

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 13TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP:
HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

Case No: SS/01^c/2020.

Between

Federal Republic of Nigeria-----Complainant

VS

Amina Kabo (a.k.a Fauziyya)-----Defendant

B. M. Balarabe Esq. with Habila Jonathan Esq: For the prosecution.

Shamsu A Dauda Esq: for the defendant

B.M. Balarabe Esq: Defendant is in court and the case for judgment.

We are ready.

Shamsu A Dauda Esq: We are ready.

JUDGEMENT

By a three <3> counts charge dated 16th January, 2020 and filed on the 17th of January, 2020, signed by one Mohammed M. Gambo Esq of Economic and Financial Crimes Commission, on behalf of the Federal Republic of Nigeria, the defendant Amina Kabo {a.k.a Fauziyya} was

arraigned before this court on the 28th of January, 2020 for the offences of obtaining property by false pretence contrary to section 1 (1) (a) of the advance fee fraud and other fraud related offences Act, 2006 and punishable under section 1 (3) of the same Act, and the forgery for the remaining two {2} counts charge contrary to section 349 of the Sokoto State Penal Code Law No. 4 of 2019.

The said three {3} charges were read and explained to the defendant in Hausa language to the satisfaction of the court because the defendant speaks and understand Hausa language.

The defendant pleaded not guilty to the three {3} charges read and explained to her. The three {3} charges denied by the defendant are produced below as follows:-

"COUNT ONE

That you Amina Kabo (F) between the 3rd and 5th day of December, 2019 in Sokoto within the Judicial Division of the High Court of Justice of Sokoto State with intent to defraud, did obtain a total sum of ~~N~~907,500:00 (Nine hundred and

seven thousand, five hundred naira) from unsuspecting public of Tamaje Metropolis of Sokoto State whom you falsely represented yourself to as operating a microfinance bank by name **Olive Microfinance Bank (Olive MFB Loan)** whereby you fraudulently collected various sums of money from members of the public, a pretence you knew to be false and thereby you committed an offence contrary to section 1 (1) (a) of the advance fee fraud and other fraud related offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT TWO

That you Amina Kabo (F) between the 3rd and 4th day of December, 2019 in Sokoto within the Judicial Division of the High Court of Justice of Sokoto State with intend to defraud, did use as genuine forged documents titled **"OLIVE MFB LOAN - HELP GROW YOUR BUSINESS"** to support the claim that the said document was from Olive Microfinance Bank giving out loans to unsuspecting public and you thereby committed an

offence of using as genuine a forged document contrary to section 351 and punishable under section 349 of the Sokoto State Penal Code Law, 2019.

COUNT THREE

That you Amina Kabo (F) between on or about the 4th day of December, 2019 in Sokoto within the Judicial Division of the High Court of Justice of Sokoto state with intent to defraud possessed a forged document titled "**OLIVE MICRO FINANCE BANK - Letter of Notification to D.P.O, The Nigeria Police Force Divisional Police Office U/Rogo Division Sokoto State**" to support the claim that the said document was from Olive Micro Finance Bank giving out loans to the unsuspecting public and you thereby committed an offence of possession of forged record contrary to section 351 and punishable under section 349 of the Sokoto State Penal Code Law, 2019."

After plea of not guilty of the defendant was taken on 28/1/2020, the case was adjourned to 30/1/2020 for hearing.

However, on 30/1/2020, the prosecuting counsel made an application for amendment of the charges earlier filed and dated 16/1/2020 with the new amended charge which was dated 27/1/2020 and signed by Mohammed M. Gambo Esq. The application which was not opposed by the defence counsel Mr. Shamsu A. Dauda Esq, was brought pursuant to provisions of section 215 of the Administration of Criminal Justice Law, 2019 of Sokoto State. Section 215 (1) of the Sokoto State Administration of Criminal Justice Law No. 8 of 2019, provides:-

"A court may permit an alteration or amendment to charge or framing of a new charge at any time before Judgment is pronounced."

In his submission, the prosecuting counsel submitted that the amendment was made in line with the best interest of Justice and in the light of the general circumstances surrounding the case.

After hearing both the prosecuting and the defence counsel, the application to amend the earlier charge dated 16/1/2020 with the amended new charge dated 27/1/2020, was grant in exercise of the judicial

discretion of this court provided by section 215 (1) of the Sokoto State Administration of Criminal Justice Law No. 8 of 2019, and the inherent powers of this court as provided under section 6 (6) (b) of the 1999 constitution of the Federal Republic of Nigeria as amended. The amended charge that has only one count charge, reads as follows:-

"That you Amina Kabo (F) between the 3^d and 5th day of December, 2019 in Sokoto within Judicial Division of the High Court of Justice of Sokoto State with intent to defraud, did obtain a total sum of N907,500:00 (Nine hundred and seven thousand, five hundred naira) from unsuspecting public of Tamaje Metropolis of Sokoto State whom you falsely represented yourself to as operating a microfinance bank (Olive MFB Loan) whereby you dishonestly collected various sums of money from members of the public, a pretence you knew to be false and thereby committed an offence of cheating contrary to section 310 of the Sokoto State penal code law, 2019 and punishable under section 311 of the same law."

Dated this 27th day January, 2020

(Singed)

Judge

Mohammed M. Gambo Esq

Buhari M. Balarabe Esq

Mela M. Gwani Esq

Habila Jonathan Esq

Prosecution Counsel

Economic and Financial Crimes Commission, No. 7, super quarters off Sama Road, Tsafe Road GRA Sokoto."

In compliance with the requirement of section 215 (2) of the Sokoto State Administration of Criminal Justice Law No. 8 of 2019, a fresh plea of the defendant to the amended charge was taken to which she pleaded guilty after she was informed of her rights under the provisions of section 269 (7) (a) of the same law. After the plea of guilty of the defendant to the new amended charge was taken, the prosecuting counsel informed the court by way of application that they intended to call one {1} witness who was in court on that day and also tender same exhibits to satisfy the court that the

ded to admit the truth of all the
elements of the offence to which she pleaded

Defence counsel did not object to the application
of prosecuting counsel, and so the application to call
said witness who was then in court, was granted.

The prosecution called the one witness and
tendered nine {9} exhibits with a view to substantiate
that the defendant by her plea of guilty, truly intended
to plead guilty to the particulars of the charge as stated
by the prosecution.

Exhibit EFCC AK1 is the Corporate Affairs Commission's
Certificate of incorporation No. RC 1609875 bearing the
name of "Olive Microfinance Bank.

Exhibit EFCC AK2 roman numbers i - v, are 5 Individual,
Account Opening forms three {3} of which were filled
with the names of Sani Shamsu, Hajar Abubakar and
Abdullahi Nafi'u with their respective passports affixed,
while the remaining two {2} are empty.

Exhibit EFCC AK3, roman (i)-(ii) are documents relating
to registration for the loan, one year loan duration
indicator and two years loan duration indicator giving

details of registration fees as well as the returns that will be gotten on weekly, monthly, quarterly and yearly respectively.

Exhibit EFCC AK4, is the banner that was displayed at the premises of the defendant advertising the Olive Microfinance Bank.

Exhibit EFCC AK5 is the statement of the defendant made on the 4th of December, 2019.

Exhibit EFCC AK6 is the statement of the defendant made on the 5th of December, 2019.

Exhibit EFCC AK7 is the statement of the defendant made on the 6th of December, 2019.

Exhibit EFCC AK8 is the statement of the defendant made on the 10th of December, 2019.

Exhibit EFCC AK9 is the statement of the defendant made on the 12th of December, 2019.

All the exhibits were admitted through the sole witness (PW1 Naziru Aminu Shehu) and were admitted in evidence without any objection by the defence.

The prosecution's case is as presented by the evidence of PW1 and is as follows:-

PW1: My name is Naziru Aminu Shehu. I live at No. 7A, super quarters, off Sama Road, Sokoto. I work with EFCC as an investigator. My schedule of duties include investigation of criminal cases assigned to section or assigned to me by my superiors, going to court to give evidence when the need arises among others.

I know the defendant in this case sometimes in September, 2019 when the commission received an intelligent report of suspicious activities going around Tamaje Area Sokoto. The report was to the effect that some people around Tamaje area including the defendant were collecting money from people fraudulently ranging from ~~N~~5,000, ~~N~~7,000 to ~~N~~12,000 under the name of Olive Microfinance Bank by convincing their victims that the Bank will give them a loan depending on what you pay as your registration fees. Upon receiving the complaint, the complaint was referred to our section where we work as a team under the leadership of Afanda Bashir Emmanuel with me, Aminu Umar Yabo, Kelvin and Gideon as members and I was asked to lead as sub team on surveillance to the area. Upon reaching the area, we confirmed that the activities were actually going on. We

also interviewed same people in the area around the office of the defendant. From there, we entered into the office of the defendant with a view to invite her to our office, and inside the office, we recovered a frame containing corporate affairs commission certificate of Olive Microfinance Bank, forms containing the name of Olive Microfinance Bank, same were filled with names of same people and some empty, a book containing the names of people that paid money and we carried the items with the defendant to our office where she was interviewed. She was given the opportunity to call any witness before her statement is taken which she did. She called her uncle and in his presence, we administer a word of caution to the defendant and explained to her in English language because she said she can speak English. While the statement was taken, I was there with my other team members on 4/12/2019 she signed under the word of caution and thereafter gave her statement voluntarily. We repeated the same procedure on 5th, 6th, 10th and 12th December, 2019 when she was making her additional statements. In all the statements, she signed and I countersigned the statements. In the course of

our investigation, we detected that the defendant collected the total sum of ₦907,500 from 108 people under the pretence that she will give them a loan under her Olive Microfinance Bank which turns out to be false. Under Cross examination, PW1 said the defendant was invited to their office after they visited the scene of crime which appeared to be a commercial area because the place is business plaza. He said the recovered items belong to the defendant because the pictures of the recovered items were seen in her phone and email in addition to the defendant's confirmation of ownership of the recovered items. He further said it was the defendant who gave them the password of her email to enable them accesses it.

At the close of the prosecution's case, the defendant opted not to give evidence by resting their case on that of the prosecution. Thereafter the case was set down for address. The prosecution did not file any written address despite the fact that the defendant filed their written address which they were served.

The learned defence counsel Mr. Shamsu A. Dauda Esq formulated one issue for determination as follows:-

"Whether the defendant is entitled to be given an option of fine instead of imprisonment based on her plea of guilty for the offence of cheating contrary to section 311 of the Sokoto State Penal Code Law, 2019."

Learned counsel for the defence, submitted that on the authority of **Apamaje V. State (1997) 3 NWLR pt 493 p 209**, where a defendant pleaded guilty to a non-capital offence, the duty falls on court to exercise its power faithfully in sentencing the defendant with option of fine either on request or even without request. He further submitted in his written address that the defendant changed her plea out of remorse for repentance as she was lured by poverty. She is a first time offender and the only surviving daughter of her parents.

From the amended charge with which the defendant was arraigned on the 3rd day of February 2020 the defendant was alleged to have committed the offence of cheating contrary to section 310 and punishable under section 311 of the Sokoto State Penal Code Law No. 4 of 2019

The sections provide:-

"310 Whoever by deceiving any person:

- (a) Fraudulently or dishonestly induces the person so deceived to deliver any property to himself or any other person or to consent that any person shall retain any property; or*
- (b) Intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property; is said to cheat"*

"311 Whoever cheats shall be punished with imprisonment which shall not be less than ten years or with fine of not less than two hundred thousand naira or with both."

From the wordings of the sections it is my humble view that to sustain a conviction for the offence of cheating contrary to section 310 punishable under section 311 of the Sokoto state penal code law No. 4 of 2019, the prosecution must establish the following elements:-

1. That the defendant deceived someone fraudulently.
2. That the person deceived delivered certain property to the defendant.
3. That the person deceived was induced by the defendant.

- Notes on the penal code law, 4th edition by S.S Richardson pg 253

Section 310 (a) of Sokoto state penal code law No. 4 of 2019.

I shall now consider the evidence adduced by the prosecution in relation to the ingredients of the offence of cheating enumerated above to see whether or not the prosecution has proved the guilt of the defendant beyond reasonable doubt as required by section 135 of the Evidence Act, 2011.

- Aruna V. State (1990)6NWLR PT 153 P 170
- Ayuba Ishan V. State (1991)1NWLR PT 172 at 180.

As to the 1st element, PW1 testified that sometimes in September, 2019 they detected the fraudulent activities of the defendant around Tamaje Area, Sokoto by which many people's money ranging from ~~N~~5,000,

~~₦7,000~~ - ~~₦12,000~~ were fraudulently collected under the name of Olive microfinance bank by convincing people that the bank will give them a loan depending on what one pays as his registration fees.

To deceive members of the public, the defendant forged a certificate of incorporation purporting same to have been issued by corporate Affairs commission bearing the name of Olive Microfinance bank, and displayed same in her office to convince the general public that Olive Microfinance bank is an incorporated financial institution. The certificate was tendered and admitted as exhibit EFCC AK1

The defendant in her additional Statement of 10th December, 2019 marked as Exhibit EFCC AK 8 stated as follows:-

"The Corporate Affairs Commission certificate of incorporation

Recovered from my office certifying

Olive Microfinance Bank was done by me."

In the light of the foregoing, I therefore hold the view that the prosecution has proved the 1st element of the offence beyond reasonable doubt.

On the second element, PW 1 testified to the fact that in the course of their investigation, they detected that the defendant Collected the sum of ~~N~~**₦907,500** from 108 people under the pretence that she will give them loan under her Olive Microfinance Bank.

This piece of evidence was confirmed by the defendant in her additional statement made on 6th of December, 2019 tendered and admitted as exhibit EFCC AK7 where she stated as follows:-

*"The total number of people that paid money to Olive Microfinance Bank are one hundred and eight people and the sum total of money collected was ~~A~~**₦907,500?**"*

On this 2nd element of the offence, it is my humble view that there is no doubt that the sum of ~~A~~**₦907,500** is a movable property. Consequently I therefore hold the view that the prosecution has proved this element of the offence beyond reasonable doubt.

As to the 3rd element the defendant induced her 108 victims into releasing their funds when she gave them the individual account opening forms admitted and marked as exhibit EFCC AK2, and the displaying of the

banner admitted and marked as exhibit EFCC AK4 around the area where the purported Olive Microfinance Bank is situated. The defendant used the purported bank to defraud her victims. She confirmed this fact in her additional statement of 6th December, 2019 admitted and marked as exhibit EFCC AK7 where she stated this:-

"The Olive Microfinance Bank is the institution I opened and use in getting the money."

In view of the above, I hold the view that the prosecution has also proved the 3rd and last element of this offence beyond reasonable doubt.

Apart from the confessional nature of the defendant's statements of 4th, 5th, 6th, 10th and 12th tendered and admitted as exhibits EFCC AK5, EFCC AK6, EFCC AK7, EFCC AK8 and EFCC AK9 respectively, the defendant also pleaded guilty to the charge after same has been read and explained to her.

The issue for determination now is:-

"Whether the prosecution has proved its case beyond reasonable doubt regard being had to the evidence adduced before this court."

It is trite law that there are three {3} ways by which the prosecution can prove its case, and this includes:-

- (i) Confessional statement
- (ii) Direct evidence account of an eye witness and
- (iii) Circumstantial evidence.

- Haruna V. AGF {2012} 32 WRN 1

- Idowu V. State {2012} 35 WRN 1

Confession is the strongest evidence of guilt on the part of a person who has been accused of committing a crime.

It is a ground upon which a court can convict a defendant as in this case, especially where the confessional statement is direct, positive and supported by other evidence outside the confession.

- State V. Usman Isah {2013} 8 NCC 320

- Ajibade V. State {2013} 8 NCC 221

- Mamman V. FRN {2013} 53 SCNQR pt 2 p

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From the substance of all the statements of the defendant previously referred to in this judgment, the defendant admitted and/or confessed to the commission of the alleged offence of cheating against her giving the

graphic details of how she started everything to the label of committing the crime even went to the extent of exposing how she acquired the experience, this is in addition to her plea of guilty as charged.

Again at the close of the prosecution's case, the defence opted not to give evidence by resting their case on that of the prosecution. There is a very serious danger in that type of action as clearly spelt out by the Supreme Court in the case of **Ajibade V. State {2013} 8 NCC 221 at 246-247** where it was held:

"—an accused person who rests his case on that of the prosecution has taken a gamble and a risk. He has in other words shut out himself and will have no one to blame. This is because, he does not wish to place any fact before the trial court. It also confirms that he does not wish to explain any facts or rebut any allegation made against him. The rating of the effect is not less than admission of the evidence led by the prosecution."

Similarly, in **Ali V. State {1988} 1 NWLR pt 68 p 1 at 12**, the Supreme Court also held:-

"---- it means no more than that the accused does not wish to place any facts before the court other than those which the prosecution had presented in evidence. It also signifies that the accused is satisfied with the evidence given and does not wish to explain any fact to rebut any allegation made against him."

In view of all the foregoing, I hold the view that the prosecution has proved all the elements of the offence of cheating contrary to section 310 and punishable under section 311 of the Sokoto State Penal Code Law No. 4 of 2019.

I also hold the view that the prosecution having proved all the elements of the offence, has also proved the offence against the defendant beyond reasonable doubt.

- **Ajayi V. State {2013} 53 NSCQR 632**
- **Ikaria V. State {2013} 8 NCC 248**
- **Alibi V. State {1993} 7 NWLR pt 307 p 511**

From the totality of the entire prosecution's led evidence which had remain undiluted even under cross examination by the defence, the confessional statements of the defendant which was made voluntarily

admitting her guilt to the commission of the offence leveled against her and corroborated by her plea of guilt in the open court and other available pieces of evidence earlier mention and referred, I hold the view that the prosecution has established all the essential elements of the offence of cheating contrary to section 310 and punishable under section 311 of the Sokoto State Penal Code Law No. 4 of 2019, and has proved its case beyond reasonable doubt and is therefore hereby convicted as charged.

13/02/2020

ALLOCUTUS

Court: You have heard the Judgment I have just read out to you. I am going to sentence you for the offence you have been convicted. You have right to say something in mitigation. You also have right to call witnesses to character if any.

Shamsu A. Dauda Esq: The convict is in her prime age, changed her plea out of remorse for repentance, the only

surviving daughter of the family and bread winner. She has been in detention since when she was arraigned before this court. We urge this court to temper Justice with mercy.

SENTENCE

Upon the plea of the convict for leniency, I have taken into consideration that the convict has been in detention since when she was arraigned before this court, she is also in her prime age in which she supposed to be useful to the society, she changed her plea out of remorse for repentance, she is the only surviving daughter of her parents and the bread winner of her family. It is for these reasons that I consider expedient to be lenient in passing the sentence against the convict.

It is trite law that a trial court can pass a sentence less than the provided by the law having regards to the facts and circumstances of case.

- **Musa V. state (2012) 3 NWLR 59**
- **Amoshina V. state (2011) 14 NWLR pt 1268 p**

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Similarly, the power to impose fine in criminal cases is a discretionary power of the trial court which the court may exercise judicially and judiciously.

- **Nwude V. FRN (2016) 5 NWLR pt 1506 pg 471**
- **Omokuwajo V. FRN (2013) 9NWLR**
- **Apanadari V. state (1997) 3 NWLR p.289**

It has been opined that financial crimes sentencing can achieve retribution and deterrence by a combination of an imprisonment and /or option of fine with forfeiture of the proceeds of crimes that will prevent the offender from retaining the proceed of crime. The importance of the application of the principles of retributive justice (especially in financial crimes), and the centrality of it to effective criminal justice system, was stated by the supreme court of America in the case of **Gregg V.**

Georgia (1976) Us 153 at 183 where Stewart J said :

" The institution for retribution, is part of the nature of man and channelling that instinct in the administration of justice of criminal justice, serves an important purpose in promoting the stability of a society govern by the law."

In view of the above, the convict is hereby sentenced, to 3 years imprisonment with effect from the date the convict was first remanded, or pay an option of fine of ₦30,000 only. The convict is also adjudged to refund the ₦907,500 to the 108 people who were the Victims of her Crime.

You have right of appeal to court of Appeal Sokoto within 3 months from today.

Signed

Judge

13/02/2020

COUNSEL:

Mohammed M. Gambo Esq with

Buhari M. Balarabe Esq

Mela M. Gwani Esq

Habila Jonathan Esq for prosecution

Shamsu A. Dauda Esq for Defendant