic programmes ran by the defendant and completely disassociated itself from them. The defendant's position in this charge especially in his statement to the police, in my understanding, should have made the prosecution to do more in its investigation, instead of just dumping the said **Exhibits G and G1** before the court and then start jubilating that they have proved that the defendant was running an illegal and unapproved university. **Exhibit G** emanated from the NUC, while **Exhibit G** came from the Vice President of the AIU. The question is, is it true that the above communications therein contained in the said exhibits took place between the NUC and the said Vice President of AIU? Is it true that the AIU disowned and disassociated itself from the activities of the defendant? Was the said Vice President or AIU contacted in the course of investigation? If contacted, what was their responses? The answers to the above questions are very important or crucial in the prosecution's case as this is against the backdrop of the fact that the defendant has completely denied the charge and has told the police in his statement to the police as well as his evidence in court, his relationship with the said AIU. Again, dumping the said exhibits with the court is not enough in the circumstances of this case when the said documents were not investigated.

It is the defendant's further contention that it is the duty of the prosecution to investigate thoroughly any defence put up by an accused person. This is the position of the law as I highlighted earlier in this judgment. He further contended that the

CERTIFIED TRUE COPY
 C. U. EKWE...
 ASST. CLERK...
 DATE 20/8/2020

HIGH COURT OF JUSTICES
 LEGAL
 JUDICIAL DIV.
 DATE 20/8/2020

prosecution's investigation centered on Atlantic Intercontinental University when the case before the court is centered on admission to students at the AIU. I also agree with the prosecution on this and this contention has been highlighted earlier in this judgment. As I said earlier, the charge before the court centers on the activities of the defendant as per AIU but the thrust of the prosecution's investigation/case centered on the Atlantic Intercontinental University. It is my further view that the evidence of investigation presented by the prosecution before the court is not only at variance with the charge before the court, but is also confusing in that they have not presented a clear cut evidence of the charge before the court but at a point started to oscillate or swing between the investigation/evidence of the defendant's activities at the AIU and his activities at Atlantic Intercontinental University. This to me, also, raised a very serious doubt as to the guilt of the defendant in this charge.

It is the further submission of the defendant that investigation in this charge was conducted in 2009, while the prosecution in its evidence before the court showed that the students were dispersed from their campus in 2008. There is no doubt the petition – Exhibit E was written in 2009 which made the PW4 and her team to investigate the matter when the said petition was endorsed to her team for investigation in 2009. Under cross-examination, the PW4 told the court that when they visited the Okija campus, they saw a full blown university in session with a lot of students who were busy with their academic activities in their various departments. That they also saw the Administrative block where they saw the Administrative officer. That they also saw the Registrar as well as the staff room and the Bursary department. He also told the court that he did not enter the office of the Vice Chancellor because he was not on seat. That there were efforts to get the Vice Chancellor but that he was evasive. The issue is, at the time the PW4 and his team went to the campus, in the course of their investigation, who was carrying out academic activities thereon? The prosecution witnesses and the defendant gave evidence to the effect that in 2009, the

CERTIFIED TRUE COPY

C. U. EKNEGBE
ASST. CLERK

20/8/2020

COURT OF JUSTICE

GIDI

DEPUTY JUDICIAL DIV.

DATE 20/8/2020

NUC officials came back to drive them away. Specifically, the PW1 told the court as follows:

“We were in school till 2009 before the NUC officials came back and drove everybody away”.

The PW2 told the court that in 2009, the defendant came up with another signpost for the university which bore Best Choice University and that he told them to bring the receipts of payment previously issued to them in respect of the fees they paid with respect to the AIU. That on the date given to them for resumption, they came to the institution to discover that every place was under lock and key with the presence of security men everywhere who refused them entry into the school. The above evidence of the PW1 and PW2 are relatively in consonance with the evidence of the PW4 who said that on 14/2/2009, some officials of the NUC with mobile policemen came to the school, assembled the students and told them to go home and to stay at home until further notice. As I pointed out earlier, the defendant in his statement to the police and evidence before the court talked about the invasion and activities of the Igwe of Okija and the Okija people in respect of the campus of the university. The DW1 and DW2 appear to have a smooth sail in the institution. According to them, they pursued on-line programmes in the university and were issued with certificates. **Exhibit L** is the certificate issued to the DW1 on completion of his Master's Degree programme. The said **Exhibit L** is dated 11/9/2008. It was signed by the officials of the AIU. **Exhibit M** - Statement of Result issued to the DW1 is dated the same 11/9/2008. Same was signed by the Registrar of AIU. **Exhibit N** dated 11/9/2008 is the Master's Degree Certificate issued to the DW2. Same with **Exhibit M** were duly signed by the officials of AIU. **Exhibit O** - Transcript, dated same 9/11/2008 was issued by the AIU and signed by the Registrar of the institution. To me, these certificates/documents were issued to their bearers before the invasion of the Okija campus of the AIU and they appear to have been issued after their bearers completed

CERTIFIED TRUE COPY

C. U. EKWEGWU?

ASST. CHIEF REGISTRAR

26/8/2020

COURT OF JUSTICE

IGIDI

JUDICIAL DIV.

26/8/2020

their respective courses of study in the institution and before the invasion of the institution and the subsequent investigation of the defendant's activities in the institution by the PW4 and her team. Again, is it true or correct that AIU issued the said certificates to their bearers? Like the failure of the PW4 and his team to investigate **Exhibits G and G1**, the prosecution failed to investigate the sources of the said **Exhibits M – O**. Investigation of **Exhibits G and G1**, to me, would have exposed the scam in the said **Exhibits M – O** which eventually led to the discovery or unraveling of defendant's illegal activities and the investigation of **Exhibits G and G1** would have confirmed the allegations of the prosecution against the defendant, that he was running an illegal or unapproved university. Therefore, I completely agree with the defendant that the fact that Igwe B.I. Okeke of Okija people took over the said Okija campus and installed students therein was not investigated to know who had or brought in the students into the school or who was running the institution at the point the PW4 and his team came to conduct investigation in the school. The activities of the Igwe Okija people as well as other defences raised by the defendant were not investigated. In my understating, this is a crucial aspect of the prosecution's case and ought to have been investigated and evidence of same laid down or placed before the court. But the prosecution did not do so.

From the above analysis/discussion, it has been shown that the prosecution has clearly failed to prove any of the elements or ingredients of obtaining by false pretence in the instant charge. They have failed to prove that there was pretence by the defendant and that the said pretence was false, that he knew its falsity and that he had the intention to defraud. They have also failed to profer evidence of investigation of the charge before the court. In short, they failed to connect the defendant to the charge before the court. And as I pointed out earlier, evidence of investigation is very important or crucial in proof of a charge, but none has been presented before the court in this charge. In the light of the above, I hereby resolve the sole issue for determination here in favour of the defendant and against the prosecution.

CERTIFIED TRUE COPY
 C. U. EKNEZU
 ASST. CHIEF REGISTRAR
 SIGN _____ DATE 26/8/2020

HIGH COURT OF JUSTICE
 GIDI
 JUDICIAL DIV.
 DATE 26/8/2020

In all, this charge ought to fail. It fails and it is accordingly dismissed and the defendant is hereby discharged and acquitted.

[Handwritten Signature]
Chudi Nwankwor
Judge
28/1/2020

P.N. Ofoma Esq. (Chief State Counsel) for the State.

J.R. Nduka Esq. (with N.A. Ifepe Esq.) for the Defendant.

*certification of 250,000
certification of 30 folios
at #30 each = #1100.00*

*26/8/2020
pd on cino
1236522
26/8/2020*

