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

SUIT NO: KWS/55c /2018

BETWEEN

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

MALL. ABDULKADIR IBRAHIM DEFENDANT

JUDGMENT

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

"That you Abdulkadir Ibrahim sometime in January 2017, in Kwara State, Within Ilorin judicial Division of the High court, being entrusted with Property, to with N6,647,700.00 by Ezikiel Ola Babatunde as part of contract sum for the purchase of Maize and Soya bean which you warehoused, then dishonestly disposed and converted the proceed in violation of the legal contract which you made in regard to the said sum, thereby committed criminal breach of trust contrary to sac 311 of the penal code and punishable under sec 312 of the same law".

2. The Defendant pleaded not guilty to the charge whereupon the trial commenced with the prosecution calling its first witness, Babatunde Ezikiel. It is the evidence of PW1 that he knew the defendant as a person who used to come to his bank to make lodgments on behalf of the company he was

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working for which had an account with Stanbic Bank where he was working. It is also the evidence of PW1 that the defendant sometime in 2016 approached him stating that instead of leaving his salary in his bank account, he would introduce him to the business of buying maize and soybean during the crop season so that he can sell them to make profit during the off season.

3. PW1 states that on asking the defendant his own interest in the enterprise, he stated that it was up to PW1 to give him whatever he felt like following which he proposed a 30% share of the profit. PW1 further states that the arrangement started with him giving the defendant the sum of N1,000,000.00 in cash after which the defendant called him to inform him two days later that he had bought the maize and invited him to inspect them with him but he responded that he would inspect them when they have bought a trailer load.
4. PW1 also states that the defendant again collected #1.5m in cash from him on 09/01/17 in the banking hall and he also gave him #1,000,000 on 11/01/17. It is the evidence of PW1 that he visited Tsaragi on 13/01/17 where he saw the maize inside a store after which he was introduced to the owner of the store as the owner of the maize whereupon he informed the owner of the store to expect additional stock of maize and soybean. PW1 states that the defendant called him on 14/01/17 to ask him for money for the next stock and he told him to come to see him on 16/01/17.
5. PW1 states that that when the defendant came to him on 10/01/17, he told him that he would make payment into the account of the seller of the product following which the defendant gave him the account number of

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one Dauda Bakare. PW1 further states that after calling the account holder to satisfy himself that he was doing the business, he then transferred the sum of #3,840,000.00 in to the account and informed him that the defendant would pick up the produce and put it in the store at Tsaragi.

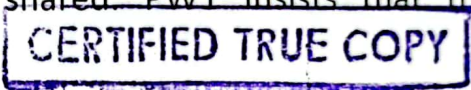
6. PW1 also states that the defendant called him to inform him that the maize and soybean have been supplied. It is the evidence of PW1 that the defendant called at his office for the purchase of the remaining stock and they called Dauda Bakare after which he transferred #4,480,000.00 into the account of Dauda Bakare. It is also the evidence of PW1 that the defendant called him on 24/02/17 to remind him that they had not paid for the store following which he transferred the sum of N50,000 to the Access Bank account of Ibrahim Yunusa, the account details the defendant gave him as that of his son.

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7. PW1 states that three months after the transfer of funds, he called the defendant to inform him that it was time to sell the grains but the defendant advised that he waits until end of June or early July to sell the grains. PW1 further states that in June 2017, he insisted on selling the grains, only for the defendant to start avoiding him leading him to travel to the place the grains were stored at Tsaragi. PW1 also states that the owner of the store told him that although the defendant brought additional grains, he had returned to take away most of the grains and when all effort to get the defendant to return the money failed, he reported the matter to EFCC.

8. *PW1 agrees in cross examination that the business he had with the defendant was a business transaction. PW1 also agrees that about*

N3,525,000 was refunded out of the money. PW1 admits in further cross examination that he was originally paying the defendant cash before he decided to be paying into the account of Dauda Bakare. PW1 insists that there was no agreement in written between him, the defendant and Mr. Dauda on the transaction.

9. PW1 agrees that the defendant and Dauda Bakare told him to wait until July which is peak period. PW1 admits that he recovered #3,525,000 through EFCC from Dauda Bakare. PW1 states that he did not meet Dauda Bakare PW1 denies that the arrangement was that maize and soya bean would be bought, sold and the profit shared. PW1 insists that the transaction was not an investment. 
10. The next prosecution witness is the investigating officer who testified as Detective Nsirim Kelly Chile. It is the evidence of PW2 that he met the defendant in the course of investigating a petition against him. It is also the evidence of PW2 that when he asked the defendant whether he was given #3.5 Million to buy grain, store and resell by PW1, he answered in the affirmative during the interview. PW2 states that the defendant also confirmed to him that one Dauda was also paid #7,800,000 to supply grains to be stored at Tsaragi on the authority of PW1.
11. It is the evidence of PW2 that the defendant told him that Dauda Bakare on receipt of the money supplied the grains which the defendant admitted he sold. It is also the evidence of PW2 that the defendant told him that he used the proceeds from the sale of the grains to rent land for planting, establish a fish pond and to treat his sick late wife. PW2 states that when he asked the defendant if he gave PW1 any part of the money he admitted

that he did not and could not explain why. PW2 also states that he then asked the defendant if he was willing to write down all that he had stated to him where upon he agreed and then made the written statement.

12. PW2 testifies that he also interviewed Dauda Bakare who admitted to him that the defendant contacted him for the supply of grains and he supplied the grains. PW2 states that his investigation revealed that Dauda Bakare supplied only 300 bags of maize and 78 bags soybean. PW2 states further that his investigation also shows that the defendant sold all the grains he bought as well as those supplied by Dauda Bakare without the consent of PW1 and used the proceed for himself without remitting any part of it to PW1 while Dauda Bakare made a refund for 282 bags that he did not supply. PW2 admits in cross examination that it was a member of his investigation team who visited the store that confirmed to him that the store was empty

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13. The defendant entered his defence by testifying for himself. DW1 states that he knew the nominal complainant, PW1 as a friend and partner whilst he was in Shonga where he was engaged in buying maize and beans to sell to valentine chickens company. DW1 further states that PW1 showed interest in doing the business he was doing where upon he introduced PW1 to one Dauda Bakare. DW1 also states that PW1 dealt directly with Dauda to whom he paid money either through cash or bank transfer, paid the owner of the warehouse and they transported the grain directly. DW1 insists that he never took any money from PW1 whether cash or otherwise as the entire arrangement was between PW1 and Bakare. DW1

agrees that he do go to the warehouse to supervise the transaction because he was the one who introduced them to each other.

14. Both counsel filed written addresses which were adopted before the court.

Mr Ismail raised lone issue for determination thus

"whether having regards to the evidence before the honorable court, the prosecution has not failed to prove the offence charged against the defendant".

15. Before arguing this lone issue, Mr. Ismail addressed the court on the voluntariness of the statement of the defendant, arguing that the statement is inadmissible, firstly because the court ought not to have relied on section 31 of the Administration of Criminal Justice law of Kwara state to defer determining the objection of the admissibility of statement instead of holding a trial within trial because it is a state law in contradistinction to the Evidence Act which is a Federal enactment.

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16. It is also the contention of Mr. Ismail that the ground for the challenge of voluntariness is based on the promise made to the defendant by EFCC officers that induced him to confess. It is also the contention of Mr. Ismail that procuring a lawyer for the defendant to satisfy the prescription of Section 35 of the constitution and Administration Criminal Justice Law also renders the statement inadmissible.

17. Arguing the lone issue for determination, Mr. Ismail contends that the prosecution has failed to establish the case against the defendant. It is argued that the four elements of the offence provided for under section 311 of the penal code has not been established, hence the failure of the prosecution to prove the case against the defendant beyond reasonable

doubt see. **SHEHU -V. STATE (2010) ALL FWLR (PT322)1841**. The point is made that failure to call DAUDA BAKARE is fatal to the case of prosecution. See **AKPABIO -V. STATE (1994) 7-8. SCNJ (PT 11) 429**. The court is urged to hold that the prosecution has not established the case against the defendant beyond reasonable doubt and the defendant ought to be discharged and acquitted.

15. Mr. A. Akoja also raised a lone issue for determination as follows:

"Whether the prosecution has not proved the charge of criminal breach of trust against the defendant beyond reasonable doubt".

Before arguing this lone issue, the prosecution reacted to the contention of Mr. Ismail that the statements of the defendant are not admissible. Mr. Akoja contends that the court was in order to have directed the incorporation of the evidence of voluntariness in to the respective evidence of the parties in accordance with the provision of sec 31 of the Kwara State Administration of Criminal Justice law especially as Mr. Ismail did not point to the specific provision of the Evidence Act which prescribe trial within trial that the Kwara State Administration of Criminal Justice Law has contradicted.

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16. With regard to the promise allegedly made to induce the defendant to make the statement, Mr. Akoja contends that the defendant led no credible evidence. The court is urged to hold that the statements are admissible. On the failure to ensure the presence of a lawyer when the statements were made, it is argued that the defendant agreed to make statement in the absence of his lawyer as regard the statement of 20/07/18, while he did not

make any statement on 23/07/17 other than to insist on the presence of his lawyer before making statement.

17. On the statement of 26/07/18, it is argued that it was made in the presence of lawyer Olumide Abifarin, while the statement of 21/09/18 was made after he was cautioned.

The point is also made that the ground of presence of lawyer at the point of making statement was not made the basis for the objection when the statement was tendered, hence raising the point amount to an afterthought. See F.R.N V. DAIRO (2015) 6 NWLR (PT1445) 141. The court is urged to overrule the objection and admit the statements in evidence.

18. I will commence the resolution of the issue with the issue of the voluntariness of the statements obtained from the defendant. I have considered the evidence of the prosecution and the defence regarding the circumstances under which the statements were made. The prosecution has argued that the defence by taking the issue of the non-conduct of a separate trial within trial as well as non-representation of the defendant by a counsel of his choice at the point of obtaining the statement was raising a new point not connected with the objection to the voluntariness of the statement.

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19. I am unable to agree with the contention of Mr. Akoja in this regard because having objected to the admissibility of the statement, the defence is at liberty to take up all the ramifications of what makes the statements inadmissible. However, with regard to the contention of Mr. Ismail that court ought to have conducted a trial within trial rather than apply the provision of section 31 of the Kwara State Administration of Criminal Justice

Law, I am in agreement with Mr. Akoja that no issue of constitutionality of Section 31 of the said law arises by reason of conflict with the Evidence Act because there is no provision of the Evidence Act mandating the conduct of trial within trial that the provision of section 31 of the law would have conflicted with.

20. I am therefore of the view that the court was well within its rights to take advantage of the provision Section 31 of the Kwara State Administration of Criminal Justice Law which allows the Court to direct the parties to incorporate evidence of voluntariness into their respective evidence so that the Court will the court will incorporate ruling in respect of the admissibility of the Statements in to the judgment.
21. Adverting to the evidence of the defendant on the promise made to him to induce him to make the statements, I am inclined to agree with Mr. Akoja that the defendant's evidence in this regard is not credible. He would say in one breath that it was due to the promise made to him while in another breath, state that he was forced to make the statements. I do not think that the defendant who had the will and the presence of mind to insist at a point that he would only make statement in the presence of a legal practitioner can expect any reasonable judge to believe that he was induced by promise of soft landing to make statement incriminating himself. I prefer the evidence of PW2 that the defendant made the statements voluntarily without any inducement by way of promise nor the threat or the use of force. I also accept the evidence of PW2 that the defendant had earlier confessed to him orally before he asked him if he was willing to write down the statement he had made. Consequently I hold that

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the defendant was not induced by any promise made to him in order to make the statements he made to the investigators.

22. If it were on this ground alone that Mr. Ismail had anchored the challenge to the admissibility of the statements of the defendant, i would have had no difficulty in holding that the statements are admissible. However, he also challenged the admissibility of the statements on the failure to comply with the provisions of Section 35 of the Constitution of Federal Republic of Nigeria and Section 30 of Kwara State Administration of Criminal Justice law 2018 which guarantees the right of the defendant to remain silent and the presence of a legal practitioner or relation during the recording of the statement of such defendant. It will be doing violence to spirits and letters of both enactments to endorse the emerging trend where EFCC procures the legal practitioner that represents the defendant at the point the statement of the defendant is being recorded.

23. I have examined the four statements attributed to the defendant and considered the submission of both counsel on this point. The statement of 20/07/2018 was clearly recorded in breach of that provision as neither the defendant's legal practitioner nor was his relation present. The same goes for the statement of 23/07/2018 and the statement of 21/09/2019.

With regard to the statement of 26/07/2018, it was witnessed by Olumide Abifarin. The unchallenged and contradicted evidence of the defendant is that Mr. Abifarin was procured for him by the EFCC. I accept this aspect of the evidence of the defendant because neither the prosecution witnesses nor Mr. Akoja deny the allegation that it was EFCC that procured the

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services of Mr. Abifarin to witness to the recording of the statement of the defendant.

In the light of the foregoing, the conclusion I have come to is that the statements obtained by the EFCC from the defendant were obtained in breach of the provisions of section 35 of the Constitution and section 31 of Kwara State Administration of Criminal Justice Law. The four statements are therefore inadmissible and they are marked tendered but rejected.

24. With regard to the lone issue for determination which is whether the prosecution has established the case against the defendant beyond reasonable doubt, I have considered the evidence of PW1 and PW2. In spite of his extensive cross-examination, PW1 remained firm and unshaken. I accept his account of what transpired between him and the defendant in this case that the defendant introduced him in to the business of buying grains at the crop season so as to sell at the peak and kept stalling when the time to sell the stock come, only to go behind PW1's back to sell the stock and convert the proceeds to his use. **CERTIFIED TRUE COPY**

25. I also accept the evidence of PW2 who stated that his investigation revealed that the defendant lured the nominal complainant, PW1, to invest in the business of the buying grains only to take the grains he bought and the one supplied by Dauda Bakare and sell without accounting for the proceeds. Although Mr. Ismail cross-examined this witness extensively, he remained firm and unshaken and I accept his evidence as credible. It is clear from the evidence of PW1 and PW2 that the defendant was entrusted with money to purchase grains when PW1 handed over cash worth N3.5 million to enable him buy maize and soy bean. It is also clear

the defendant was entrusted with dominion over the stock of grains supplied by Dauda Bakare and stored by the defendant at a store of his choosing. I also find as a fact that the defendant from the evidence of PW1 and PW2 sold off the stock stored in the warehouse in violation of the arrangement he had with PW1.

26. I also find as a fact that the defendant acted dishonestly in that on the one hand he was stalling when PW1 insisted that it was time to sell the grains whilst he was already without the knowledge of PW1 selling the stock and converting the proceeds to his use. Consequently, I do not agree with the contention of Mr. Isma'il that the prosecution has not established any of the ingredients of the offence.

I hold that the prosecution established all the ingredients of the offence of Criminal Breach of Trust. See **ONUOHA V. THE STATE (1988) LPELR 2706 (SC)**.

25. What is the defence of the defendant to the amended charge?. The answer to this question can be located in the total denial of the defendant in his evidence. I have considered the totality of the evidence of the defendant. He denied collecting any money from PW1. He denied knowledge of what transpired between Dauda Bakare and PW1. He took it to another level when he would not even admit that PW1 paid money to Dauda Bakare, even though he admitted going to the warehouse to supervise the stock of PW1. There is also evidence that some payment was made to the account of his son which he gave PW1.

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26. The evidence of the defendant is to say the least not implausible. The definite impression I formed as I watched him testify is that of a witness

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who was lying readily and resourcefully. I do not find him to be a credible witness. **See OBRI V. THE STATE (1997) 2194 SC.** I prefer the evidence of PW2 as to what the defendant told him regarding the transaction which corroborates the evidence of PW1 to the incredible story of the defendant that he only introduced PW1 to Dauda Bakare and did not know what transpired between them.

I hold that the prosecution has established the case against the defendant beyond reasonable doubt.

Accordingly, I convict you Abdulkadir Ibrahim of committing Criminal breach of trust contrary to section 311 of the Penal Code Law of Kwara state.

[Signature]
Hon. Justice M. Abdugafar
Judge
05/08/2022

APPEARANCES

O. B. Akinsola (Mrs.) (With A. Akoja) for prosecution.

W. Ismail (O. Yahya) for the defendant.

C.T.C - A50000

[Signature]
30/1/2024

*Certified by me
Salmon Marian O.
Chief Legal Officer*

[Signature]
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