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**IN THE HIGH COURT OF JUSTICE OF KWARA STATE
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN**

SUIT NO: KWS/11c/2019

BEFORE HIS LORDSHIP: HONOURABLE JUSTICE .M. ABDULGAFAR

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

YAKUB AZEEZ AFOLAYAN.....DEFENDANT

JUDGMENT

1. The defendant was arraigned before this court on a four count charge alleging as follows:

COUNT 1

(a) That you YAKUB AZEEZ AFOLAYAN, between the months of November 2018 and January 2019, in Ilorin, within the jurisdiction of this Honourable Court, with the intent to defraud, obtained the gross sum of N267,000.00(Two Hundred and Sixty Seven Thousand Naira) from one **Usman Janet Opeyemi** through your UBA account number 2012612639 under the false pretence that you are capable of securing employment for her son with the Nigeria Customs Service; the representation you knew to be false and thereby committed an offence contrary to section 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 2

(b) That you YAKUB AZEEZ AFOLAYAN, between the months of June and August 2018, in Ilorin, within the jurisdiction of this Honourable Court, with the intent to defraud, obtained the gross sum of N133,000.00(One Hundred and thirty three Thousand Naira) from one **Gambari Tajudeen** through your UBA account number 2102612639 under the false pretence that you are capable of securing employment for her son with the Nigeria Customs Service; the representation you knew to be false and thereby committed an offence contrary to section 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 3

(c) That you YAKUB AZEEZ AFOLAYAN, between the months of June 2018 and August 2019, at Ilorin, within the jurisdiction of this Honourable Court, did make a false document titled: Nigeria Customs Service Application Form, purportedly emanating from the Nigerian Customs Service which you knew

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to be false and thereby committed an offence contrary to section 362 of the Penal Code Law and punishable under section 364 of the Penal Code Law.

COUNT 4

- (d) That you YAKUB AZEEZ AFOLAYAN, between the months of June 2018 and August 2019 at Ilorin, within the jurisdiction of this Honourable Court, dishonestly used as genuine a forged document by presenting it to one **Gambari Olayemi Tajudeen** titled: Nigeria Customs Service Application form purportedly emanating from the Nigeria Customs Service which you knew to be a forged document and thereby committed an offence contrary to section 366 of the Penal Code Law and punishable under section 364 of the Penal Code Law.

2. The defendant pleaded not guilty to the charge and thereafter the trial commenced with the prosecution calling Emmanuel Furo as its first witness. It is the evidence of Pw1 that on 13/01/19 one Abdulrasaq Afolayan came to his office at Custom House, Ilorin, to lodge a complaint that the defendant had collected money in order to secure a job at Nigeria Customs service for him. It is also his evidence that the Nigerian Custom dispatched a team of officers including himself to accompany the complainant to the residence of the defendant.

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3. Pw1 stated that on getting to the residence of the defendant, the place was searched and they recovered 7 Nigerian Custom Service application forms and two curriculum vitae of Femi Abayomi. It is the evidence of Pw1 that the Custom application forms are fake because Nigeria Customs Service does not issue forms but operate an online application portal. Pw1 agreed in cross examination that exhibits 1 – 4, the

application forms are computer generated while exhibits 5 and 6 and not computer generated.

4. The second prosecution witness testified as Tajudeen Gambari and it is his evidence that he knew the defendant as an Islamic Cleric who visits his brother, Dr. Ibrahim Gambari. It is also the evidence of Pw2 that the defendant told Dr. Gambari that he could secure employment in Nigeria customs service for him and his brother then called him and asked him if he was interested. Pw2 stated that when he answered in the affirmative, the defendant demanded for N15, 000 for the application form.
5. Pw2 stated that after he had paid the money, the defendant gave him an application form which he completed and returned to the defendant. Pw2 stated that the defendant called him several times between July and August 2018 to demand for money for transport; feeding and accommodation to enable him go to the Controller General's Office to process the employment, and money was paid to the defendant through Dr. Gambari's account in GTBank and UBA totaling N133,000.
6. It is Pw2's evidence that sometime in February 2019, he received a call from Nigeria Customs Service, Ilorin that his attention was needed. It was there at their office where he identified the defendant. Pw2 stated that the custom's officers then brought out documents recovered from the defendant and

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he identified his completed application form among them. It is also the evidence of Pw2 that it was when the officers told him that the form was fake and he realized the defendant was a fraud. Pw2 then identified exhibit 1 as the application form the defendant gave him to complete. Pw2 admitted in cross examination that the defendant told him that he had a brother who was working with Nigeria customs service. Pw2 admitted that his brother, Dr. Gambari is based in Ilorin.

7. Janet Opeyemi Usman is the third prosecution witness. It is her evidence that she got to know the defendant through her husband. Pw3 stated that she got information that Nigeria customs service was recruiting and the application form was going for N30,000. Pw3 stated that her son went down to Ilorin to collect the form from the defendant who collected N30,000 for the form.

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8. Pw3 stated further that her husband gave him the defendant's number so that she could discuss the details with him. It is the evidence of Pw3 that from the moment he contacted the defendant, he kept on calling her to demand for money for one thing or the other to enable him go to Abuja, Lokoja or Katsina. It is also Pw3's evidence that the defendant collected N30,000 for Uniform and N40,000 for Service code. Pw3 pointed out that between 7/11/18 and 23/01/19, she had paid the defendant N267,000.

9. Pw3 stated that her son did not get the job the defendant promised. It is the evidence of Pw3 that it was when the defendant's demand for money got too much that she informed her brother, Abdulrasaq about the situation only for him to get to Nigeria Customs Service office Ilorin to be told that they were not recruiting and this was what led to the arrest of the defendant. It is also the evidence of Pw3 that when she went with customs officer to effect the arrest of the defendant, they met him completing application form for another victim.

10. Pw3 admitted in cross examination that she was in court on the previous adjourned date when Pw1 testified that the defendant was arrested on 14/1/19, but insisted that the correct date of the arrest was 01/02/19 because it was on 31/01/19 that she was able to trace the defendant house before leading the officers there the following day. Pw3 stated that the last contact she had with the defendant was a message that the referee of my Son should come to Lokoja with N17,000 on 29/01/19.

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11. . The last prosecution witness is the EFCC investigating officer in this case, Mr. Shittu Babatunde Misbau. It is the evidence of Pw4 that the EFCC received a petition from Nigeria Customs Service alleging that the defendant was involved in Nigeria Customs service job scam. It is also the evidence of Pw4 that the defendant was handed over to the EFCC on that day whereupon he showed the defendant the petition.

12. Pw4 stated the defendant was cautioned on the presence of his solicitor after which the defendant responded to the petition. Pw4 also stated that EFCC got the statement of account of the defendant to ascertain if the victims actually paid money in to the account of defendant. It is the evidence of Pw4 that two of the victims of the scam were invited and Pw2 and Pw3 told the EFCC how the defendant collected money from them. Pw4 stated that an analysis of exhibit 6 shows that Pw3 paid N257,000 directly into the account and Pw4 set out each payment and the date the payment was made. It is the evidence of Pw4 that a further analysis of exhibit 6 show that Pw3 cumulatively paid N133, 000.
13. Pw4 admitted in cross examination that he did not go to the Bank to verify the information contained in the statement of account. Pw4 admitted that he relied on the statement of the arresting officer that the application form is not from the Nigeria customs service. Pw4 admitted that he did not invite Dr. Gambari nor the husband of Pw3. **CERTIFIED TRUE COPY**
14. After the prosecution closed its case, the case was fixed for defence. The defendant took several adjournments to enable him enter into a plea bargain agreement. When it became difficult for the defendant to get money to pay restitution to the victims of the crime, the court granted the defendant bail to enable him source for the funds. However the surety came to court to withdraw his security, hence the

return of the defendant to prison and the collapse of the plea bargain agreement.

15. With the collapse of the plea bargain agreement, the defendant entered his defence by stating that all the counts of the charge are not true. It is the evidence of Dw1 that he comes from the same place with Mr. Agoro, the husband of Pw3. It is further evidence of Dw1 that he has asked the said Mr Agoro to get him employment as an Arabic School Teacher. Dw1 maintained that it is not true that he fraudulently collected money to get the victims employment in Nigeria customs service since he is not a staff of Nigeria customs service.
16. Dw1 stated that the payments made into his account is to help him in the construction of his Islamiya school which Dr. Gambari was financing because his children were attending the Islamiyya. With regard to the money Pw3 paid, it is the evidence of Dw1 that it was money meant for Pw3's son and the son was coming to collect the money from him.
17. Dw1 admitted in cross examination that he knows Pw2 and Pw3 but denied promising to secure employment for them. Dw1 stated that he does not know where the prosecution got exhibits 1-6 from. Dw1 agreed that he made statement at EFCC. and it was what he told the investigating officer that was written down in his statement. Dw1 admitted that Pw2 paid N133,000 but he insisted it was for the building of his Islamiyya. Dw1 insisted that the money he collected from Pw2

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and Pw3 is not to facilitate employment at Custom and he did not give exhibits 1-6 to anybody.

18. Dw1 stated that he told EFCC about the Islamiyya he was building and about the money he was sending to Pw2's son. Dw1 did not agree that all he has told the court are lies.

19. The prosecution and the defence filed written addresses which were adopted before the court. Mrs. Akinsola for the prosecution raised a lone issue thus:

"Whether by the quantum of the evidence adduced by the prosecution, it has proved its case beyond reasonable

doubt". Arguing the issue Mr. Akinsola contends that the essential ingredients of the offences alleged in counts 1 and 2 are as follows:

- (a) Pretence
- (b) Emanation of pretence from the defendant
- (c) Falsity of the pretence
- (d) Defendant's knowledge of the falsity of the pretence.
- (e) Intention to defraud
- (f) Subject matter capable of being stolen.
- (g) Inducement of the owner. See **ONWUDIWE .V. FRN (2006) 7NWLR (PT988).**

20. Akinsola esq then proceeded to demonstrate how the prosecution has established each of the ingredients through the evidence of Pw1 - Pw4. Akinsola esq also called the

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attention of the court to the failure of the defence to cross examine Pw1 – Pw4 on those pieces of evidence. See **NJIOKWUEME .V. OCHEI (2004) 15 NWLR (PT895)196**. It is the contention of Akinsola Esq that the defendant expressly admitted and corroborated the evidence of Pw1 – Pw4 in his statement exhibits 9 & 10. The court is urged to hold that exhibit 9 & 10 are sufficient to sustain the charge against the defendant. See **AMALA .V. STATE(2004)12 NWLR (PT888)520**.

21. . Adverting specifically to the counts 3 and 4 dealing with forgery and uttering, Akinsola Esq sets out the ingredients of the offence of forgery as follows:

- (a) Existence of a document in writing
- (b) forgery of the document
- (c) Defendant is the forger
- (d) Defendant's knowledge of falsity
- (e) Intention that the victim act upon it as genuine to his detriment. It is the contention of Akinsola esq. that a document is said to be forged if it is made by a person falsely and with it intention that it be acted upon as genuine. See **OSONDU .V. STATE(2000)12 NWLR (PT682)483**.

22. With regard to count 4 alleging uttering, Akinsola Esq sets out the essential ingredients as follows:

- (a) Uttering of document

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(b) Defendant's knowledge of its forgery

(c) Acting fraudulently. Akinsola esq then demonstrated from the evidence of Pw2 and Pw3 and exhibits 7-10 how the prosecution established the ingredients. Reacting to the contention of the defence that Dr. Gambari Pw2's brother and Mr. Agoro, Pw3's husband, should have been called as witnesses, Akinsola Esq argues that the duty of the prosecution is only to call material witness relevant to the case. See. **IJIOR .V. THE STATE(2001)9NWLR (PT.718)371.** The court is urged in conclusion to hold that the prosecution has established the case against the defendants.

23. Mr. Ishola for the defence raised the following lone issue for determination:-

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"Whether the prosecution proved its case beyond reasonable doubt to warrant judgment by this court in its favour".

Arguing the issue, Mr. Ishola, Director, Office of Public defender, set out the ingredients of the offence of Advance Fee fraud as follows:

- a. Obtainment by the defendant
- b. Inducement to obtain
- c. Obtainment through false pretense.

24. The ingredients of making false document, were set out as follows:

a. Making or signing of a document

b. Defendant doing so dishonestly. It is the submission of Mr. Ishola that the prosecution has not established any of the ingredients of the offences. Mr. Ishola points out that the evidence of Pw1 that exhibits 1-4 were found in the house of the defendant was denied by the defendant. It is the contention of Mr. Ishola that there is no evidence before the court of who the maker of exhibits 1-4 is, and the law is that any doubt as to the guilt of the defendant should be resolved in favour of the defendant. See. **BELLO V. C.O.P(2018)2 NWLP(PT1602) 267.**

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25. With regard to the testimony of Pw2 that the defendant collected money from his brother, it is the contention of Mr. Ishola that the failure to call Dr. Gambari is fatal to the case of the prosecution. See **ETIMETIMUDO .V. STATE (2019)1 ALL FWLR (PT978)160.** It is also the contention of Mr. Ishola that there is nothing in exhibit 7 to show that the payments by Pw2 and Pw3 were made to secure employment from Nigeria customs service and this also raises doubt as to the guilt of the defendant which should be resolved in his favour. See **BELLO V. C.O.P (supra).**

26. Adverting to the confession in exhibits 8, 9 and 10, Mr. Ishola argues that since the defendant has distanced himself from the confession save for his signature, and has retracted the statements, the court ought not to convict him on it. It is the view of Mr. Ishola that a court faced with retracted confession must look for independent evidence. See **OGUDO .V. STATE (2011)202 LRCN 11**. The court is urged to hold that the statements in exhibits 8-10 do not satisfy the test in **OGUDO V. STATE(supra)** and the defendant should not be convicted on the statements. The court is urged in conclusion to hold that the case against the defendant has not been proved beyond reasonable doubt. Mr. Ishola devoted substantial part of his reply on points of law to disagree with the cases cited by Akinsola esq in the prosecution's address and I do not find the need to set that out.

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27. Both the prosecution and the defence are ad idem that the only issue for determination is whether the prosecution has established the case against the defendant beyond reasonable doubt. It is clear from the evidence of Pw1 – Pw4 that the prosecution has established the case against the defendant especially in view of failure to cross examine Pw1 – Pw3 on their evidence before the court. Both Pw2 and Pw3 gave evidence to the effect that the defendant represented to them that he was in a position to secure employment for them with

Nigeria Customs service for which he gave them application forms at the cost of N15, 000, and N30, 000 respectively.

28. The evidence of Pw1 is clear to the effect that the Nigeria Customs service does not sell application forms to job seekers. Pw3 gave evidence that on the day the day he accompanied the Pw1 to arrest the defendant, they met him completing an application form like the one he had sold to her for another victim.

29. All these pieces of evidence were not challenged under cross examination. See **OFORLETE .V. STATE(2000) 12 NWLR (PT.681)** where the point was made as follows:

"Where the adversary fails to cross examine a witness upon a particular matter, the implication is that he accepts the facts of the matter as led in evidence."

There is another aspect of this case which is the confessional statement of the defendant, exhibits 8, 9 and 10. The statements contain clear and unequivocal admission of the offences alleged. In **AROGUNDADE .V. STATE (2009) 6 NWLR (PT 1136)165** the court stated the position of the law thus:

"It is firmly established that a free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction."

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30. With regard to the contention of Mr. Ishola that the court ought to look for evidence outside the confession, it is clear that the evidence of Pw2 and Pw3, the statement of account showing the payments made to the defendant's account and exhibits 1-6 all constitute evidence supporting the confession. Consequently, taking the unchallenged and uncontradicted evidence of Pw1 – Pw3 along with the confessional statements of the defendant in exhibits 8, 9 and 10, the inevitable conclusion to draw is that the prosecution has established the case against the defendant beyond reasonable doubt.

(a) I convict you Yakub Azeez Afolayan of obtaining N267,000 from Usman Janet Opeyemi under false pretence contrary to section 1(a) Advance Fee Fraud and other fraud related Offences Act 2006.

(b) I also convict you YAKUB AZEEZ AFOLAYAN of obtaining N133,000 from Gambari Tajudeen under false pretence contrary to section 1(a) of Advance fee fraud and other fraud related offence Act 2006.

(c) I convict you Yakub Azeez Afolayan of uttering false document titled Nigeria Customs Service application form contrary to section 362 of the penal code law.

(d) I further convict you Yakub Azeez Afolayan of dishonestly using as genuine Nigeria Customs service application form contrary to section 366 of the penal code.

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Ishola: I urge the court to be lenient with the convict in sentencing him. He is still a young man and a first offender with aged parents, wife and children.

Akoja: The offence for which the convict was charged carries a term of not less than seven years without the option of fine.

I ask that restitution in the sum of N267,000 and N53,000 to Pw2 and Pw3.

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SENTENCE

I have considered the fervent plea made on behalf of Mr. Ishola on behalf of the convict. Sadly the law under which the convict has been convicted prescribes a minimum term of 7 years without an option of fine so there is little the court can do.

- a. I sentence you Yakub Azeez Afolayan on count 1 to 7 years term at Mandala Correctional Centre.
- b. I also sentence you Yakub Azeez Afolayan to on count 2 to 7 years term at Mandala Correctional Center.
- c. I further sentence you Yakub Azeez Afolayan to a term of 3 years in respect of count 3 at Mandala Correctional Center.
- d. I sentence you Yakub Azeez Afolayan on count 4 to a term of 3 years at Mandala Correctional Center.
- e. All the terms are to run concurrently and commence from 14th day of November 2019.
- f. I do not think it will serve the interest of justice to order restitution in this case in view of the fact that the attempt at

plea bargain failed only because the convict could not raise the money to pay the victims.

If I take that along with the concession of Mr. Akoja that what the support Pw2 and Pw3 sought from the convict constitute corrupt practice, I do not make order for restitution in favour of Pw2 and Pw3.

Committed

Hon. Justice M. Abdulgafar

Judge

22/07/21

Appearances

O.B Akinsola (with Andrew Akoja) for the Prosecution.

S.O Ishola (Director OPD with I. Imam Fulani and A.I Amasa) for the Defendant.

C.T.C - A 500.00

S.O Ishola
29/11/2024

Certified by me
Salman Marjan O.
Chief Clerk Officer



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