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

SUIT NO: KWS/21^c/2020

ON TUESDAY 31ST DAY OF MAY, 2022.

BEFORE HIS LORDSHIP: HONOURABLE JUSTICE .M. ABDULGAFAR

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

OLUWOLE KOMOLAFEDEFENDANT

JUDGEMENT

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

That you, Oluwole Komolafe being the alter ego of Destiny Works Limited, sometimes in July, 2015, in Ilorin within the jurisdiction of this Honourable Court Did cheat Femimat Concept Limited the sum of # 31, 500,000.00 (Thirty One Million, Five Hundred Thousand Naira) when you intentionally induced Mr. Taiwo John Ajala, being one of the directors and legal representative of Femimat Concept Limited, to supply laboratory equipment in respect of a contract worth # 128,199,986.00 (One Hundred and Twenty Eight Million, One Hundred and Ninety Nine Thousand, Nine Hundred and Eighty Six Naira) to University of Ilorin in your stead, which he would not supply but for your inducement and you hereby committed an offence contrary to section 322 (b) of the Penal Code and

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punishable under section 322 of the same Penal Code

2. The defendant pleaded not guilty to the charge leading to the commencement of this trial. The first prosecution witness testified as Bakare Abiodun Adesanmi to the effect that, sometime in 2014 Femimat Concept Limited along with some other companies bided for the contract subject matter of the charge. It is the evidence of PW1 that the contract was eventually awarded to Destiny Works Nigeria Limited who then contacted Femimat Concept Limited to supply the items in the contract having gone to the United Kingdom to source the items only to be told that Femimat Concept Limited had their sole franchise in Nigeria.
3. PW1 states how the two companies negotiated to supply the items and the execution of the contract started. PW1 also states how after making the initial payment, the defendant was not forthcoming with further payment, the authority of University of Ilorin and EFCC was involved in the effort hence, the filing of this charge. PW1 agrees under cross examination that they had instructed a lawyer to write the defendant to demand payment before reporting the case to the EFCC.
4. PW1 admits that his company was also interested in the company and that was why they participated in the bid for the contract along with the defendant's company. PW1 agrees that it took their agent 17 months to do the supply. PW1 further agrees that EFCC was mediating between the parties though he would not say that it was pursuant to the the mediation that the money paid to their company.
5. The prosecution's next witness testified as Emmanuel Dada Obafemi, the erstwhile Registrar of University of Ilorin. PW2 testifies regarding the award of the contract to the defendant's company and the variation approved for the company in respect of the contract. PW2 narrates how Femimat Concept Limited reported to the University that the defendant's company was owing them in respect of the contract as a result of which the vice chancellor intervened in the matter. PW2 agrees in cross examination that the defendant's company was awarded the contract as lowest bidder.

6. The managing Director of Femimat Concept Limited testified as the third prosecution witness. It is the evidence of PW3 that the defendant contacted him to say he had been referred by UK manufacturers of laboratory equipment as their representative in Nigeria. PW3 then corroborate the evidence of PW1 on the arrangement between the companies to supply the laboratory equipment whose contract had been awarded to the defendant's company and the execution of the contract proceeded up to the involvement of the authorities of the University of Ilorin and then the EFCC.
7. PW3 agrees on cross examination that exhibit 4 is the written agreement between the two companies in respect of the supply. PW3 disagrees with the evidence of PW1 that the EFCC was mediating between him and the defendant. PW3 agrees that the EFCC recovered #26 million for them. PW3 also agrees that the defendant instituted an action against him for using EFCC to harass him. PW3 admits that the defendant has been alleging that we breached the agreement with him.
8. The Director of planning, University of Ilorin was the next witness called by the prosecution. It is the evidence of PW4 that it was a surprise to the University when they received the complaint of Femimat Concept Ltd because their only dealing was with Destiny Works Ltd. PW4 corroborated the evidence of PW2 and documents pertaining to the contract were tendered through him.
9. PW4 agrees in cross examination that the meeting they had with the disputing companies was in respect of debt owned by the defendant's company in the sum of #61,000,000. PW4 admits that as at the time exhibit 12 was written by the complainant, the defendants company was due for payment in the sum of #64 million based on certification of his department.
10. The investigating EFCC detective Musbau Babatunde Shittu testifies as the fifth prosecution witness. It is the evidence of PW5 that the defendant induced the complainant to supply equipment for over #90,000,000. It is the evidence of PW5 that while the

- complainant executed the contract as agreed and Unilorin paid fully for the contract, the defendant did not fully pay the complainant.
11. PW5 states in cross examination that the defendant knowing that he will not be able to execute the contract after it was awarded to him approach the complainant to supply the equipment on an agreed sum , and when he was fully paid by Unilorin, he refuse to remit the money to the complainant.
 12. PW5 agrees in cross examination that there was a bidding process in which the complainant participated and lost. PW5 further agrees that the complainant was interested in the contract from the beginning. PW5 admits that the complainant and the defendant agreed terms before they agreed to do the supply and exhibit D1 are those terms.
 13. PW5 agrees that the complainant did not supply the equipment in over a year contrary to the stipulation of 16 weeks in exhibit D1. Pw5 agrees that the position of the defendant during his investigation is that the complainant breached the agreement. PW5 admits that the defendants sued EFCC in court, while the complainant a civil case against the defendant for breach of contract.
 14. Oyebade Adedapo Rotimi testified as the last prosecution witness. PW6 corroborated the evidence of PW5 on the investigation of the case and the documents of the prosecution were tendered through him. PW6 states that the mobilization fee of #14,778,915.4 paid to the defendant was diverted as the defendant only paid #11,000,000 and diverted the balance to his personal use. PW6 also state that the defendant was paid #45,000,000 for the project by the University of Ilorin, but he use #30,000,000 out of it for his personal benefit. PW6 insist that his investigation reveals that the defendant had no intention to pay the complainant having diverted the funds to his own personal use.
 15. PW6 agrees in cross examination that as an EFCC operative, he is not a debt recovery agent. PW6 also agrees that the sum in dispute when the complainant petition EFCC was #61,000,000. PW6

admits that the defendant repudiated the sum due and sought reconciliation of account with complainant.

16. The defendant testified for himself and denies the charges against him. It is the evidence of DW1 that his company participated in the University of Ilorin 2014 tender for procurement of laboratory equipment and the contract was awarded to the company. It is also the evidence of DW1 that after sourcing for funds he traveled to the United Kingdom to procure the equipment, only to be told by the UK manufacturers that I had to procure from their Nigerian franchise holder Femimat Concept LTD.
17. DW1 stated that he then returned to Nigeria to meet Femimat Concept LTD and discovered that the company participated in the bid. DW1 further stated that the two companies then agreed that 14 items which were major component of the contract would be supplied by the complainant's company at the cost of #92,000,000 and an agreement was signed to that effect.
18. DW1 also stated that he went to Unilorin Microfinance Bank to source for #50,000,000 loan, out of which he gave the complainant #46,000,000, the agreed 50%. DW1 states that it was while he was making effort to get the University of Ilorin to pay for outstanding valuation in 2017 that he got a call from EFCC Ibadan Zonal office and when he reported there, he was confronted with the petition by the complainant's company accusing University of Ilorin of diverting the money for the contract.
19. DW1 further stated that after three visits to EFCC, the operatives told him that Femimat Concept LTD had withdrawn the petition against University of Ilorin but had filed a petition against him. It is the evidence of DW1 that the petition was then transferred to Ilorin Zonal office where he made a statement telling them it is Femimat Concept that breaches the agreement and so it was not a simple case of debt.
20. It is the evidence of DW1 that the operative did not accept this and insisted that he should bring the money and threatened to shut his restaurant and sell his house. It is also the evidence of DW1 that when the pressure became too much, he instituted an action in court

against EFCC to enforce his Fundamental Human Right and it was as a result of this the y threatened to deal with him hence filing of this charge.

21. DW1 states in cross examination that he is not indebted to Femimat Concept LTD as there need to be a reconciliation of account before he can agree to owing Femimat Concept LTD as there is dispute against the debt. DW1 was recalled after the prosecution amended the charge and he states that he did not cheat PW3 because he never met, not even when he went to their office as he only met and dealt with Ayo Omoniwa and Biodun Bakare.
22. DW1 states that it was only once he received a call from UK wherein PW3 introduced himself as the managing Director of Femimat Concept LTD and this was after about 6 months when he was putting pressure on them to supply the equipment. DW1 admits in further cross examination that he only met PW3 when the equipment was being supplied.
23. After the close of the case for the defence, counsel to the parties filed written addresses which were adopted before the court. Mr. Akanbi for the defendant raised a lone issue for determination as follows which Mr. Ola agrees with:

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Whether from the totality of the evidence adduced before this honorable court, all the necessary ingredients of the offence of cheating have been made out against the defendant beyond reasonable doubt

24. Arguing the lone issue, Mr. Akanbi contends that the ingredients of the offence of cheating has been listed by the supreme court in UZOAGBA V. C.OP (2014)NWLR (PT 1401) 441. It is the submission of Mr. Akanbi that the defendant has not deceived the complainant especially in the light of the evidence of DW1 that he wanted to complete supply by traveling to United Kingdom. Attention of the court is called to the evidence of PW1, PW2 and PW5 that Femimat Concept Limited also bided for the contract but lost to the defendant's company. The court is urged to find from the

evidence of PW1 that the defendant had no intention of cheating anyone.

25. Mr. Akanbi contends that this is a simple case of contract that resulted in breach and the EFCC is only intervening as debt collectors to assist one of the parties to the contract. See *OBIEGUE V. A.G FEDERATION* (2014) 5 NWLR (PT 1399). Arguing on another wicket, Mr. Akanbi contends that it is not possible to cheat or deceive an artificial person. See *SANDA V. C.O.P* (1974) NWLR 73. The court is urged to hold that the prosecution has failed to establish the case against the defendant beyond reasonable doubt.
26. Mr. Ola for the prosecution agrees that the only issue for determination is whether the prosecution has proved the case against the defendant beyond reasonable doubt. It is the submission of Mr. Ola that having proved the ingredients of the offence, the case has been proved beyond reasonable doubt. See *ALAKE V. STATE* (1997) 7 NWLR (PT 205) 591. Mr. Ola argues contrary to the contention of Mr. Akanbi that all the ingredients have been established against the defendant. He calls in aid the evidence of PW1- PW4.
27. The court is urged to hold that the prosecution has proved the case against the defendant beyond reasonable doubt. It is the contention of Mr. Ola that exhibit 18 corroborates the evidence of PW1 and PW3. See *KIMDEY V. MILITARY GOV GONGOLA*. 2016 LPELR 40255 (CA). The court is urged to convict the defendant as charged.
28. Mr. Akanbi filed a reply on point of law where he reacts to same submissions of the prosecution.
29. Before considering the lone issue for determination raised by Mr. Akanbi which is essentially the same in substance as the issue for determination raised by Mr. Ola for the prosecution, I wish to consider a point raised by Mr. Akanbi which Mr. Ola did not respond to at all in his written address or oral argument before the court. It is the point that has to do with the vires of the EFCC in

dabbling into a case of simple contract and the debt arising there from.

30. I think I am entitled to take the silence of Mr. Ola as a concession sub silentio of the point. The courts at all levels in this country have held that our law enforcement agencies are not debt collectors. See DIAMOND BANK PLC V. OPARA (2018) 7 NWLR (PT 1617) 92 where the supreme court stated thus:

What is even disturbing in recent times is the way and manner the police and some other security agencies rather than focus on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and or unscrupulous character for recovery of debt arising from simple contracts, loans or purely civil transactions.

And with specific reference to the EFCC, the court stated thus:

It is important for me to pause and say here that the powers conferred on the 3rd respondent i.e. the EFCC to receive complaints and prevent or fight the commission of financial crimes in Nigeria pursuant to section 6(b) of the EFCC Act does not extend to the investigation and or resolution of dispute arising from simple contracts or civil transaction in this case.

The EFCC has inherent duty to scrutinize all complaints that it receives carefully no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate lawful means to resolve their disputes Alas EFCC is not a debt recovery agency and should refrain from being used as such.

31. In the light of the foregoing, the conclusion I have come to is that the EFCC ought not to have arraigned the defendant since the transaction between Femimat Concept LTD DESTINY WORKS NIG LTD was a simple contract which is outside the purview of the powers of EFCC.

32. I will commence the resolution of the lone issue with the question whether an essential ingredient of the offence has not been proved. It is the view of Mr. Akanbi that deception as an essential ingredient of the offence of cheating has not been proved. While Mr. Ola agrees that deception is an essential ingredient, he however takes the view that it has been proved. I do not see how on the facts of the case, a case of cheating can arise. The evidence of the defendant which PW1 and PW3 corroborated is that he won the bid in which both companies participated, traveled to the United Kingdom to procure the equipment but was referred by the manufacturers to Femimat Conception LTD their franchise holder in Nigeria. The implication of this is that the defendant was compelled to source the equipment from Femimat Concept LTD. The further implication is that, Femimat Concept Limited opted to act as sub-contractor in respect of a contract it lost to the defendant's company.

33. How then in these circumstances can the defendant be said to have induced Femimat Concept LTD to enter into a sub-contract agreement in respect of a contract it bid for and lost. PW1-PW5 agreed that this was a transaction steeped in contract from which the defendant's company became indebted to the complainant's company.

34. It is only PW6 who in an attempt to find criminal liability where none exists that gave evidence of diversion of part of the money, forgetting that the charge before the court is not about diversion of funds but inducement to enter into a contract for supply of equipment.

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35. I find as a fact that the prosecution has failed to prove an essential ingredient of the offence of cheating and this entitles the defendant to the verdict of the court. See DERIBA V. THE STATE (2016) LPELR 40345 CA where the court stated thus:

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In law, failure on the part of the respondent to
Prove any or all of the essential elements that
Constitute respective offences with which the
Appellant was charged would be fatal to the charge.

36.1 hold that the prosecution has not established the case against the
defendant and he is hereby discharged and acquitted.

[Signature]

Hon. Justice M. Abdulgafar
Judge
31/5/2022.

Appearance

S. T. Ola for prosecution

Y. L. Akanbi for the defendant

C. T. C - ~~At~~ 500.00

[Signature]
30/1/2024

Certified by me
Solomon Morrison
Chief Clerk Officer



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