

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 20TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP:
HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

Case No: SS/03^C/2020.

Between

Federal Republic of Nigeria-----Complainant

VS

Wakili Yusuf Oladapo-----Defendant

B. M. Balarabe PLO: For the prosecution.

Shamsu A Dauda Esq. for the defendant and the defendant is present
before the court.

JUDGEMENT

By one <1> count charge dated 22nd January, 2020 and filed on the 23rd of January, 2020, signed by one Mohammed M. Gambo Esq of Economic and Financial Crimes Commission, Sokoto Zonal office, on behalf of the Federal Republic of Nigeria, the defendant Wakili Yusuf Oladapo was arraigned before this court on the 28th of January, 2020 for the offences of obtaining

money 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.

The charge was read and explained to the defendant to the satisfaction of the court in English language because the defendant speaks and understand English language.

The defendant pleaded not guilty to the charge read and explained to him the charge denied by the defendant is reproduced below as follows:-

"CHARGE

That you Wakili Yusuf Oladapo (m) between the 13th and 24 day of September, 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~~**120,000.00K** (one hundred and twenty thousand naira) from Aladetan Micheal Olubodunrin whom you falsely represented yourself to him as being a staff of National Youth Service Corps (NYSC) who could have him redeveloped to a state of his choice, a pretence you know to be false

and thereby 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."

After the plea of not guilty of the defendant was taken on the 28/1/2020 the case was adjourned to 3/2/2020 for hearing.

However, on 3/2/2020, the prosecuting counsel made an application to amend the charge earlier filed on the 23/1/2020 but dated 22/1/2020 with the new amended charge which was dated 27/1/2020 and file on the 28/1/2020.

The application was not opposed by the defence counsel and was brought pursuant to section 215v 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 a 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 done in line with the best interest of Justice surrounding the circumstances of the case.

After hearing both the prosecuting and defence counsel, the application to amend the said charge was granted in exercise of the judicial discretion of this court pursuant to section 215 (1) of the Sokoto State Administration of Criminal Justice Law No. 8 of 2019 and the inherent powers of this court provided under section 6 (6) 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 Wakili Yusuf Oladapo (m) between the 13th and 24 day of September, 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~~**120,000.00K** (one hundred and twenty thousand naira) from Aladetan Micheal Olubodunrin whom you falsely represented yourself to him as being a staff of National Youth Service Corps (NYSC) who could have him redeployed to a

state of his choice, 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 code.

Dated this 27th day February, 2020

(Signed)

Judge

Mohammed M. Gambo Esq

Buhari M. Balarabe Esq

Mela M. Gwani Esq

Habila Jonathan Esq

Prosecution Counsel

Economic and Financial Crime 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 was taken after his attention has been drawn to his available rights under section 269 (7) (a) of the Sokoto State Administration of Criminal Justice Law No. 8 of 2019 as required by

section 270 (1) of the same law. Section 270 (1) of the Sokoto State Administration of Criminal Justice Law of 2019, provides:-

"Before a defendant takes his plea, the court shall inform him of his rights under the provisions of section 269 (7) (a) of this law."

Section 269 (7) (a) on the other hand, provides that the defendant shall be informed:-

- (i) *That he has a right to remain silent;*
- (ii) *Of the consequences of not remaining silent; and*
- (iii) *That he is not obliged to make any confession or admission that could be used in evidence against him"*

Including his right to enter into a plea bargain agreement.

When the amended charge was read to the defendant for the purpose of taking his fresh plea, the defendant pleaded guilty.

After the plea of guilty of the defendant to the new amended charge was taken, the prosecuting counsel informed the court that they intend to call

one <1> witness who was then in court to tender same exhibits to satisfy the court that the defendant to admit the truth of all the essential elements of the offence to which he pleaded guilty. The defence counsel did not object to the application of the prosecuting counsel and so the application to call the said witness was granted in the interest of Justice.

During the trial, the prosecution called one witness and tendered five <5> exhibits marked as exhibits EFCC WYO1, EFCC WYO2 (i), (ii), (iii) and (iv) EFCC WYO3, EFCC WYO4, EFCC WYO5.

Exhibit EFCC WYO1 is the petition written and signed by one Aladetan Michael Olubodunrin and captioned "obtaining money by false pretence" dated 24th October, 2019.

Exhibit EFCC WYO2 is the First Bank Reply letter to EFCC captioned "Re: (SOK) INVESTIGATION ACTIVITIES (50588): ABUBAKAR WASIU OYEDELE 3110354632" to which four <4> documents were annexed there and marked roman (i) - (iv).

Exhibit EFCC WYO (i) is the image and signature of the customer who is the account holder of account NO. 3110354632 with the First Bank PLC in person of Abubakar Wasiu Oyedele.

Exhibit EFCC WYO2 (iii) is the BVN print out of the said customer Abubakar Wasiu Oyedele.

Exhibit EFCC WYO2 (iv) is the certification of identification of the account and the account holder signed by Owolawi Gbenga Head, Non-financial transactions of First Bank and dated 13th October, 2019.

The covering letter beneath which the above four <4> documents were annexed, was signed by Owolawi Gbenga and Adeboye Stephen A., Head, Non- financial Transactions officer and Head, Branch services respectively.

Exhibit EFCC WYO3, is the defendant statement of 14/11/2019.

Exhibit EFCC WYO4, is the defendant's statement of 15/11/2019 and Exhibits EFCC WYO5, is the statement of the defendant made on the 18/11/2019.

All the exhibits were admitted through the sole witness (PW1 Etim Urbone Christopher) and were admitted without objection by the defence.

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

PW1: My name is Etim Urbone Christopher. I live at No. 7, super quarters, off Sama Road, Sokoto. I am a public servant with EFCC and Assistant Detective Superintendent by rank. My schedules of duties include investigation of Criminal cases and giving evidence before the court among others. I know the defendant. He is Wakili Yusuf Oladapo when on 25/10/2019 a complainant signed by Aladetan Michael Olubodunrin alleged that the defendant Misrepresented himself as an NYSC official and obtain the sum of **₦120,000** with the deceit that he will help him and his colleague to relocate to any state of their choice from Sokoto as serving corps members. They complaint that the relocation failed and could not also recover their money and so they lodge their complaint before our office. The matter was assigned to our section and

the sectional Head assigned same to my team under the leadership of Waziri Nittle I was part of the team and Halidu, Ochenna, Olutu Ola Oluwa. We sent a letter to the First Bank PLC and the UBA because the defendant gave them account numbers from these banks to confirm the transactions that took place. We there after freezed the account and order the arrest of the defendant. In November, 2019, we got a call from our Benin Zonal office that they have a suspect handed over to them by First Bank PLC and that happened to be one Abubakar Wasiu Ayodele. According to the statement of the said Abubakar Wasiu Ayodele he confirmed that his elder brother who is a serving corps member in Sokoto state and who happened to be the defendant, got his account details to make funds transfer into his account. He also informed us that he also transfer same amount into the account of the defendant since he has no idea about the money. As a result, we went to the place of primary assignment of the defendant on 14/11/2019 and arrested him at Rima television

Sokoto. We also executed a search warrant at his personal residence at No.48 Lowcost Estate Arkilla, Sokoto. No much exhibits were recovered apart from his personal identity card.in our office, the defendant on 14/11/2019, made a voluntary statement even without his relations being around. We administer a ward of caution which he signed after understanding same. He then gave his statement which he wrote himself. He also made additional statements which on 15th and 18th of November, 2019 in which he confirmed the allegation made against him. I was present when the defendant made all his statements. The ward of caution was administered by our team leader Mr. Waziri Nitte and the said Mr. Waziri Nitte is now in Abuja officially to give evidence in and other case. I have worked with him for almost a year and very much familiar with his hand writing.

Under Cross examination, PW1 confirmed that, there is no any legal practitioner or relation of the defendant neither any member of civil society organization at the time the defendant was making

his statements. He further testified that Abubakar Wasiu Ayodele is in Sokoto at the time he was give his evidence. That the evidence he gave was not what Wasiu told him, but what he comes to know in the course of investigation. He participated in the arrest of the defendant and the investigation of the case.

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 adoption of written address of counsel. The prosecution filed their written address, but the defendant did not file any written address despite the fact that they were served with that of the prosecution.

The learned prosecuting counsel Mr. Mohammed M. Gambo Esq formulated one issue for determination.

That is:-

"Whether the prosecution has proved the case of cheating beyond reasonable doubt against the defendant to warrant his conviction?"

He submitted that while he concedes to the fact that in criminal proceedings the burden of proof is on the prosecution to prove its case beyond reasonable doubt, it does not mean beyond all shadow of doubts and relied on the following cases:-

- Alabi V. State <1993> 7 NWLR pt 507 p 511 at 551
- Bolanle V. State <2010> V. 179 LRCN p 25 at 32-33
- Itodo V. State <2019> 4 MJSC pt 1 p 1

He submitted that the defendant by the contents of exhibits EFCC WYO 3, 4 and 5 confessed to the commission of the offence alleged against him and can be convicted on that ground. He cited the case of **Itodo V. State <supra>** and finally urged the court to convict the defendant as charged.

From the amended charge with which the defendant was arraigned on 3/2/2020, 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 section 310 of the said code provides:-

"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 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"*

The section 311 of the same code also provides as follows:-

"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 section 310 of the Sokoto state penal code law No. 4 of 2019 defining the offence of

cheating I hold that to sustain a conviction for the said offence, 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 p 253*
- *Section 310 (a) of the Sokoto state penal code law No. 4 of 2019*

The question now is, has the prosecution proved all the above listed elements of the offence of cheating contrary to section 310 and punishable under section 311 of the Sokoto state penal code law against the defendant?

I shall now consider the evidence adduced by the prosecution in relation to the ingredients of the offence of cheating as enumerated above to see whether or not the prosecution has proved its case against the defendant beyond reasonable doubt as required by law.

- Section 135 of evidence Act, 2011
- Aruna V. state <1990> 6NWLR pt 153 p 170
- Ayuba Ishan V. state <1991> 1NWLR pt 172
p 180

As to the 1st element the defendant in his statement of 14/11/2019 marked as exhibit EFCC WYO3, has this to say:-

"I met Aladetan Michael who claims to graduated from same state where I graduated.

----- After he left camp, he told me he want to relocate that he don't want Sokoto again and I shared my experience with him how same of my friends on camp relocated back to their state using medical report. He agreed to try his luck"

From the foregoing portion of the defendant's statement it is my finding of fact that the defendant fraudulently deceived Aladetan Michael and I hold that the prosecution has proved the first element.

As to the 2nd element, the defendant in his statement of 14/11/2019 admitted and marked as exhibit EFCC WYO3, stated as follows:-

"He sent up to one hundred and five thousand naira to my brother account due to I borrowed money in my account to avoid debit. My brother account detail is Abubakar Wasiu Oyedele 3110354632 first bank.

From the foregoing, it is my finding that as a result of the deception practiced by the defendant, money has been delivered to the defendant by his victim Aladetan Michael.

Exhibit EFCC WYO2 (ii) which is the bank statement of Abubakar Wasiu Oyedele, has shown that a total sum of **₦115,000** were deposited in account No. **3110354632** from 13/9/2019 - 24/9/2019 by Aladetan Michael Olubodunrin which the defendant acknowledged in his statement of 14/11/2019 admitted and marked as exhibit EFCC WYO3.

Although the said bank statement is a computer generated evidence section 84 (1) of the evidence Act, 2011 permits the admissibility of such documentary evidence produced by a computer. The said section 84 (1) provide:-

"In any proceedings, a statement in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.

I hold that for the purpose of satisfying the conditions enumerated by subsection (2) of section 84 of the evidence Act, 2011, exhibit EFCC WYO2 (iv) has satisfied all those conditions alongside the requirement of section (4) of the said section 84 of the evidence Act 2011 for the purpose of relevancy and admissibility of the bank statement.

This is because, in the case of **Sylva V. Dickson** <2013> ALL FWLR pt 676 p 392 Nweze JSC said:-

"In actual fact section 84 consecrates two methods of proof either by oral evidence under section 84 (1) and (2) or by certificate under section 84 (4).

Buttressing his standpoint with the pronouncement of Lord Griffith in *RV. Shepherd* <1993> 1 ALL ER 225, Nweze JSC said:-

"As eminent Lord Griffith explained in the said case {RV. Shepherd} --- proof that the computer is reliable, can be provide in two ways: either by calling oral evidence or tendering a written certificate --- subject to the power of judge to require oral evidence."

Exhibit EFCC WYO2 (iv) is the certificate of identification authenticating the condition and usage of the computer from which the bank statement was produced signed by one Owolawi Gbenga, Head, Non-financial transactions of the First Bank and dated 13/11/2019.

In the light of the foregoing I hold that this court was right in accepting, and admitting the said document in evidence.

As to the 3rd element, it is my finding that Aladetan Michael induced by the defendant and which inducement led to the deposition of **₦115,000** into Abubakar Wasiu Oyedele's account with the first bank

by telling his victim his experience in the deal using medical report.

The defendant in his exhibit EFCC WYO3, stated this:-

"I shared my experience with him how save of my friends on camp relocated back to their state using medical report. He agreed to try his luck."

With the foregoing piece of evidence I hold that the prosecution had also proved the 3rd element.

Apart from the confessional nature of the defendant's statements, made 14/11/2019, 15/11/2019 and 18/11/2019, admitted and marked as exhibits EFCC WYO3, 4 and 5 respectively, the defendant also pleaded guilty to the amended charge after same has been read and explained to him to the satisfaction of the court. It is trite law that there are three ways by which the prosecution can prove its case and this include:-

- (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

- **Itodo V. state {2019} 4 MJSC pt 1 p 1**

It is trite law that a confession is the strongest evidence of guilt against 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.

- **State V. Usman Isah {2013} 8 NCC 320**
- **Ajibade V. State {2013} 8 NCC 225**
- **Mamman V. FRN {2013} 53 SCN QR pt 2 p 183**

At the close of the prosecution's case, the defence opted not to give evidence by resting their case on that of the prosecution. The implication of doing so, has been explained by Supreme Court in the case of **Ajibade V. state {2013} 8 NCC 221 at 246 - 247** where the court 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 that 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 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 that the prosecution having proved all the elements of the said offence, has also proved its case beyond reasonable doubt.

- **Ajayi V. state {2013} 53 NSCQR 632**
- **Ikaria V. state {2013} 8SNCC 248**
- **Alabi V. state {1993} 7 NWLR pt 307 p 511**

In *Adekunle Oluwafemi Alo V. state* {2015} LPELR 24404 the Supreme Court held that:-

"if on the entire evidence the trial Court is left with no doubt that the offence was committed by the accused person, that doubt is discharged and the conviction of the accused person will be upheld even on the credible evidence of a single witness."

- *Afolalu V. state* {2010} 6-7 MJSC 187 Ratio
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I hold that the evidence adduced before this court has left this court with no doubt that the offence of cheating with which the defendant is charged was actually committed by him. Consequently, the defendant is hereby convicted as charged.

20/02/2020

ALLOCUTUS

Court: You have heard the Judgment I have just readout 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: My Lord the convict is a youth copper and a first time offender. He changed his plea out of remorse for repentance and in his prime age. Temper Justice with mercy.

B.M. Balarabe Esq: He is first time offender.

SENTENCE

Upon the plea of the convict for leniency, I have taken into consideration that the convict is a youth copper doing his national service and in his prime age in which he supposed to be useful to the society, he changed his plea out of remorse for repentance and the fact that he has been in detention since when he was arraigned before this court. It is for these reasons I consider it 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 one provided by the law creating the offence after having regards to the circumstances and facts of the case.

- Musa V. state {2012} 3 NWLR 50
- Amoshina V. state {2011} 14 NWLR pt 1268

p 50

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

- **Nwude V. FRN {2016} 5 NWLR pt 1506 p 471**
- **Omokuwajo V. FRN {2013} 9 NWLR**

It has also been opined that in financial crimes, sentencing can achieve retribution and deterrence by a combination of imprisonment with or without option of fine and forfeiture of the proceeds of crime to prevent the offender from retaining the proceeds 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. Georgis {1976} US 153 at 183** where Stewart J. said:-

"The institution for retribution is part of the nature of man, and channeling that instinct in the administration of Criminal Justice, serves an

important purpose in promoting the stability of a society governed by the law."

In view of all the foregoing, the convict is hereby sentenced to three {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 hereby adjudged to refund the **₦115,000** deposited in account No. 3110354632 of Abubakar Wasiu Oyedele to Mr. Aladetan Michael Olubodunrin who is the victim of the crime.

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

Signed

Judge

20/02/2020

COUNSEL:

Mohammed M. Gambo Esq with

Buhari M. Balarabe Esq

Mela M. Gwani Esq

Habila Jonathan Esq for prosecution