IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
ON TUESDAY THE 12TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP
HON. MR. JUSTICE I.N. BUBA

CHARGE NO: FHC/EN/CR/01/2013

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

1. ADEDAPO ADELEYE SOLANKE - DEFENDANTS

2. MEGA ASSETS MANAGERS LIMITED

JUDGMENT

In the instant charge that was filed since the 7/1/13 and was handled by my Learned Brothers Shuaibu J. (as he then was); M. N. Yunusa J. and A. M. Liman J.; Trial denovo started before I. N. Buba J. on the 20/2/19.

At the resumed hearing of the case on the 25/2/20, Learned Counsel to the Defendant, Mr. Uzor referred the Court to the defence final address dated 7/2/2020 and filed on even date and adopt same and a reply on point of law dated 24/2/2020 and urged the Court to discharge and acquit the Defendant.

Learned Counsel for the Prosecution F.A.I. Asemebo Esq. referred the Court to the final address dated 12/2/2020 and adopts same as the argument for the Prosecution.

FEDERAL HIGH COURT
CASHIER
SIGN
Date 4/9/2020
ENUGU.

4/9/2020
2804 - 1870 - 1566

The Court read the allegation in the 7 counts charge before the court and the evidence of the 2 witnesses for the prosecution; Exhibits P1 to P8; the Evidence of the defence DW1 which the court shall in a while revert to. The Court equally read the address referred to earlier.

Quickly to the allegation before the court; the charge is to wit:

COUNT ONE

That you, Adedapo Adelaja Solanke being the Managing Director of Mega Assets Managers Limited sometimes in 2010 within the jurisdiction of the Federal High Court of Nigeria, carried on banking business by accepting cash deposits from members of the public without a valid license from the Central Bank of Nigeria and thereby committed an Offence contrary to Section 2(1) of the Banks and other Financial Institutions Act, Cap B3, Laws of the Federation, 2004 and punishable under Section 2(2) of the same Act.

COUNT TWO

That you, Adedapo Adelaja Solanke being the Managing Director of Mega Assets Managers Limited sometimes in 2010 within the jurisdiction of the Federal High Court of Nigeria, carried on other financial businesses without a valid license from the Central Bank of Nigeria and thereby committed an Offence contrary to Section 58 of the Banks and other Financial Institutions Act, Cap B3, Laws of the Federation, 2004 and punishable under Section 59(6) of the same Act.

COUNT THREE

That you, Adedapo Adelaja Solanke being the Managing Director of Mega Assets Managers Limited sometimes in 2010 within the jurisdiction of the Federal High Court of Nigeria, advertised for, and received deposits from members of the public without authorization from the Central Bank of Nigeria and thereby committed an Offence contrary to Section 44(1) of the Banks and other Financial Institutions Act, Cap B3, Laws of the Federation, 2004 and punishable under Section 44(2) of the same Act.

COUNT FOUR

That you, Adedapo Adelaja Solanke and Mega Assets Managers Limited between 18th of June, 2010 and May, 2011 at Enugu, within the jurisdiction of Federal High Court of Nigeria, with intent to defraud obtained the sum of Nl,331,000 (One Million, Three Hundred and Thirty-One Thousand Naira) from Emeka Igwesi under false pretence, when you represented yourselves to be a savings scheme portfolio manager , a pretence you knew to be false and thereby committed an offence contrary to section l(l)b of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT FIVE

That you, Adedapo Adelaja Solanke and Mega Assets Managers Limited between 8th of January, 2010 and 1.4th December, 2010 at Enugu, within the jurisdiction of Federal High Court of Nigeria, with intent to defraud obtained the sum of N830,OQO (Eight Hundred and Thirty Thousand Naira) from Emeka Nwefoh under false pretence, when you represented yourselves to be a savings scheme portfolio manager, a pretence you knew to be false and thereby committed an offence contrary to section l(l)b of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT SIX

That you, Adedapo Adelaja Solanke and Mega Assets Managers Limited between 25th of August, 2010, May 2011 at Enugu, within the jurisdiction of Federal High Court of Nigeria, with intent to defraud obtained the sum of N915,000 (Nine Hundred and Fifteen Thousand Naira) from Onyebuchi Ezeoka under false pretence, when you represented yourselves to be a savings scheme portfolio manager, a pretence you knew to be false and thereby committed an offence contrary to section l(l)b of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT SEVEN

That you, Adedapo Adelaja Solanke and Mega Assets Managers Limited between 15th of November, 2010 and May, 2011 at Enugu, within the jurisdiction of Federal High Court of Nigeria, with intent to defraud obtained the sum of N510,000 (Five Hundred and Ten Thousand Naira) from Ani Benjamin under false pretence, when you represented yourselves to be a savings scheme portfolio manager, a pretence you knew to be false and thereby committed an offence contrary to section I(I)b of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

The Evidence of the two witnesses on the 19/3/19, are to wit:

"COURT REGISTRAR: Defendant in court

THE COURT: Appearances?

M.A Shehu Esq appearing for the prosecution

THE COURT: Yes?

PROSECUTION COUNSEL: The matter is slated for trial and we are ready to proceed.

THE COURT: To the defendant, where is your counsel?

DEFENDANT: I spoke with him and he said he would be in court

THE COURT: On the 27th I adjourned this matter and on 28th you abandoned the case, no communication no nothing and you did not communicate to the court.

PROSECUTION COUNSEL: I informed the court that I had a trial that was why I couldn't make it.

THE COURT: You only have one more adjournment because you are not entitled to more than 4 adjournments; I already have an impression that you are not serious.

THE COURT: Any objection?

PROSECUTION COUNSEL: No, My Lord.

THE COURT: Case is hereby stood down to later in the day.

Same appearance

Ejike Ozor Esq appearing for the defendant

PROSECUTION COUNSEL: The matter is for trial and I have my witness in court.

THE COURT: Yes, call PW1.

DEFENDANT COUNSEL: Before he goes on, I want to inform the court that all the documents has not been given to me so that I can be able to defend the case.

THE COURT: This is a 2013 matter, if you did not approach the court to make an Order, I will not listen to you.

DEFENDANT COUNSEL: On the last adjourn date, I did inform the court.

THE COURT: This is a 2013 matter, the defendant doesn't know where the processes are, and this is a ploy to delay the matter.

DEFENDANT COUNSEL: It is not so sir.

THE COURT: Did you leas with the former lawyer.

DEFENDANT COUNSEL: He has a kidney problem and he is in the hospital.

THE COURT: Affirm the witness.

COURT REGISTRAR: Affirm the witness in English language.

THE COURT: PW1 Muslim speaks English affirm and caution per section 206 of the Evidence Act.

Q. Tell this honorable court your name?

A. My name is Njidda Mohammed.

Q. What do you do for a living?

A. I work with the Economic & Financial Crime Commission (EFCC) since 2004.

Q. Where do you live?

A. I live at independent layout.

Q. Do you know the defendant?

A. Yes, My Lord.

Q. Tell this honorable court why you are in court today?

A. The defendant Adedapo Solanke the M.D of Mega Asset Nig Ltd who I know sometime in 2011 and several petition written against him and his company, it is duly registered with the CAC and duly certified as a stock broker and a Portfolio Manager this I found out in the course of my investigation, the petitioner alleged among other thing that they deposited some money into Mega Asset limited, in view to get some percentage unfortunately they have not seen the interest, infact they went to look out for their money and most of the managers cannot even help them to know where it is, in the course of our investigation we wrote to the Security and Exchange Commission and they said truly he is a stock broker, our further investigation went to the Central Bank of Nigeria (CBN) and we received a reply that Mega Asset have violated section 2, in the course of the investigation we took statement of the complainant and the defendant he admitted that he is the M.D of Mega Asset and Mega Asset has 40 branches in 15 states of the country which he rented, furnished and employed people to run the office, the Mega Asset as I speak to you although it is registered but it went to do some activities that is not vested on it in Nigeria, less I forget in the course of investigation of the victim because there is no fund in their account, in addition the defendant all effort made to reach him through his address in Lagos proof abortive until we brought him here and confirmed the allegation of his company and he admitted he has all these offices and each office had a deposit book and they issued receipt of money deposited, however at the end of our investigation I found out beyond that, unfortunately the bailiff liable that the Mega Asset have gone beyond its mandate, to go out of it mandate what he did was clearly Ponzi scheme, the scheme is where victims are lodged to deposit money far back and there is 1 we call Bernard in the judgment he gave before the case coming up, he said drug trafficking is a dangerous claim and Mega Asset is a very clear to examine in Nigeria if you register a company.

THE COURT: Let us concentrate on the fact of this case, let us go to the evidence.

Q. What are the documents that you recovered in the course of your investigation from Mega Asset?

A. We recovered a leaflet that they use in marketing the company, in that document the company is given a profile of story?

Q. If you see the leaflet will you be able to recognize it?

A. Yes, my lord.

Q. Take a look at this and tell this honorable court if they are?

A. Yes, My Lord they are.

Q. We seek to tender it in evidence.

THE COURT: Any objection?

DEFENDANT COUNSEL: No objection, my lord.

THE COURT: Admitted as exhibit P1.

Q. Take a look at the reply and template and tell this honorable court if they are the reply you are talking about

A. Yes, they are?

THE COURT: Any objection?

DEFENDANT COUNSEL: No objection, my lord.

THE COURT: Letter to Central Bank of Nigeria (CBN) admitted as exhibit 2 A and B.

Q. What again did you recover?

A. There is also a deposit register.

Q. Take a look at this, is this the register?

A. Yes, My Lord.

PROSECUTION COUNSEL: We seek to tender the deposit register.

THE COURT: Any objection?

DEFENDANT COUNSEL: No objection, My Lord.

THE COURT: The deposit register is admitted as exhibit P3A and B, the receipts are admitted as exhibits P4A to J.

Q. You talked about pass book, take a look at this and tell this honorable court if they are the ones?

A. Yes My Lord, they are.

Q. Where are the originals?

A. They are with the company.

Q. We seek to tender the photocopies of the pass books?

THE COURT: Any objection?

DEFENDANT COUNSEL: No objection, my lord
THE COURT: Pass book admitted as exhibit P5.

PROSECUTION COUNSEL: My Lord that will be all for the witness.

THE COURT: Any cross-examination?

DEFENDANT COUNSEL: Yes, My Lord.

THE COURT: Cross examination by defendant counsel.

Q. In the course of your evidence, you told the court that Mega Asset Managers Nigeria limited was registered under CAC?

A. Yes, my lord.

Q. You told the court that it was registered under security and Exchange Commission?

A. Yes, as stock brokers.

Q. You told the court that Mega Asset was registered on the portfolio manager not secretaries

A. Yes, my lord

Q. Can you tell the court the functions of manager?

A. It does not have anything to do with the deposit of individuals.

Q. I put it to you that a manager under security and exchange commission had right to embark on community saving?

A. I am hereby testifying that what he collected is a deposit.

Q. Is Mega Asset one of the commercial banks in Nigeria?

A. Not really.

Q. I put it to you that it is not and does not deserve to obtain license from the Central Bank of Nigeria (CBN)?

A. I beg to disagree.

Q. I put it to you thought Mega Asset never run as a Ponzi scheme as you told the court; it was to manage Asset Management company not a Ponzi scheme?

A. You are not correct I am sorry to say that, it is a Ponzi scheme absolutely.

DEFENDANT COUNSEL: That will be all for the witness My Lord.

THE COURT: Any re-examination?

PROSECUTION COUNSEL: No, My Lord.

THE COURT: PW1 is discharged.

PROSECUTION COUNSEL: We have a subsisting date for tomorrow.

THE COURT: The case is adjourned to the 20th of March 2019..."

Whilst the 1st defendant testified as follows on the 20/11/19:

"**COURT REGISTRAR**: Defendant in court

THE COURT: Appearances?

M.A Shehu Esq appearing for the prosecution

Ejike Uzor Esq with him O.O Maduabuchi Esq appearing for the defendant

THE COURT: Yes?

DEFENDANT COUNSEL: The matter is for defense and we are ready to go on.

THE COURT: Call the defendant and affirm him.

COURT CLERK: Swore the defendant on oath to speak to truth.

THE COURT: DW1 speaks English swore to the holy Bible caution per section 206 of the Evidence Act 2011.

DEFENDANT COUNSEL: Can you tell this honorable court your name.

A. My name is Adedapo Adelaja Solanke

Q. Where do you live?

A. I live at Lekki in Lagos Island.

Q. What do you do for a living?

A. Banking business and asset management.

Q. What is your relationship with the 2nd defendant?

A. I was the Managing Director of Mega Asset Nigeria limited.

Q. Do you know why you are in court?

A. Yes, my lord.

Q. Tell this honorable court what you know about the charge against you?

A. The charge against me is that i do not have a registered scheme that we are running but I will like to affirm that we have, the company Mega Asset Nigeria limited was registered in 2007 with the Corporate Affair Commission.

Q. Do you have anything to show that you were registered with the Corporate Affair Commission?

A. We have our certificate of incorporation.

Q. Take a look and tell this honorable court if this is the certificate?

A. Yes, this is the original certificate.

DEFENDANT COUNSEL: My Lord I seek to tender the certificate.

THE COURT: Any objection?

Prosecution Counsel: No objection, my lord.

THE COURT: Admitted as exhibit D1.

DEFENDANT COUNSEL: We also apply for substitution with a photocopy.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

A. After the incorporation of the company we approached Security and Exchange Commission with an application and a

proposal, we attached to the application a proposal on how we intend to run the scheme, we got the approval on the 10th December 2007 and that is the document we have to operate with, so we have that document that was given to us by Security and Exchange Commission.

Q. Take a look at this document if it is the said document you are referring to?

A. Yes this is the original document and this is the photocopy.

DEFENDANT COUNSEL: We wish to tender and also apply to substitute with the photocopy.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Admitted as exhibit D2 and substituted with a copy.

A. After we received the letter of registration and needed to commence operation, so we recruited.

Q. Did you make any other application to Security and Exchange Commission?

A. We applied to Security and Exchange Commission before we got the registration done and we commenced the business and we recruit.

Q. Did you make any other application to Security and Exchange Commission?

A. Yes for additional function, we went for the interview and we scaled true.

Q. You were issued a certificate on that?

A. Yes, my lord.

Q. Take a look and tell this honorable court if these are the certificate?

A. Yes, this is the original and a photocopy.

DEFENDANT COUNSEL: My Lord we seek to tender the document and apply to substitute with a photocopy.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Registration admitted as exhibit D3 and a copy be substituted.

A. In addition to this function, we applied for another registration, this time around as portfolio managers.

Q. Take a look and tell this honorable court if this is the document?

A. Yes, this is the registration of additional function of portfolio managers.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord

THE COURT: Admitted as exhibit D4 and substituted with a copy too.

Q. What are the functions of portfolio managers?

A. We manage basket of investment in capital markets, this could be own by one person or be owned by a corporate entity, when this is being managed, it can be under discretionary arrangement or not discretionary, so as managers fund for investment could be given to us to apply in these various investment with the brokers and banks, mortgage institutions and from time to time this portfolio could be reviewed depending on the return from market to make sure that the portfolio performance is good enough, that is how the works.

Q. After registration with Security and Exchange Commission what happened?

A. The first registration we had has to do with community service scheme, it was after that we got other registrations done, the one we started with was community scheme and it has to do with pool of fund from contributors those who subscribed to the scheme and if this is done they are approach by our marketing officers who are trained on concerning the product and the company where customers can invest, when this is done we have our marketing fliers that tells our customers about the company, product and registration and the customer has the right to choose for how long he want to invest, the amount and how he want it and at the same time when this is done the customers can

withdraw his investment upon maturity of the investment, the investment can be 1 year, 2 or 3, and at maturity, he applies for payment. In addition when customers come to subscribe because we have our subscription forms, the form is completed indicating interest with it commencement and we issue receipt to them to show that we collected that fund or transact business with the customers, the customer is entitle to a passbook and it state the distribution of payments and contain the passport photograph, name, address and all the customers information and that is the purpose of given the passbook, our investment in this circumstance is not such that you can contribute now and say you want the money tomorrow, it has to be year term, it defer from the saving of the bank, if you save money in the bank you are saving your reserve and it does not have a tenure, if you save money in the bank now and you work to the gate and want the money after that you can be paid, so we don't take that except for tenure and we make sure there is documentary evidence for all our transaction.

Q. You were arrested by the Economic & Financial Crime Commission (EFCC)?

A. On the 1st of July 2011.

Q. And what transpired?

A. They investigated the matter and after that they said we should go back to our businesses and they said what they wanted was to investigate the intent of our company, and there at Economic & Financial Crime Commission (EFCC) we paid them Millions in the present of the Economic & Financial Crime Commission (EFCC), we applied to take money from our account and they lifted the sanction in our account and after we left Economic & Financial Crime Commission (EFCC) office, we paid customers.

Q. Is there any evidence to show that you made payment in the Economic & Financial Crime Commission (EFCC)?

A. Yes, my lord.

Q. Take a look and tell this honorable court if these are some of them?

A. Yes, these are some of them.

DEFENDANT COUNSEL: We apply to tender exhibit and to substitute the original with the photocopy.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Admitted as exhibit 5 and 6 respectively.

DEFENDANT COUNSEL: We apply for substitution.

THE COURT: They are copies.

Q. Where and where did you invest the customer's fund?

A. When we started in 2008 January we were able to invest the fund in the capital market and the market crashed and there was devaluation of value and we had to look at other option, we also invested in money market with various banks, and what we do is we negotiate interest rate with them, at a point it was encouraging in 2009, somehow later money market came down, that also indicated that we lost some interest in our investment, and we did not stop there we had to look at other option because we had intent to pay to those customers, so we are to invest in tricycle business from in Innoson Motors, so we bought them and they said they had spare parts in place and we gave it for high purchase and after that the engine started giving problems and he told me how he ran into problem.

Q. You said you had an investment in the money market?

A. Yes, my lord.

Q. Take a look at this document and tell this honorable court if this is what you invested?

A. Those are some of my investment in the money market.

DEFENDANT COUNSEL: My Lord we seek to tender the document as evidence before this honorable court.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Admitted as exhibit D7 A to K.

DEFENDANT COUNSEL: We apply for substitution of the original.

THE COURT: Copies shall be substituted.

Q. You said you bought some try cycle from in?

A. Yes our cheques are attached; those cheques were paid into their accounts.

Q. Take a look and tell this honorable court if these are the documents?

A. Yes, it is the delivery of the product.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Request for purchase of tricycle admitted as exhibit D7, 8, and 9.

DEFENDANT COUNSEL: We also apply for substitution.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

Q. You told this honorable court that you invested in the capital market?

A. Yes, My Lord.

Q. Take a look at these documents?

A. Yes, these are the statement from Core Trust.

Q. What happened to the original copy of this document?

A. When we had issue, some customers came to the office and they tempered with our cabinet and I had looked for the document in the office but these are the once I could lay hands on.

DEFENDANT COUNSEL: My Lord we wish to tender same in evidence.

THE COURT: Any objection?

PROSECUTION COUNSEL: I will be objecting.

THE COURT: On what ground?

PROSECUTION COUNSEL: They are photocopies.

THE COURT: Admitted as exhibit D10.

Q. You said you invested in Simba?

A. Yes we bought tricycles from Simba also and this is a TVS Link product for several Millions.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Admitted as exhibit D11 A to G.

DEFENDANT COUNSEL: We seek to substitute the original.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

Q. You also invested at approved formal invoice?

A. Yes, it is.

DEFENDANT COUNSEL: We wish to tender same.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, My Lord.

THE COURT: Admitted as exhibit D12.

Q. What happened after the said payment was made in the Economic & Financial Crime Commission (EFCC)?

A. There were payment we made after our experience at Economic & Financial Crime Commission (EFCC) as we paid customers within the premises of Economic & Financial Crime Commission (EFCC) some customers ran to Security Exchange Commission and reported and I was invited for questioning, I appeared before the admin panel and at the end of the day Security and Exchange Commission paid customers with claims and it was published.

Q. Do you have any proof of that?

A. Yes, My Lord.

Q. Take a look at this and tell this honorable court if this is the document?

A. Yes, this is one of them.

DEFENDANT COUNSEL: We seek to tender the document in evidence.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

THE COURT: Admitted as exhibit D13.

DEFENDANT COUNSEL: We also filed to substitute the original copy with a photocopy.

THE COURT: Any objection?

PROSECUTION COUNSEL: No objection, my lord.

Q. Is there any other thing you want to tell this honorable court in regard to this matter?

A. I wish to state that Mega Asset limited is an investment company and not a bank, it is not also a wonder bank and we never did that and there was no time we paid anything within 1, 2, 3 % to customers, I have been in this business since and I know the implication of business like this without approval.

DEFENDANT COUNSEL: That will be all for the witness.

THE COURT: Any cross-examination?

PROSECUTION COUNSEL: How many years have you been in the banking industry.

A. 1977 to date.

Q. I will be right to say that you are familiar with the banking law?

A. Yes, my lord.

Q. You did stated that you issued performance report to investors?

A. I said that if you are managing portfolio for anybody that you can review a portfolio to make sure there is maximum performance to the customers.

Q. During the period, did the 2nd defendant manage every investment?

A. I said one of it was I managed portfolio.

Q. Did the 2nd defendant have any portfolio management?

A. The bulk of our investment was community saving scheme, that when we had to get our brokers because we are stock brokers.

Q. You did stated that after Economic & Financial Crime Commission (EFCC) investigated, you were asked to go back to your business, is that correct?

A. Yes they said we should go back but we had to solve the problem with the Security Exchange and Commission.

Q. Is the 2nd defendant still in operation?

A. No, my lord.

Q. If you are being asked to go back to the business, why are you in court?

A. The first investigation that took place within 1st July and 7th July 2011 and after that there was series of event that took place it was after that.

Q. During the period before the 2nd defendant, did you make any application to the Central Bank?

A. No we were not under Central Bank, if community saving scheme was under Central Bank we would, so we have no business with the Central Bank.

Q. But the 2nd defendant advertised to the members of the public?

A. I wouldn't know about advert.

Q. What we had was our flier introducing the company and it products so we can explain our products and what we are doing, so when we meet with them, we discuss with them and tell them how the company runs?

Q. But the 2nd defendant /KR-GS dep sit register?

A. We have our deposit register on the entire accounts officer to monitor what the people are doing in the field.

Q. Is the cash deposit register, is it allowed to the community saving scheme?

A. It is discretionary.

PROSECUTION COUNSEL: That will be all for the witness.

THE COURT: Any re-examination?

DEFENDANT COUNSEL: No, My Lord.

THE COURT: To the defendant, you are discharged. How many more witnesses?

DEFENDANT COUNSEL: Just one, my lord.

THE COURT: The case is adjourned to the 21st January 2019."

It is in the light if the above allegations and evidence, that learned counsel to the defendant submits that the Prosecution brought a seven-count charge against the Defendants alleging the following; that the 1st Defendant carried on banking business by receiving cash deposits from members of the public without a valid licence from the Central Bank of Nigeria (C.B.N); that the 1st Defendant carried on other financial businesses without valid licence from the C.B.N; that the 1st Defendant advertised and received deposits from members of the public without authorization from the C.B.N; and that the Defendants, with intent to defraud, obtained various sums of money under false pretence, when they represented themselves to be a savings scheme portfolio manager, a pretence they knew to be false.

The Defendants were charged under Sections 2 (1), 58, and 44 (1) of the Banks and Other Financial Institutions Act (BOFIA) 2004; and Section 1 (1) (b) of the Advance Fee Fraud and Other Related Offences Act (AFFOROA), 2006. Two issues were raised for determination, viz:

i. Whether the Prosecution proved its case beyond reasonable doubt as required by law in criminal matters.

ii. Whether there is a competent charge against the Defendants before the Court.

Both issues were argued seriatim.

With respect to Count one of the charge, learned counsel submits that Section 2 (1), BOFIA, 2004 provides that; *No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under this Act.* It is submitted that the ingredients of the offence of carrying on banking business by accepting cash deposits as contained in Count one of the charge are as follows:

i. That there is a business carried on in Nigeria

ii. The business constitutes banking business by accepting cash deposits from members of the public

iii. The banking business is without a valid licence from the CBN.

In Section 66, BOFIA, 2004, "banking business" means; *the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business.*

Also, in the foregoing section of the Act, "deposit" means; *any money lodged with any person whether or not for the purpose of any interest or dividend and whether or not such money is repayable upon a given period of notice or upon a fixed date.*

That from the foregoing definitions of "banking business" and "deposit", for a business to constitute banking business by receiving deposits, the cash deposit must have been received on current account,

savings account or other similar account. Thus, it is not sufficient to prove that deposit was received from members of the public, but that it was received on current account, savings account or other similar account.

In proof of the alleged offence that the Defendant received cash deposit from members of the public, the Prosecution relied on Exhibits PI- P7. Exhibit P3 A-B which is a contributors' register fails to establish that any cash deposit was received on any of the accounts stipulated by the law in pursuance of which the Defendants were charged.

It is submitted that the Prosecution has failed to establish a core ingredient of the offence with which the Defendants were charged in Count one of the charge sheet.

It is submitted that the Prosecution having failed to establish a core ingredient of the offence, has failed to prove the said offence; and it was urged the Court to dismiss Count one of the charge.

It is also submitted that Count two of the charge was brought under Section 58, BOFIA, 2004, without specifying which sub-section it was brought under. That the said Count two was brought pursuant to sub section (1), which is the most probable sub-section of the said section to bring such charge.

It is argued that Section 58 (1) BOFIA, 2004 provides that; *without prejudice to the provisions of part 1 of this Act, no person shall carry on other financial business in Nigeria other than insurance and stockbroking except if it is a company duly incorporated in Nigeria and holds a valid licence granted under section 59 of this Act.*

And that from the foregoing provision, it is submitted that the ingredients of the offence contained in Count two of the charge are as follows:

i. That there is a business carried on in Nigeria.

ii. That the business constitutes "other financial business" within the meaning of the Act.

iii. That the "other financial business" is carried on by an unincorporated company and without a valid licence granted under the Act.

In proof of the allegation in Count two of the charge, the Prosecution relied on the exhibits already stated which are principally made up of letters written to C.B.N and S.E.C to ascertain the status of the Defendants' registration with the regulatory bodies. That there is no evidence placed before the Court by Prosecution to establish without equivocation that the Defendants carried on other financial business within the meaning of the Act. The Prosecution therefore failed to establish the ingredient of the alleged offence of carrying on other financial business as provided by the Act.

It is also argued that on the other hand, the Defendants tendered evidence to establish that they are incorporated and obtained certificates and were duly registered to carry on all businesses which they carried on. See Exhibits DI, D2, D3 and D4. That Exhibit D3 shows that the Defendant was duly registered to operate as a Sub-broker, while Exhibit D4 empowers the Defendants to carry out additional functions of Portfolio Manager. Exhibit D2 empowers the Defendants to operate a Community Savings Scheme.

It is further argued that Section 58 (1) BOFIA, 2004 clearly excludes insurance and stockbroking businesses from "other financial business", in

respect of which a valid licence granted under section 59 of the Act is required. The ISA, 2004, pursuant to which the Defendants were registered with the S.E.C defines "sub-broker" to mean; *a person who has satisfied the conditions laid down by a Securities Exchange or capital Trade Point for such status and who is therefore authorized to deal in the securities listed in the exchange under the control and supervision of a dealing member.*

Thus, as a Sub-broker, the Defendant is clearly excluded from other financial businesses which require a valid licence granted under the Act, to carry on.

That there is nothing placed before the Court by the Prosecution to show that running a Community Savings Scheme duly registered by S.E.C— vide Exhibit D2— constitutes "other financial business" within the meaning of the BOFIA, 2004. The Prosecution did not establish any other financial business carried on by the Defendants in contravention of the law, other than the aforestated businesses, in respect of which they were properly licenced and authorized by law to carry on.

Learned counsel further submits that the prosecution has therefore, failed to establish any ingredient of the offence of carrying on any other financial business within the meaning of the BOFIA, 2004. It is submitted that the Prosecution has failed to prove the said offence and urged the Court in the circumstance to dismiss Count two of the charge.

With respect to Count three of the charge, section 44 (1), BOFIA, 2004 provides that; *No person other than a bank or any other person authorised to take deposits shall issue any advertisement inviting the*

public to deposit money with it. It is submitted that the ingredients of the offence are as follows:

i. There is an advertisement issued within the meaning of the Act

ii. The advertisement is inviting the public to deposit money with a person

iii. The person issuing the advertisement is not a bank or any other person authorised to take deposits.

It is argued that the foregoing section of the law is a general provision on restriction of advertisement for deposit. It does not provide for receiving deposit as wrongly stated in the charge by the Prosecution. The offence created by that section of the law only restricts issuing advertisement for deposit by an unauthorized person, but does not extend to receiving deposits, as wrongly stated by the Prosecution in the charge. That Count three of the charge is not precise, as the acts constituting the offence are inconsistent with the context of the law, in pursuance of which it was brought.

Learned counsel thus urged the Court to strike out the portion of Count three of the charge which relates to receiving deposits from members of the public, for being *ultra*-vires the provisions of the law creating the said offence.

In proof of the allegation in Count three of the offence, the Prosecution relied on Exhibit PI, which is a marketing flier that tells the Defendants' customers the products available for them to choose from. However, the Prosecution failed to clearly identify any information in the said exhibit calculated to lead directly or indirectly to the deposit of money by the public within the meaning of the Act, the Defendants having already established in uncontradicted evidence that what they have is subscription form.

Furthermore, that from the tenor of section 44 (1), BOFIA, 2004, a bank or any other person authorized to take deposits shall have the right to issue an advertisement inviting the public to deposit money with it. And that the evidence before the Court shows unequivocally that the Defendants are duly registered with the C.A.C as Asset Manager and with the S.E.C as Sub-broker, Portfolio Manager and Operator of a Community Savings Scheme. See Exhibits DI, D2, D3 and D4. All these established businesses of the Defendants are regulated by S.E.C, pursuant to the Investment and Securities Act (ISA), 2007.

Section 45 (1), ISA, 2004, pursuant to which the Defendants were registered and section 68 (1), ISA, 2007, authorize a public company to make an invitation to the public to deposit money with it, if certain conditions are satisfied. Therefore, the Defendants, being a public company, eminently qualify as "any other person authorized to take deposits" within the context of section 44 (1), BOFIA, 2004 and thus, can lawfully issue advertisements inviting the public to deposit money with it.

That from the foregoing, it is clear that the Prosecution has failed to establish that the Defendants are under obligation to obtain authorization from the C.B.N to issue advertisements. Moreso that the Prosecution has also failed to show that the Defendants issued advertisement for deposit from members of the public without authorization. Learned counsel thus submits that the Prosecution has failed to establish the ingredients of the offence alleged in Count three of the charge, and thus, failed to prove the said offence; and urged the Court to dismiss Count three of the charge.

It is further submitted that in Counts four, five, six and seven of the charge, the Prosecution alleges that the Defendants, with the intent to

defraud, obtained various sums of money under false pretence, when they presented themselves as a savings scheme portfolio manager, a pretence they knew to be false. The said charge was brought under section 1 (1) b of the Advanced Fee Fraud and Other Related Offences Act (AFFOROA), 2006.

The said Section 1 (1) (a) (b) of (AFFOROA), 2006 provides thus;

> *(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 in any other country, for himself or any other person; or*
>
> ***(b) induces*** *any other person, in Nigeria or in any other country to deliver to any person,*
>
> *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, commits an offence under this Act."*

It is submitted that from the foregoing provisions that the ingredients of the offence of obtaining by false pretences are as follows:

i. Obtaining or inducing delivery of anything capable of being stolen

ii. False pretence

iii. Intent to defraud.

That there is a distinction between obtaining and inducing delivery. Where the word "obtaining" is used, it means obtaining for oneself, while "inducing delivery" covers where a person induces another person to deliver to him or to some other person. It has been held in **R V. AYEWO [1957] W.R.N.LR. 146** that a charge alleging an "obtaining" will fail if in

fact the false pretence was made with the object of inducing delivery to another person.

That the foregoing distinction can be clearly seen in Section 1 (1) of (AFFOROA), 2006, under which the Defendants were charged. Section 1 (1) (a) deals with "obtaining", while section 1 (1) (b) deals with "inducing delivery".

It is further argued that in the instant Counts four, five, six and seven of the charge, the Prosecution charged the Defendants for false pretences by obtaining various sums of money and adduced evidence in support of the said charge. However, the Prosecution brought the said charge of obtaining by false pretence under the section of the law which creates the offence of inducing delivery by false pretence, which is substantially at variance with the offence charged, and in respect of which evidence was adduced.

In **ADEYEMI V. COMMISSIONER OF POLICE [1961] All N.LR. 387,** the accused was charged with obtaining money from X by falsely pretending that he was in a position to appoint him a Customary Court member. Evidence adduced was to the effect that accused obtained the money to give to another person to enable X to be so appointed. It was held that there was a variance in substance between the pretence charged and the evidence adduced which variance was fatal to the prosecution's case.

It is submitted that there is a variance in substance between the pretence charged by the Prosecution and the pretence in the law under which the charge was brought. We urge the Court to hold that the said variance is fatal to the charge against the Defendants and dismiss Counts four, five, six and seven of the charge. More so, as

the Prosecution has failed to prove either obtaining or inducing delivery which form the core ingredients of the offence of obtaining by false pretence.

On the ingredient of false pretence, section 20, AFFOROA, 2006 defines "false pretence" to mean; *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.*

It is argued that in proof of the foregoing offence of obtaining by false pretence, the Prosecution placed heavy reliance on Exhibits P7 and P8 and maintained that the Defendants did not register as a community savings scheme. It is also on this evidence that Prosecution rely to allege that the Defendants holding themselves out as a savings scheme and portfolio manager amounts to misrepresentation and false pretence.

That in contradiction of Prosecution's evidence, the Defendants tendered Exhibit D2, which establishes the fact that the Defendants are duly registered as Community Savings Scheme by the S.E.C, pursuant to section 146 (1)- (4) of the ISA Cap. 124, LFN 2004, which provided for mandatory registration of community investment schemes and such other similar schemes for statistical purposes.

That by section 168 (1) of the Evidence Act 2011, Exhibit D2, which was tendered to frontally challenge Exhibits P7 and P8, raises a presumption of regularity in favour of the Defendants. In other words, the Defendants have satisfied all the conditions precedent for operating a community savings scheme, and thus,

were duly registered, licenced and authorized to so operate. The said presumption of regularity, though rebuttable, was never rebutted by the Prosecution, nor was the said Exhibit D2 challenged or contradicted.

That also, Exhibit D4 raises a presumption of regularity in favour of the Defendants that they have satisfied all the conditions precedent, and thus, were duly registered for additional function of Portfolio Manager. This presumption remains unrebutted and uncontradicted. And that from the facts and evidence before the Court, the Prosecution failed to prove that the Defendants engaged in any other business or held themselves out in any capacity, other than the businesses and in the capacity conferred on them by law, vide Exhibits DI, D2, D3 and D4. It is learned counsel submission that the Prosecution has failed to establish the ingredient of false pretence.

In the case of **WELHAM v. D.P.P [1961] A. C. 103,** it was held that an intent to defraud is; *an intent to induce another by deceit to act to his detriment or contrary to what would otherwise be his duty and it is immaterial that there is no intention to cause pecuniary or economic loss.*

There is nothing placed before the Court by the Prosecution to establish any element of intent to defraud by the Defendants. On the contrary, the evidence of the Defendants establish that the Defendants complied with the requirements of the law with respect to registration. Furthermore, Exhibits D7 A-K and D10 show that the Defendants invested in the Money Market and Capital Market, respectively, while Exhibits D8, D9, D11- A-F and D12 show that the Defendants also invested in Hire purchase business with tricycles.

Furthermore, evidence of the Defendants establish that when the investments collapsed, the regulatory body, S.E.C made payments to customers with genuine claims. That if the Defendants were fraudulent or had intention to defraud, the S.E.C would not have intervened in the matter to the extent of settling genuine claims of affected customers.

The law is settled beyond peradventure that the standard of proof in criminal trials is proof beyond reasonable doubt. The Supreme Court in **NWATURUOCHA V. STATE (2011) 6 NWLR (Pt. 1242) P. 170,** explained proof beyond reasonable doubt to mean; *establishing the guilt of the accused person with compelling and conclusive evidence. A degree of compulsion which is consistent with a high degree of probability.*

It is also further submitted that where there is doubt in criminal trial, that doubt should be resolved in favour of the accused person— **STATE V. AZEEZ (2008) ALL FWLR (PT. 424) 1423.** Also, the apex Court held in **SHADE V. STATE (2005) FWLR (pt. 279) 1342** thus;

> *'Where there is doubt in the mind of the court either as to the procedure adopted or failure to address on very important latent issues that assail or circumscribe the case, the court should acquit and discharge. Though the standard of proof is not that of absolute certainty, the court seised of the matter must convince itself beyond all proof that such and such had occurred.'*

Learned counsel again urged the Court to resolve issue no. 1 in favour of the Defendants and hold that the Prosecution did not prove its case beyond reasonable doubt as required by law in criminal matters.

On issue 2, it is argued that all evidence before the Court show that the Defendants are Capital Market Operators, whose businesses revolve around Collective Investment Scheme and include; Asset

Management, Community Savings Scheme, Stockbroking and additional function of Portfolio Manager. There is no evidence adduced by the Prosecution to establish that any of the businesses or functions of the Defendants constitutes banking business within the meaning of the BOFIA, 2004, pursuant to which the Defendants were charged, or that the Defendants are under the regulation of the C.B.N.

That on the other hand, the ISA 2007 establishes the S.E.C as the apex regulatory authority for the Nigerian Capital Market, as well as regulation of the market to ensure the protection of investors, maintain fair, efficient and transparent market and reduction of system's risk; and for other related matters.

Section 315 of the ISA, 2007 defines "capital market operator" to mean; *any person (Individual or corporate), duly registered by the Commission to perform specific function in the capital market* The same section defines "collective investment scheme" to mean; *a scheme in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other asset in a portfolio, and in terms of which:*

> *a) Two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;*
>
> b) *The investors share the risk and benefit of investment in proportion to their participatory interest in a portfolio of a scheme or any other basis determined in the deed, but not a collective investment scheme authorised by any other Act.*

That it is established beyond doubt that the Defendants are Capital Market Operators whose businesses are regulated by the S.E.C, pursuant to the ISA, 2007, which is the enabling law. The said law, while

effectively regulating activities of Capital Market Operators, makes provisions in Part XIV for Investors Protection Fund, in case of investment failure.

It is further argued that the evidence before the Court shows unequivocally that the Defendants are duly registered with the S.E.C. and thus, are regulated by the ISA, 2007. That thus, Counts one, two and three of the charge brought against the Defendants pursuant to the BOFIA, 2004 are incompetent and liable to be dismissed.

That as argued earlier, Counts four, five, six and seven of the charge were brought under section 1 (1) (b) instead of section 1 (1) (a) of the AFFOROA, thereby making the charge imprecise, as the act constituting the offence on the charge sheet and the evidence in prove of same are at variance with the context of the law, pursuant to which the charge was brought. It is submitted also that Counts four, five, six and seven of the charge are incompetent and thus, liable to be dismissed.

Furthermore, Rule 10 (1), (2) and (3) of the Rules of Professional Conduct for Legal Practitioners, 2007, presupposes that before any lawyer acting in the specified capacities appends his signature on any legal document or presents any such document or process of court for filing, there must be his seal and stamp affixed on such document.

In **YAKI V. BAGUDU [2015] 18 NWLR (pt. 1491) Pp. 315-316,** the Court held that; *if, without complying with the requirements of the rule, a lawyer signs or files any legal document as defined in rule 10 (2), and in any of the capacities mentioned in rule 10 (1), the document so signed or filed shall be deemed not to have been properly signed or filed.*

The Court held in **ABAKALIKI L.G.C V. ABAKALIKI R.M.O [1990] 6 NWLR (PT.155) 182 AT 190,** that; *'is the law that where a legislation provides that certain acts be done by the person initiating an action before invoking the jurisdiction of the court, then it is only after compliance with such law that the court's jurisdiction to adjudicate can be activated.'*

Learned counsel thus urged the Court to deem the charge signed and filed by the Prosecution against the Defendants as not being properly signed and filed, for not having an NBA approved seal and stamp affixed on same; and that the Court should resolve issue no. 2 in favour of the Defendants by holding that there is no competent charge against the Defendants before the Court.

It is further submitted that on the whole, the Prosecution has failed abysmally to establish that the Defendants are a bank or financial institution, and therefore failed to show that the Defendants are under the regulation of the C.B.N and subject to the BOFIA, 2004, pursuant to which the charge was brought. Consequently, Counts one, two three of the charge brought against the Defendants under BOFIA, 2004, are incompetent and liable to be dismissed.

Furthermore, Counts four, five, six and seven of the charge which allege obtaining by false pretence were brought under section 1 (1) (b), AFFOROA, 2006 which creates the offence of inducing delivery, thereby making the charge and evidence in support of same inconsistent with the law pursuant to which it was brought. Counts four, five, six and seven of the charge are therefore incompetent and liable to be dismissed; that on the strength of the foregoing, the Court should dismiss the seven-count charge and acquit and discharge the Defendants.

Whilst the Prosecution submits that the accused persons are standing trial on a seven counts Amended charge of transacting financial business without a valid license from Central Bank of Nigeria, contrary to Section 58 of the Bank and other Financial Institution Act, and punishable under section 59(6) of the same Act; Advertising for deposits without valid license contrary to Section 44(1) of the Bank and other Financial Institution Act, and punishable under Section 44(2) of the same Act and obtaining money under false pretence under section 1 of the Advance Fee Fraud & Other Fraud Related Offences Act, 2006.

The Prosecution in proof of its case called two Witnesses and tendered various exhibits in proof of its case. That the accused persons induced the investors with the false pretence of payments of outrageous and unrealistic interest rate monthly (wonder bank). Exhibit PI. With a promise to also pay back their capital investments upon demand. That the investors (victims) due to their naivety and desire to make great profits fell for the tricks, scam, sham, deception, false pretence and fraud of the accused persons. That the fraudulent motive, trick and deception of the accused persons was made more manifest in the fact that they pretended to pay a very few people their interest and that encouraged and induced more people to invest their money who were eventually not paid, at the end, the vast majority lost all the money invested, thereby the Accused Persons robbed Peter to pay Paul (Ponzi Scheme). A lone issue was raised for determination by this court, to wit:

a) Whether the prosecution has proven its case against the defendants to ground conviction?

In arguing this, learned counsel posits that Section 58(1) OF THE BANKS AND OTHER FINANCIAL INSITUTIONS ACT provides:

"Without prejudice to the provisions of part 1 of this Act, no person shall carry on other financial business in Nigeria other than insurance and stock broking except if it is a company duly incorporated in Nigeria and holds a valid license granted under section 59 of this act."

And submits that the elements to be established in the said offence in count one of the charge is as follows:

1. That the person carries on financial business.
2. The person has no valid license from central bank.
3. The person is not an insurance or stock broking entity.

It is argued that the evidence of PW1 and PW2 has succinctly established these elements; it is clear from the evidence of all prosecution witnesses that the accused persons presented a purported investment scheme to the public consequent upon which members of public paid money running into billions of naira into the bank account of the defendants. And from the evidence of PW1 and PW2 and exhibits tendered this financial business was transacted without a valid license from the central bank.

Section 44 (1) OF THE BANKS AND OTHER FINANCIAL INSITUTIONS ACT provides:

No person other than a bank or any other person authorized to take deposits shall issue any advertisement inviting the public to deposit money with it.

And that the elements to be established in the said offence in count two of the charge is as follows:

1. That the person is not a bank;
2. The person not a bank and not authorized has issued advertisement inviting the public to deposit money with it.

It is argued that the evidence of PW1, PW2 and exhibit PI has succinctly established these elements, it clear from the evidence of all prosecution witnesses that the accused persons by themselves and through their agents not only issued advertisement to the public but obtained money running into billions of naira in consequent of the advertisement. A flyer containing the advertisement issued to the public was tendered in evidence marked exhibit PI tendered through PW1. That from the above guiding principles, the question is, could it be said that there is no evidence so far adduced by the prosecution to support the essential elements of the case against the accused persons.

In arguing the offence of obtaining money by false pretence as contained in count 4 to 7 of the amended charge sheet, it is submitted that the prosecution by the evidence led and facts adduced as summarized above, has proved beyond reasonable doubt the guilt of the accused persons in the offence of obtaining money by false pretence contrary to section 1 (1) and section 1(3) of the Advanced Fee Fraud and other Fraud Related Offence Act 2006, as contained in count 1 of the charge sheet.

a) Section 1 (1) (a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 provides that-

b) "Any person who by any false pretence, and with intend to defraud obtains, from any other person, in Nigeria or in any other country for himself or any other person commits an offence under this Act".

c) Section 20 of the Act defines "false pretence" as

d) "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 then person making it knows to be false or does not believe to be true".

e) The ingredients of the offence of obtaining money by false pretence under section 1(3) and 1(1) of the Advance Fee Fraud & other related offences Act 2006 are;

1) That there must has been pretence
2) That the pretence emanated from the accused
3) That the said pretence was false
4) That the accused knew of the falsity or did not believe in its truth
5) That there was intention to defraud
6) That the thing is capable of being stolen
7) That the accused induced the owner to transfer his whole interest in the property.

See ALAKE V. STATE (1991) 7 NWLR (PT. 205) 567 AT 592. SEE ALSO F.R.N. V OGATIMINRIN (2005) Q.C.C.R. VOL.3.

Learned counsel further submits that **Justice Oyewole, J (supra) held in F.R.N. V OGATIMINRIN** thus:

> "that in the present context, the ingredients to be proved are that there must have been a pretence, that the pretence must have emanated from the accused and the pretence must have been false and to the knowledge of the accused, there must have been an intention to defraud the complainant of money by inducing him to transfer his whole ownership or interest in the money"

It is argued that indeed from the evidence adduced by the prosecution, there was, a false pretence to which PW1 and PW2, (and all the Mega Assets Managers Limited investors, including the investors mentioned in counts 4 to 7 of the charge sheet), fell victim due to their naivety and desire to make high profits as an investors, they were induced fraudulently by the Accused Persons directly and through their Agents to part with their money which runs to over several millions of

naira. And the Accused Persons has been positively, sufficiently and cogently linked to the scam/fraudulent deception by the evidence of PW1 and PW2 all the Documentary Evidence/Exhibits which were not contravened. **In ONWUDIWE v. FRN (2006) 10 NWLR (Pt. 988) 382 at Pg. 432, Niki Tobi, JSC** held as follows:

> *'The false pretence on the part of the Appellant was very clear. At the time he was in the so- called business conversation with Mrs. Justina Nkechi Nwaogu, he knew that neither the Ivory Merchant Bank Limited or himself had US$345, 000 to exchange for N16.56 million. And that made the pretence false. And because he had the intention to defraud, the Appellant kept away from PWI and PW2 the fact that he had no dollar value or content of the N16.56 million. By his action and conduct, Appellant had an intentional perversion of truth for the purpose of inducing PWI and PW2 to part with N16.56 million without a dollar."*

It is further submitted therefore that the accused persons had no legal authority or capacity to receive any funds or deposits from any member of public through the second accused. That the false pretence on the part of the accused persons is further made manifest by the fact that at the time of the so called business transaction the investors, the second accused person (Mega Assets Managers Limited) (1) was not licensed by CBN as a Bank (2) was not licensed by Securities and Exchange Commission to subscribe for funds from public to manage such funds (3) Does not have a license from CBN to carry out any Financial transaction. (4) The victims' money was not invested in any genuine business for the benefits of the invested but was converted to the personal use of the first accused person.

It is therefore learned counsel submission on this issue, that the Prosecution has established conclusively the elements of the offence of obtaining money by false pretence and has proved beyond

reasonable doubt the guilt of the accused person. According to **Justice M.L. SHUAIBU, in FRN v. NVENE (2006) Q.C.C.R volume 6 page 91.** Proof beyond reasonable doubt constitutes establishing the ingredients of a particular offence. (Section 138 of the Evidence Act referred).

In **EDAMINE V. STATE (1996) 3 NWLR (Pt. 438) 530 at 539,** it was stated that proof beyond reasonable doubt "Does not mean proof beyond shadow of doubt. The law would fail to protect the society if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it possible, but not in the least probable" the case is proved beyond reasonable doubt, but *nothing short of that will suffice. See also* ***R V. ANI NWAKARAFOR & ORS (1994) 10 WACA 221.***

Lastly, that the accused persons' learned counsel assertion that there was no NBA stamp and seal to the amended charge holds no water as same cannot be substantiated. Contrary to this assertion, there is a stamp and seal affixed to the amended charge and duly signed by Kabila Jonathan.

It is also submitted that in the light of the above testimonies of prosecution witnesses and exhibits tendered in evidence, that the prosecution has proved its case beyond reasonable doubt against the accused persons. And urged the court to so hold and convict the accused persons accordingly.

In the reply filed by the defendants it is further argued that in their Final Written Address, the Prosecution was silent on the salient issues raised in the Defendants' Final Written Address. Furthermore, the Prosecution failed to canvass argument with respect to Count one of the charge.

Thus this Reply to the Prosecution's Final Written Address to seek the determination of the Court, whether the said silence of the Prosecution over the salient issues raised amounts to an admission of the facts in those issues; and whether, by not canvassing argument on Count one of the charge the Prosecution has abandoned the said Count one. Two issues were raised:

i. Whether the silence of the Prosecution over issues of fact and competence of the charge filed against the Defendants amounts to an admission of the facts raised in those issues.

ii. Whether, by not canvassing argument on Count one of the charge filed against the Defendants, the Prosecution has abandoned the said Count one.

Both were argued seriatim.

It is argued that in canvassing arguments on Count two of the charge, the Defendants observed that the Prosecution brought the said Count two under section 58, BOFIA, 2004 without specifying which sub -section it was brought under. The Defendants however, assumed that the said count was brought pursuant to sub-section (1) of the said section and went ahead to argue on that ground.

That the Prosecution's Final Written Address afforded the Prosecution the opportunity of reacting to the issue raised. However, the Prosecution took the said issue for granted and without stating why it made the omission, or even confirming that it actually charged under the said sub-section, went ahead to argue on the assumption of the Defendants.

Further that with respect to Count three of the charge, the Prosecution was silent on the Defendants' argument that the said Count three is imprecise, on the ground that section 44 (1), BOFIA, 2004, pursuant to

which the said count was brought, is a general provision on restriction of advertisement for deposit, and does not provide for receiving deposit, as wrongly stated in the charge by the Prosecution. Defendants also argued that the portion of Count three on receiving deposit was *ultra vires* the provisions of the law creating the offence and thus should be struck out.

Further to the foregoing, the Defendants challenged the Prosecution to clearly identify any information in Exhibit P1, a marketing flier, calculated to lead directly or indirectly to the deposit of money by the public within the meaning of the Act. This, the Prosecution failed to do in the Written Address.

That in **TERAB V. LAWAN (1992) 3 NWLR (PT 231) 569 AT 590,** it was held that ; *the correct view of the law is that a party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. The court cannot assume the duty of tying each of a bundle of documentary exhibits to specific aspect of the case for a party when that party has not himself done so.*

Also in **Governor, Kwara State v. Eyitayo (1997) 2 NWLR (pt. 485) 118 at 129,** the court held that; *it is the duty of any party that tenders a document to establish before the court its relevance and what it expects the court to do with it.*

That the Defendants also argued in their Final Written Address that, assuming without conceding that the Defendants issued advertisement inviting the public to deposit money with it, within the meaning of section 44 (1), BOFIA as alleged by Prosecution, that section 45 (1), ISA, 2004 pursuant to which the Defendants were registered and section 68

(1), ISA, 2007, authorize a public company to make an invitation to the public to deposit money with it, if certain conditions were satisfied. The Prosecution was silent on this issue in their Address.

And that with respect to Counts four, five, six and seven, Prosecution was completely silent on the argument of the Defendants that under section 1 (1) (a) (b) of AFFOROA, 2006, there is a distinction between "obtaining" and "inducing delivery". The Prosecution also did not make any allusion to the Defendants' argument that the Prosecution brought the charge of obtaining by false pretence under the section of the law which creates the offence of inducing delivery by false pretence, thereby making the offence charged and evidence led in support of same to be at variance with the law under which it was charged.

Learned counsel for the defendant further argued that the Prosecution also did not make any effort whatsoever, to rebut the presumption of regularity in favour of the Defendants as argued in the Defendants' Address, pursuant to section 168 (1) of the Evidence Act.

That in trying to counter the argument of the Defendants in paragraph 4.42 of the Defendants' Final Written Address that they invested customer's money, the prosecution alleged that the Defendants did not invest in any genuine business. However, the Prosecution failed to establish or lead evidence to prove that the Money Market, Capital Market and tricycle business, in which the Defendants invested customer's money, are not genuine businesses.

That also the Prosecution was also silent on the Defendants' argument that the payments made by the Securities and Exchange Commission to investors with genuine claims when the business collapsed, pursuant to Part XIV of the ISA, 2007, which provides for Investor's Protection

Fund, negatives the element of fraud or intent to defraud as alleged by the Prosecution.

And that the Prosecution failed to address the argument that, the Defendants as Capital Market Operators whose businesses are regulated by the S.E.C, pursuant to ISA, 2007 which is the enabling law, ought not to have been charged under the BOFIA, 2004, the prosecution having not proved that the Defendants are subject to the direct supervision or regulation of the C.B.N.

The law is trite as stated in **AMICO CONST. CO. LTD. V. ACTEC INT'L LTD. [2015] 17 NWLR (PT. 1487) 146 AT 195-196** that; *a factor series of facts not denied are deemed to be admitted, Furthermore, whatever is admitted needs no further proof.*

Also, that silence in certain circumstances amounts to acceptance— **ZENON PETROLEUM & GAS LTD. V. IDRISIYYA (NIG.) LTD. (2006) ALL FWLR [PT. 312] 2121 AT 2140.**

It is submitted on the authorities that, the Prosecution's silence on salient issues of fact supported by evidence of the Defendants, is conclusive proof that the Prosecution has conceded those facts. We therefore urge the Court to hold that in the circumstance, the said silence amounts to an admission of those facts— **CAPPA & D'ALBERTO LTD. V. AKINTOLA (2003) FWLR [PT. 160] 1565 AT 1578.**

On issue 2, learned counsel submits that in **OMISORE V. AREGBESOLA [2015] 15 NWLR (PT. 1482) 205 AT 272-273,** the Supreme Court held thus; *the address of counsel is a summation of facts admitted, proved or deemed conceded in the trial and relevant law applicable to the facts. It is the means by which counsel seeks to persuade the court to lean in favour of his client. The purpose of address by counsel to a party*

is to demonstrate to the court and counsel for the adversary his opinion of the facts and the law as shown by the evidence before the court.

Also, in **ADEDEJI V. BELLO (2015) 6 NWLR (pt. 1454) 104 at 117,** it was held that; the address of a party after close of evidence is a part of the party's case. Counsel's address or submission is meant to elucidate on the pleadings, evidence led and the laws applicable in the circumstances.

That in their Address, the Defendants argued the fact that, as Capital Market Operators regulated by the S.E.C, pursuant to the ISA, 2007, Counts one, two and three of the charge ought not to be brought under the BOFIA, 2004. However in their Address, Prosecution was silent on that issue and also did not allude to, or canvass any argument on Count one of the charge. Learned counsel thus urged the court to hold that the Prosecution is deemed to have conceded the argument of the Defendants and abandoned Count one of the charge.

In **Ayo v. State [2015] 16 NWLR (pt. 1486) 531,** it was held that a lacuna in prosecutorial facts cannot ground a conviction.

Learned counsel again urged the Court to resolve issues 1 and 2 above in favour of the Defendants and hold that the Prosecution's silence on salient issues of fact which arose during trial, amounts to an admission of those facts and that, facts admitted need no further proof; and the Court should hold that by not alluding to, or canvassing argument on Count one of the charge, the Prosecution is deemed to have abandoned the said Count one.

On the strength of the foregoing, learned counsel urged the Court to dismiss the seven-count charge and acquit and discharge the Defendants.

Let the court take the liberty to quickly state that it read the allegations, the evidence of the Prosecution- PW1 and PW2 and the Exhibits; the court equally read the evidence of the defence.

Afortiori, the court read the address of learned counsel and virtually reproduced verbatim the allegation, the evidence and the address for the appreciation of what took place.

The court shall also quickly say, on issue two as to whether there is valid charge or not in law. The court is guided by the case of **YAKI .V. BAGUDU (SUPRA).**

The amended 7 count charge dated 14/2/19 signed by Habola Jonathan of EFCC, Enugu, even though without a seal, the same will not vitiate the proceedings in this matter that had been in court since 2013; it is on a valid charge.

Accordingly issue two of the defence is dismissed without any finality and the court upholds the Prosecution's arguments.

Having said that, what is the resolution of issue one which is the life wire of this case? Has the prosecution proved its case on all or any of the allegations before this court? A criminal trial is a serious business. Allegation that touches as the liberty of the citizen should be handled seriously with cogent and compelling evidence to enable the court act on same and curtail the liberty of the citizen.

Milfred Savage in his book, The Knives of Justice, alluded to what a criminal trial is liken to at Pp87 and 89 to the affect that-

> **"A trial is bricklaying to build a wall of proof. Each new bricks is delivered, ...set into place, and then it is tested-tapped, thumped, examined in a strong light-to see whether it is sound and solid or full of holes and crushing. By fitting brick on brick the state hopes**

at the end to be able to say there is a wall you cannot knock down. And the defence mending and probing for weakness, hopes to be able to counter that's a wall that won't stand up"

The author also likened Evidence in a trial to a ball when he stated:

"The *evidence never has there been a more deceptive word. It sounds so exact so definite; in fact it is so nebulous, so relative, so subject to interpretation. The evidence in a trial is like a football-it is displayed, manipulated, kicked around, ditched tight, passed forward and backward and sideways and by the end of the game it can be quite dirty. But it is the thing the game is played with from start to finish, the only thing with which one side or the other can* score."

Even though it has never been the law that it is the number of witness that will make a case succeed; No! It is the quality of Evidence and not the quantity of witness.

In the instant case the Prosecution called 2 witnesses, both from the EFCC and tendered copies of Exhibit without more.

This court's understanding of the law as regards the Exhibits dumped on the court, was stated by the Supreme court in the case of **YONGO V. COMMISSIONER OF POLICE (1992) 8 NWLR (Pt. 257) P 36 at 73-74 Para F-G and A-C .**

To this end, let me refer to the law as this court stated in the case of **SUIT NO. FHC/L/CS/455/2013; THE INDUSTRIAL TRAINING FUND GOVERNING COUNCIL V. KPMG PROFESSIONAL SERVICES** judgment of **Hon. Justice I. N. Buba** unreported of 25/5/16 to the effect that:

"It is not the duty of the court when it retires for judgment to start sorting out the case of the parties. Again this is what this court said in the case of **FEDERAL REPUBLIC OF NIGERIA V. NWANESINDU JUSTICE & 4 ORS CHARGE NO:FHC/PH/38C/2007** of 27/6/08 unreported:

"It is the law that where documentary evidence is tendered and admitted in court it is the duty of the prosecution to lead evidence in a criminal trial such as the one before the court to show the effect of the exhibits, their contents vis-a-vis the charge before the court. It is not the duty of the court when it retire to write its judgment to start inquiring into what happened and what did not happened that is beyond the duty of adjudication but that of investigation.

The duty of the court is to adjudicate and not to investigate on what the prosecution should do when exhibits are tendered in court. See the decision of Wali JSC in the case of **YONGO V COMMISSIONER OF POLICE (1992) 8 NWLR (Pt. 257) P 36 at 73-74 Para F-G and A-C respectively**. See also the case of **DURUMNIYA V. COMMISSIONER OF POLICE (1961) NRLR 70 at 73** while it was stated that:-

"The magistrate examined the books but apparently not in court for the records does not show that he observed or was shown any entries in court except a fair ....have mentioned and in examining them out of court as appears from his judgment he observed numerous points which ought to have been brought out in court at the hearing but were not in this, the magistrate was investigating it. A trial is not an investigation and, investigation is the function of a court. A trial is the public demonstration and testing before the court of the cases of the contesting parties. The demonstration is by assertion and evidence and testing by cross examination and argument"

The above statement of the law in the case of **DURUNYE V. COMMISSIONER OF POLICE (SUPRA).** He was referred to by the Supreme Court in the case of **YONGO V. COMMISSIONER OF POLICE (SUPRA)** by Wali JSC.

Without belabouring the issue n whether a judge can examine documents to sort out parties case outside the court the case of **OBM COMPANY LIMITED V MBAS LIMITED (2005) 10 WRN PI at PP25-26 lines 40** -5 Kalgo JSC held:-

"A Judge cannot sit down out of court on his own and examine documents to sort out the case of a party, it is the duty of the party itself to elicit such evidence in court through its witness especially in this case where various documents are involved. See DURUMUNYA V. COMMISSIONER OF POLICE (1961) NRNLR 70 at 73 (cited also by the appellant in the brief) which was followed by this court in ONUBODU V. AKIBU (1982) 7 SC 60 at 62"

On this issue, see also the case of DOMINIC V STATE (SUPRA) cited by learned counsel to the 1st accused. The case where the Supreme Court held thus:-

"The position of a judge adjudicating in a case in Nigeria adversary system is that of an unbiased umpire. His role is generally to determine from the facts before him whether the charge against the accused person has been proved, it the onus has not been discharged, it is the constitutional and judicial duty of the Judge to so declare. Not being a party, he is bound to do nothing to promote the case of either party. He is bound to do everything to achieve justice in the dispute between the parties before him and on the evidence presented"

I do with respect think it is not enough to say that some mails were printed from a mail box of an accused and that he is in possession of those mails. It is more than that in a criminal trial. The prosecution must go on to show by evidence from the documents that they are indeed seam mails and how they are same. The matter cannot be left to the court to conjecture."

Having said that, no single victim was also called to testify on the counts of AFF in count (4) (5) and (6) and count (7), all on charge as Advanced Fee Fraud.

In the circumstances, this court has no hesitation whatsoever in coming to the inevitable conclusion that they have not been proved, let alone beyond reasonable doubt. Accordingly the counts are hereby dismissed.

The coast is now clear for determination of counts one, two and three said to be in contravention of the Banks and other Financial Institutions Act; the counts had been reproduced at the inception of this judgment.

In a criminal trial, in our accusatorial system of administration of criminal justice, prosecution is a serious business, as stated by Milfred Savage (supra). Afortiori, the defence of an accused no matter how feeble, the court must consider.

In the case of **FRN V. MUSTERED SEED, CHARGE NO: FHC/ASB/29C/11** unreported Judgment of 7/1/13, learned counsel representing the EFCC, Mr. G.K. Latona did not only frame the right charge, but proceeded to graphically prove every allegation with mathematical precision and exactitude that left this court with no doubt whatsoever and it was argued inter alia:

> "The duty of proving the guilt of the Accused beyond reasonable doubt, rest squarely on the prosecution's head and there is no corresponding duty on the Accused to prove their innocence. See **STEPHEN OTEKI V. A.G. BENDEL (1986) 2 NWLR (Pt. 24) 648; MUMIM V. THE STATE (1975) 6 SC. In Re MAIDUGURI (1961) All NLR 673 (1961) 2 SC NLR 341; OKORO V. STATE (1988) 5 NLR (Pt. 94) 255 and ADEYEMI V. STATE (1991) 8 NWLR 39.**
>
> This Court has no doubt that the law by dint of Section 2(2) of SOFIA is that:
>
> *"Any person who transacts banking business without a valid license under this Act is guilty of an offence and liable on conviction to imprisonment for a term not exceeding ten years or to a fine of N2,000,000, or to both such imprisonment and fine."*
>
> Thus to prove the above offence, the prosecution must show that:
>
> - There is a person, natural or Juristic

- The person transacts or engages in banking business
- The banking business is carried on without a valid license issued by the Central Bank of Nigeria.

Section 66 of BOFIA further states that banking business means the business of receiving deposit on current account, savings account or other similar account, paying or collecting charges, drawn by or paid in by customer, provision of finance or such other business as the Governor may by order published in the Federal Gazette, designate as banking business.

This Court agrees that above definition reveals that banking business is broad and encompasses several areas which include:

- Receipt of deposits on current account, savings account or other similar account.
- Paying or collecting cheques, drawn by or paid in by customers Provision of finance.
- Such other business as the Governor or any of the Deputy Governors of the Central Bank of Nigeria may by order publish in the Federal Gazette designate as banking business.

To the prosecution that contention is in essence, the itemized businesses are disjunctive and not inclusive. In recognition of this position, Section 66 provides for the existence of different banks engaged in various aspects of banking business like Commercial Banks, Community Bank, Merchant Bank, Profit and Loss Sharing Bank and Specialized Banks. Counsel for prosecution are fortified in this view by the provision of Section 2(1) of BOFIA which clearly stipulates that no person shall carry on ANY banking business in Nigeria except it is a duly incorporated company which holds a valid banking license from the Central Bank of Nigeria. Thus, transacting banking business without valid license of the extant provisions of BOFIA can only be considered by a community reading of the relevant sections quoted above. As the Court of Appeal noted in **NWAIGWE V. F.R.N.** (2009) **16 NWLR (Pt.1166) at 191 paragraph** E. a court of law construing a statute must consider and give effect to other related provisions of the same enactment in order to interpret the law correctly.

On the other hand, the defence posits and agrees with the ingredients stated by the prosecution and went on to argue that:

"In this case, it is not in dispute that the 1st Accused person is a juristic person and the 2nd and 3rd Accused are natural persons. However, the next ingredient to be proved by the prosecution is whether from the totality of both oral and documentary evidence tendered before this court, the Ist Accused actually carried out or transacted banking business. That takes to the point as to whether if there was any such banking transaction; it was carried out without a valid license. It will be expedient to know what the concept of banking is and what constitutes a banking business for us to be able to appreciate the full import of the provisions of Section 2(2) of the Banks and Other Financial institutions Act which is under reference in this case. This court read the relevant Section in relation to count 1 and the ingredient as agreed by both the prosecution and the defence. Indeed it is true that the law was stated.

In the case **of WEMA BANK PLC. V. OSILARU** (2008) **10 NWLR (Pt. 1094) C A. Page 150 at Page 182, paragraphs D-E Ratio 12** thereof, it was held that:

"The following are the concepts of banking:

(a) That a Bank is a legal entity statutorily regulated and statutorily backed.

(b)That ownership of deposits pass to the bank which can deal with the same without reference to the customer, except as overdraft or loan and except where the bank acts a bailee for the custody of securities like gold, stock and share certificates of depositors etc.

(c) That the bank is profit oriented...

"For the purpose of this Act, a person shall be deemed to be receiving money as deposits.

If the person accepts deposits from the general public as a feature of its business or if it issues an advertisement or solicits for such deposit;

Notwithstanding that it receives moneys as deposits which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates or for the payment of interest or dividend on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable."

Section 1(6) of the Banks and Other Financial Institutions Act, provides thus:

> ***"Notwithstanding anything contained in this Section to the contrary the receiving of moneys against any issue of shares and debentures offered to the public in accordance with any enactment in force within the Federation shall not be deemed to constitute receiving moneys as deposits for the purposes of this Act."***

The Defence laboured to submit that from the collective construction of the foregoing provisions of Section 1 (5)(6), 2(2) and 66 of the Banks and Other Financial Institutions Act with regard to the meaning of the word 'deposit', that merely receiving monetary deposit by a person does not constitute a banking business. This is because in the normal course of business people deposit monies with their customers for various purposes. For instance, a customer can deposit a particular sum of money with a car dealer as part payment for a car he intends to buy. This receipt of that monetary deposit by the car dealer from the customer does not, ipso facto, qualify the transaction to be a banking business as contemplated by the provisions of Section 2(2) of the Banks and Other Financial Institutions Act. It is the means of receiving the deposit and purpose for which is in received that qualifies it as a banking business. For instance, in EXHIBIT "D14" is the Bye-laws of the MUSTARD SEED 200 MEGA MULTI-PURPOSE CO-OPERATIVE SOCEITY LIMITED. Section 37(4) of

Mustard Seed 200 Mega Multi-Purpose Cooperative Society Limited stipulates that one of the sources of funds of the co-operative society is receiving 'deposit' and loans from non-members. The Delta State Bye-Laws of Co-operative Societies (which is equally tendered in evidence in this case) also has a similar provision for co-operative societies to accept 'deposits'. That does not automatically transform them into a bank or qualify their business a banking business.

It is further submitted that for the receipt of deposit to qualify as banking business as contemplated by the provisions of Section 2(2) of the Banks and Other Financial Institutions Act, such a deposit must have been received by the recipient on current account, saving accounts or other similar account like Executive Savings Account opened with the recipient. Therefore, it is the mode/means by which the deposit is received in a given transaction and the purpose for which the money is being deposited that determines whether the transaction is a banking business of not. It is submitted also that deposit can be made for the purpose of buying a house or any other chattel. That type of deposit does not qualify as a banking business. On the other hand where a person deposits money with somebody on either current accounts, saving accounts or other similar account like Executive Savings Account for safe keeping and with the intention of withdrawing the money whenever he desires, that may qualify as banking business under Sections 2(2) and 66 of the Banks and Other Financial Institutions Act. In the instant case, PWs 1 and 2 admitted that they issue cheques and paid the monies into the accounts they opened with the 1st Accused. That is the position of the defence.

In the case of **C.B.N** V. **UKPONG (2006) 13 NWLR (Pt. 998)** 555 **at 571, paras. C-E, *Fabiyij*** J.C.A(as he then was) observed that:

"In construing a statute all sections must be taken into consideration to arrive at a right interpretation of the same. A section of the statute should not be taken in isolation because doing so will occasion violence on the law. In the instant case, the respondent in interpreting the Central Bank Act stated that the

duties of the appellant was purely commercial or for profit purposes without adverting his mind to section 2 of the Central Bank Act, which states the purpose for establishing Central Bank of Nigeria"

From the totality of the oral and documentary evidence before the court the *following* facts are evidence and beyond any argument and beyond any doubt. *By* Exhibit P24 particularly the memorandum of the company. The objects for which the company is established include;

1) Acceptance of various types of deposits, including savings, time, target and demand deposits from individuals, groups and associations, except public sector deposits (government).
2) To act as agents for any person or persons, whether for the purpose of collecting and paying monies, or for any purpose whatsoever.
3) Provision of credit to its customers, including formal and informal self-help groups, individuals and associations.
4) To provide all financial services which the Company may wish to provide and which it may lawfully provide,

In Exhibit P18, 3rd Accused (DW1) also wrote thus:

"Mustard Seed Micro Investment Ltd is registered with the Corporate Affairs Commission as a micro finance institution to receive debentures from the public and invest same in micro loans and micro businesses, Debentures are deposits from investors or specified interest rates to be paid monthly or annually whether on a short term or a long term basis. The business was carried out from June 2008 when the company was registered".

Similarly in Exhibit P16, DW1 also freely wrote:

"The company run two schemes under the mass partnership scheme one for time deposits for three, six and twelve months and a daily savings scheme for a minimum of six months all with a 4% monthly interest and later changed to 3% percent. The money received were applied to loans and invested in business ventures like Solace Fast Food Ltd, Solace Micro Finance Bank and Vision

Global Building Concept Ltd all of which were to raise funds to pay the interest and repay the capital at maturity".

It is true and as rightly submitted that DW1 admitted the aforesaid facts. Also on record, 2nd Accused person confirmed DW1 (3rd Accused person) as a truthful, reliable and trustworthy person who has no cause to lie against him and the 1 Accused Company.

It is also true and as rightly argued by the prosecution that PW4 and PW5 also testified that investigations established that the 1st Accused Company accepted deposits from members of the public to which it paid interest.

So it is clear that the principal business of 1st Accused Company is acceptance of deposits for which it paid interest initially at 4% per month and later at 3% and giving out of loans to members of the public. This is one of the business of banking under BOFIA and by dint of Section 1(5) of BOFIA clearly provides:

"a person shall be deemed to be receiving money as deposits - (a) If the person accepts deposits from the general public is a feature of the business or if it issues an advertisement or solicits for such deposit purposes.

(b)Notwithstanding that it receives moneys as deposits which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates or for the payment of interest or dividend on the amount deposited at specified intervals or otherwise, or that such certificates are transferable"

Section 66 of the same law further reinforces that deposit:

"Means money lodged with any person whether or not for the purpose of any interest or dividend and whether or not such money is repayable upon demand upon a given period of notice or upon a fixed date" This court agrees that in this respect, the reference to Section 1(6) of BOFIA by defence serves no useful

purpose. DW1 above clearly explained that their own debenture means deposits of money with 1st Accused company. So Section 1 (6) is inapplicable. The same goes for his reference to the definition of deposit in the Oxford Advanced Learners Dictionary.

This court agrees with Mr. G.K. Latona, that the cases of WEMA BANK PLC V. OSILARU and G.E.B PLC V. ODUKWU (SUPRA) are not relevant to the present situation. They deal with facts different from the situation herein. As the Supreme Court noted in **OKOYE V. CENRE POINT MERCHANT BANK LTD (2008) 15 NWLR (Pt.1110) 335 at 362, paragraphs A - B,** the principles of precedent and stare decisis cannot be determined in isolation of the facts of a case. As a matter of law, the facts of a case denote the principle of stare decisis. In the instant case, the Court of Appeal was right when it refused to apply the decision of the Supreme Court in **BEN THOMAS HOTELS LTD V. SEBI FURNITURE** as that case was decided on facts different from those before the Court of Appeal. This court agrees that the argument of Learned Counsel for the defence in relation to Exhibit P24 also amounts to raising red herring. Firstly, they were in court when PW6, a staff of the Corporate Affairs Commission tendered Exhibit P24 a public document in their custody. The law is that once a public document is signed and certified as required by law, it becomes admissible on production and it is unnecessary to call a witness to prove custody or to verify the document. Such a **AREGBESOLA V. OYINLOLA (2009) 4 NWLR (Pt. 1162) 429 at 472.** document is presumed to be genuine. See

It is also apposite rightly submitted in my view that 2nd and 3rd Accused in spite of their protestations failed to produce their own version of the memorandum and articles of the 1st Accused Company. Though there is no duty on them to proof their innocence. A party who puts up a case, the proof of which requires some evidence that is within its reach, and which it has refused to produce can be presumed to believe that such evidence if produced would be unfavourable to the party. See **FIRST BANK V. ASSOSCIATED MOTORES (1998) NWLR (PT. 570) 485; KUINAGANAM V. KYARI (2012) FWLR (PT. 126) 817 AT 834.**

However, in the circumstances of this case, beyond PW1 saying the defendants were running a Ponzi Scheme, and the exhibits dumped on the court, nothing was done with a view to showing how the defendants contravened the provisions of the BOFIA.

To this court, heads or tail, the Prosecution has not been able to proof the allegations in counts (1, (2) and (3) before this court.The court upholds the evidence and argument of the defence.

What is this court saying ultimately?

This court holds that the Prosecution failed to proof the case on all the 7 counts against the defendants; therefore the defendants be and are hereby discharged and acquitted from the 7 counts as contained in the amended charge.

It is better for 99 criminals to escape than for one innocent man to be punished, for that will bring calamity to the society. Kayode Eso JSC says, law and justice are twin lions, born on the same day, which is stronger depends on the judge.

FEDERAL HIGH COURT
ENUGU
Certified True Copy
SIGNATURE
NAME
REGISTRAR
DATE

HON. JUSTICE I.N. BUBA
JUDGE
12/5/2020

FEDERAL HIGH COURT ENUGU
CASHIER SIGN
Date 4/9/2020

JUDGMENT READ AND DELIVERED IN OPEN COURT.

Defendant absent

M.A. SHEHU ESQ for the Prosecution

EJIKE UZOR ESQ for the Defendant

HON. JUSTICE I.N. BUBA