

IN THE MAGISTRATE COURT: DELTA STATE OF NIGERIA
IN THE EFFURUN MAGISTERIAL DISTRICT
HOLDEN AT EFFURUN

BEFORE HIS WORSHIP E.A. ODJUGO ESQ., CHIEF MAGISTRATE
(SPECIAL GRADE)
ON MONDAY THE 11TH DAY OF SEPTEMBER, 2023.

CHARGE NO: ME/76C/2021

BETWEEN:-

COMMISSIONER OF POLICE COMPLAINANT

AND

ALFRED O. OKANE DEFENDANT

JUDGMENT

The Defendant was charged before this Court on a One-Count Charge of Stealing, to wit, that he did obtain the sum of N900,000 (Nine Hundred Thousand Naira) only, from one Toluwalope Ojuade (f) under the pretence that he would invest it in agricultural business, a representation that he knew to be false, and thereby, committed an offence punishable under Section 419 of the Criminal Code, Cap. C21, Vol.1, Laws of Delta State, 2006.

The Defendant pleaded NOT GUILTY, and thereafter, the prosecution called two witnesses, PW1, Mrs. Toluwalope Ojuade, and PW2, W/Sgt. Nwakaego Effiong, the IPO.

The witnesses for the Defence are (1) The defendant himself – DW1, (ii) Evangelist Daniel Inefe, DW2 (iii) Mr. Nwose Ikechukwu – DW3 (iv) Mr. Festus Akpocha – DW4 and (v) Mr. Felix Ojefia – DW5.

The exhibits tendered are as follows:

- (i) Proposed agreement between PW1 and the Defendant – Exhibit A.
- (ii) Copy of Petition – Exhibit B.
- (iii) Statement of PW1 to the Police – Exhibit C
- (vi) Defendant's Statement to the Police – Exhibit D.
- (v) Certificate of Compliance and cost analysis of cucumber farm – Exhibits E and E1.
- (vi) The Defendant's Statement of Account – Exhibit F.
- (vii) Lease agreement admitted as a receipt – Exhibit G.

- (viii) Receipt for purchase of Agrochemicals as well as accompanying certificate – Exhibits H and H1
- (ix) Certificate of compliance to tender photographs of the farm – Exhibit J.
- (x) Five photographs of the farm – Exhibits K1 – K5 respectively.
- (xi) Two Statements of Account – Exhibits L and L1 respectively.
- (xii) Statement made by DW3 at the Police Station – Exhibit M.

The issues for determination as presented by the Learned Counsel to the Defendant are:

- (i) Whether the Prosecution has proved the material particulars of the charge against the Defendant with regards to the evidence before this Court?
- (ii) Whether an alleged breach of contract can result in criminal liability?

It is therefore necessary at this stage to evaluate the evidence of both witnesses for the prosecution and the Defence. PW1 is Mrs. Toluwalope Ojuade. She stated that she is a businesswoman, and, also reported his matter to the Police. She then narrated to this Court how the Defendant who is a member of her church, approached her in the month of November, 2017, and then introduced his agricultural business to her in a bid to enable her invest in his business.

According to her, she and another friend then invested the sum of one Million Naira. She then further stated that in actual fact, a Bank transfer of N773,000 was made to the Defendant, while the sum of N127,000 in cash, making a total of N900,000 was given to the Defendant she stated that the project was for cucumber farming and, that it was geared for two months planting and harvesting, and, then for one month for the recuperation of the land. It was expected that there would be four planting seasons in a year, with the first planting season in November, 2017 which was to be harvested in February, 2018.

According to PW1, the Defendant was expected to sell, and then return back proceeds of sale alongside profit. She stated that the Defendant never gave to her any sum of money, and claimed that the harvest was bad. So, she gave the Defendant benefit of doubt, being her church member, and to give him another chance for the next planting season.

PW1 stated that she was already pregnant, and, so could not monitor him. According to her, as at May, 2018, she had already given birth, and, that as at that time, the second planting season ought to have been concluded. According to her, the Defendant gave excuses that he was preparing for his wedding, and, so, she then discovered that the farm never existed.

She stated quite emphatically that she had been duped, since the third farming and planting season never took place. She said she requested for a refund of the money paid to the Defendant, but, he refused to pay back. She stated that the Defendant had foreknowledge of the fact she, PW1, had taken the sum of N500,000 from her friend, and yet, told her that he could not refund the said sum of N900,000 and, also the said sum of N500,000.

PW1 stated that she does not know the home of the Defendant, and that the Defendant left their church. She stated that they had been on this matter for the last four years. According to her, an agreement was made between the parties, which is Exhibit "A" before this Court.

PW1 stated that she wrote a Petition to the office of the Area Commander, Warri, and there, made a statement to the Police. She stated that the Defendant told the Area Commander, Warri, that he had no money to pay back.

Under Cross-Examination, she stated that the project was for One Million Naira, and, that, that was the agreed sum. She explained further that the sum of N600,000= would be paid and then, the cucumber would be planted for the next three months. The said sum of N600,000= was for equipment, materials, which included the seeds and fertilizers and other things which were done on the 30th of November, 2017.

According to her, the subsequent payment was upon request, and, that these payments ranged from N70,000, N3,000, N100,000, N50,000= another sum of N50,000, and the last sum of N24,000= totaling the sum of N900,000. She stated further that the last sum of N100,000= was expected to be used to pay workers, and, to clear the field after harvest, but upon discovery that she had been scammed, did not pay the remaining sum of N100,000.

She gave a further breakdown of how the sum of N773,000 was paid to the Defendant's Bank Account, while the remaining sum of N127,000= cash was paid thrice as follows N50,000, N50,000, N20,000 for bamboo, and N7,000 for fuel. She stated that the Defendant came to her house to collect the sum of N120,000= while he sent someone to collect the sum of N7,000= from her.

PW1 stated that she had evidence to show to the Court of the transfer to the Defendant's bank account, but, nothing in documentary form to evidence the cash given to the Defendant. Her Petition to the Police which is Exhibit B was tendered and admitted in Court at that stage. She further clarified in Exhibit B, at para 6, that the said sum of N900,000= was paid in cash, and also to his account.

She stated that she told this Court that she invested the sum of N900,000 into the farming business of the Defendant she stated that when she did not get her capital and return, she then wrote Exhibit B to the Police. She then stated that the defendant did not set up a farm, because and according to her, (1) She requested for photographs of the farm from the Defendant as at January, 2018, when the harvest was expected, but, no photographs were given (2) she discovered that when the Defendant sent some photographs of his farm relating to previous planting, they were Internet photographs, and, so, fake (3) Unilaterally, the Defendant changed the size of the farm from two acres to two plots which was not discussed before (4) The Defendant took her to a furnished three-bedroom apartment claiming same to be his office, and, so, she was encouraged to pay and invest, but, after the business, the Defendant left her church which was their meeting point. Also, she went back to the said office shown to her by the Defendant, and, then discovered that clothes were being sold there (5) That the Defendant promised four planting seasons, and, did nothing. Yet, for the second planting season, the Defendant mentioned to her that he did nothing.

PW1 stated that the Defendant has in his possession the internet photographs, and, that GOOGLE proved it to be another person's farm, not, the Defendant's farm. She stated that the name of the Defendant's partner was not disclosed to her, and, furthermore, that there was a matter bothering on the institution of fundamental rights pertaining to this matter. She stated that there was no transaction between parties before this particular business. She stated that she has never been to Ugolo, Okpe Community before she said she read Exhibit A before. She stated that the Defendant never gave to her photographs of her farm and work in progress as agreed.

She stated that her husband went to the farm site, and, saw nothing there, and, also, that he did not see the Defendant's labourers cleaning the site or digging ridges there. She repeated that she was pregnant at that time.

She stated that Exhibit A does not contain a clause when she should pay the sum of One Million Naira, but, there was a modified agreement which was expected to be given to her. She stated that the Defendant set to her a cost analysis when she went to him, but not sent to her through her E-mail Address.

She stated that she would not know if the Defendant paid the sum of N500,000.00 into her husband's account, or pay any further sum of N500,000= to that effect. She stated that she did not instruct the Defendant to pay into Emmanuel Ajayi's Account the sum of N100,000=.

She denied delaying payment of money to the Defendant to power the generator or to buy chemicals. She said the sum of N600,000= paid was to cover the cost

of the seedlings, chemicals, and other major raw materials. She stated that she does not know the chemicals required for cucumber farming.

She said that the initial agreement was for cassava farming, but, the issue of cassava farming never came up. According to her, Exhibit A is a sample of what they were to be doing. She stated that it was the Defendant himself who approached her husband and herself for this business particularly herself, and, not them, approaching the Defendant.

She repeatedly stated that the Defendant does not have a farm. She stated further that she did not propose that she would subsequently own the farm. She stated that in her statement, she said she gave to the Defendant, almost the sum of N900,000= . Thereafter, the statement of PW1 was tendered and admitted as Exhibit C. PW1 restated that the said sum of money given to the Defendant was for the cucumber farm investment. She stated that she did not get her capital and profit from the business.

There was no re-examination of PW1

Pw2 is W/Sgt. Nwakeago Effiong, the IPO of this case. She is attached to the Area Commander's Office of the Nigeria Police Force, Warri. She narrated to this Court how sometime in the year 2019, when a Petition was received, and, then referred to her Section to investigate. She then narrated how she received a statement from PW1, and then how she obtained statement from the Defendant.

She said she visited the scene of crime, accompanied by both parties, and through investigation, received the Defendant's Statement of Account. The said statement of account is Exhibit D.. She stated further that the Defendant received the sum of N900,000= from PW1.

She stated that at the scene, she observed that the farm had just been freshly brushed and, then she took photographs. She stated that she does not know who the owner of the farm is, as she was not given any evidence or proof of ownership in that regard.

She stated further that the Defendant told her that he would bring the owner of the farm to her for the purpose of taking statement. She said also that nothing was planted on the farm, and, that, she did not meet workers at the scene.

Under Cross Examination, she stated that she is the IPO of this case, and that she could not remember the year she visited the scene of crime, and then, later stated that it was in the year 2021. She stated that the business pertaining to the parties was to do with planting of cucumber. PW2 stated that she does not know what happened at the farm site between November, 2017 and 2018 personally,

or know the amount of chemicals or fertilizer used within that stated period, or how much was paid for the lease of the said plot of land between 2017 and 2018.

She stated further that she would not know the labourers, or the number of labourers who worked on the said plot of land between 2017 and 2018, or how much they were paid, or how the Defendant spent the sum of N900,000 given to him. She said her investigation Report does not contain whether she met landlord or labourers on the said plot of land.

She said she visited the farm land once.

There was no re-examination of PW2, and that was the case for the prosecution.

The Defendant himself testified as DW1. He stated that he is a Business consultant and an Agric Economist. He stated that in the month of October, 2017, whilst heading in a tricycle, albeit, unbeknown to the Defendant and PW1 and her husband to the same church. He then narrated to this Court how they met again in next day at the same church. He then narrated to this Court how the exchanged pleasantries and then he the Defendant gave his office address to PW1 and her husband, at the material time, according to him to be No. 156, PTI Road, Effurun.

According to DW1, PW1's husband then came to visit him in the said office a three-bedroom apartment to his senior partner's office, and he stated that his senior partner was not around then. Then, he said he took PW1's husband around and then showed to him some chemicals products and seeds which they were selling at that time.

According to DW1, some of the services which they render include joint partnership with investors who are not in the field of agriculture, and, according to DW1, PW1's husband left. DW1 stated further that they met again in church. Thereafter, according to him, DW1 at the end of Uti Street,, Effurun, PW1 saw him one day and then approached him, and, then told him of her interest in agriculture, and also expressed interest to own a farm. Dw1 stated further that PW1 told her she had a friend at Ugbomro, who had a piece of land, and would be able to in her words "hire" our a parcel of land for farm purposes. According to him, PW1's husband and himself eventually went to the said plot of land, and, then he then told them what to do.

DW1 stated that he wrote down the names of chemicals and seeds required to cultivate the said plot of land, and, that they expressed interest in cucumber. According to him, he has not paid a kobo as at that time. He said the couple then told him of the attempts to spray the said plot of land, but could not go ahead with it.

According to him, Dw1, later, PW1 then requested for a proposal, and, so he the Defendant prepared a proposal for cassava, a ten-acre farm which would be inter-cropped with maize and water melon seasonally. Thereafter, DW1 then narrated how he submitted this proposal to PW1 and her husband, and how they then met to discuss this proposal at Little Paradise Hotel, Uti Road, Effurun.

According to him, PW1 and her husband then inquired why he, DW1 had chose cassava, considering the fact that his partner and himself, DW1, were already running a two-acre cucumber farm.

According to him, DW1, he then explained to PW1 and her husband that cassava is a very low risk crop, and that there was no way that they would plant cassava, and not get their money back. Furthermore, that seasonally inter-cropping of maize and water-melon in the same season would be a big boost to their profit. He explained further that low risk crop was mentioned in relation to profit making.

DW1 then narrated to this Court how he gave a guarantee to PW1 and her husband that if the planting of cassava seasonally inter-cropped with maize and water-melon fail, then there would be a refund of money back to them. According to DW1, PW1 and her husband refused, claiming that they would rather own the farm with PW1 managing same, and that their interest was on cucumber farming.

DW1 stated that PW1 then brought out her Ipad to show to him the research that she had been conducting in respect of cucumber farming, and also the fact that himself, Dw1, and his partner, one Felix Ojefia were already running a cucumber farm.

DW1 further stated that the emphasis of PW1 and her husband was in cucumber farming. Then according to DW1, right there, PW1 and her husband stated that they would contract them, and then requested for cost analysis for setting up a cucumber farm, which according to him, he sent through an E-mail.

At this stage, Certificate of Compliance and Cost Analysis were admitted and tendered as Exhibits E and E1 respectively. According to DW1, a week after a review by PW1 and her husband, he, DW1 was then credited with the sum of N600,000= in his account, to enable him, DW1, start implementation. Statement of Account of Defendant is Exhibit F before this Court. Thereafter, according to DW1, he went ahead to secure the land lease for the site. He said PW1's husband assisted on giving two workers to help with the clearing and rigging of the site. Lease Agreement albeit a photocopy was tendered as a receipt. It is Exhibit G before this Court.

According to him, the names of the two workers he referred to earlier are Jubril and Emeka, who cleared one acre out of the two acres, and were paid the sum of

N24,000= initially, and then eventually, the sum of N10,000 for and barring of the debris. DW1 said he then paid Emeka and Jubril the sum of N60,000 to do the ridge of one acre. He said PW1's husband was present when they were doing the two ridges.

DW1 then stated that he bought seeds for N176,000 agrochemicals for N115,380, organic fertilizer for N45,000, tying up the crop for N40,000, manure for 20,000 and the N40,000 for bamboo for take off.

According to him. PW1's husband then sent an additional sum of N50,000 on the 26th of December, 2017, as reflected in Exhibit F. Also reflected in Exhibit F is the payment of N600,000 on the 21st of November, 2017. Also reflected in Exhibit is another payment of N50,000 on the 26th of December, 2017, so too payment of N3,000 on the 10th of January, 2018, so too the payment of N70,000 on the 15th of January, 2018, so, too the payment of N100,000 on the 26th of February 2018 making a total sum paid to him, and according to him, to be N823,000.

DW1 denied receiving any payment in cash. DW1 said Ikechukwu was given N3,000 to buy fuel. According to him, the sum of N115,380= which he paid to purchase agrochemicals is reflected on Exhibit F to be 21st of November, 2017 and that the receipt was sent and scanned to his E-mail address. Said scanned copy is Exhibit H and then Exhibit H1 for the certificate of compliance.

Thereafter, according to him, he took photographs of them working, along with workers, which PW1's husband brought. The certificate of compliance is Exhibit J while the photographs are Exhibits K1 – K5 respectively.

DW1 said he sank the borehole at the farm, and, also commenced planting operations and sent PW1 and her husband photographs. He said he kept on asking PW1 and her husband for money for water to water the crops, and, thereafter according to him, N3,000 was brought to him for fuel to power the gen for water. Thereafter, according to him, the sum of N70,000 was given to him for pumping machine, watering of the crops and then for part-payment of salary.

DW1 said after that, PW1 could not bring any sum of money despite pressure from him. He said he was compelled to hire a generator at N500 per day, and thereafter, PW1 and her husband, paid to him the sum of N100,000 for payment of staff salaries and overhead, and this was insufficient according to DW1. He said that they had a poor harvest, and that, most of the cucumber were shunted and bent. Only a few were able to be sold up to the value of N100,000 plus, and out of that, staff salaries were paid, and midway, he remitted the sum of N100,000 to PW1.

He said that he also paid the sum of N30,000 to clear the plot again with a view of doing a second phase of planting. According to him, he requested for funds, but, PW1 stated that she was out of funds. He stated that he told PW1 that the cost of the project was the sum of N1,660,000= and that only the sum of N823,000 had been given to him. He stated that such a project requires funding, and that he told them this fact and also that as Church members he told them that he was going to compensate them even though he was not at fault.

According to him, PW1 then called him to inform him that they were going to borrow money from a co-operative society, and, that they requested for a current account, and that she had submitted the account details of Chevaah Nig. Ltd. to them. He said he is a director of the said company. He then narrated to Court that after that, the sum of One Million Naira was received from one Mr. Ajayi Friday, which was received in two installments, and then he forwarded the sum of One Million Naira to PW1's husband's according. The tellers evidencing that payment are Exhibits H and H1 respectively. According to him, he made these transfers on the 16th and 23rd days of March, 2018..

Thereafter, according to DW1, he did not hear from them, until Mr. Ajayi called him requesting for his return on investment, which he had made with Chevaah Nig. Ltd. DW1 then stated that he informed Mr. Ajayi that he had transferred the said sum of One Million Naira back to PW1 and her husband, and, that the said sum of money was not used for that investment purpose, and, so he sent a document, tagged "fraud alert" to him, and copied PW1 and her husband.

DW1 said PW1's husband then called him, and he was expecting to hear from them, until he was invited by the police. He said he made a statement to the Police,. According to him. There was an attempt to resolve this matter at one Barrister Blessing's Office, but could not resolve.

He said he paid the people who sank the borehole the sum of N40,000, after being mobilized the sum of N50,000 on the 26th of December, 2017. He referred Court to Exhibit L. He said he paid N10,000 cash to one Mr. Godffery the borehole man. He said he paid N5,000 to the Onukogbere Community, Okpe Local Govt. Area for drinks, and that he had to borrow the sum of N70,000 from one of his Classmates named Mr. McDonald Omugere in respect of this project.

He stated that the Farm Manager earned N35,000 per month, while the attendants earned N25,000 each, and that they were paid for two months completely. He stated that on the third month, he paid the said staff leaving a balance of N5,000 for the Manager, N10,000 to one of the attendants and N5,000 to the other. He said that he was paid a total sum of N823,000= but, spent (50,000 in respect of this project.

He said he invited PW1 to go and inspect the project, but, stated that PW1 said she was pregnant, but her husband came to the farm. DW1 stated that he moved office from No. 156, PTI Road, Effurun to Iye Plaza at Refinery Road, Effurun, a few blocks away from the Church. He said he left the Church because he had personal issues with the pastor. He said he invited PW1's husband to house after the incident. He said that he has done cucumber business successfully before, and that this is the first time that he was invited by the Police.

Under cross examination, he stated that he mentioned a transfer of one Million Naira, but did not indicate why. He stated that they did not reach an agreement relating to Agric business project. He state that PW1 said an agreement was reached to set up a cucumber farm for her.

DW1 stated that PW1 gave to him a total sum of N823,000 for a project worth N1,661,000 as reflected in the Cost Analysis before the Court. He said that the money given to him was spent judiciously for the project, and that the said money was insufficient. He said that it was not in one initial agreement that he, Dw1 would use his own money to sponsor the project.

He stated that Exhibit A was made by him, but the parties did not sign it, since it was decided. He stated that he remitted to PW1 the sum of N1.1 Million, and that the sum of N100,000 was paid to Mr. Emmanuel Ajayi on their instruction. He said the sum of One Million Naira was transferred to PW1's husband's account. He said the sum of N100,000 represents sales from cucumber. He said the sum of One Million Naira was not meant for his business, but was used to sell an investment to Mr. Ajayi, by using his DW1's account. He stated that PW1's money is not with him, because it was used for procurement of input, land lease, labour costs, drilling of borehole. He said he started the farming business at Orerokpe in early 2017. He said he did not deceive PW1, and also that he has a farm. He said he reached an agreement with PW1 IN Barrister Blessing's office to refund the said sum of N350,000 since what was given to him was utilized at the farm.

He stated that he has evidence that he planted cucumber which he has presented before the Court. He stated that he instituted a civil suit at the High Court Warri against PW1 and the police, in which he lost with N100,000- costs awarded against him, which has not been paid yet.

There was no re-examination of DW1.

DW2 is Evangelist Daniel Enefe. He stated that himself and two others were employed by the Defendant for farming. He said he worked for three months at the said cucumber farm and was paid the sum of N25,000 per month. He said the farm folded up after three months, and that he was not fully paid on the third

month. He said that he was watering cucumber day and night, and clearing weeds. He stated that the farm is located at Olokpobanye near Orerokpe. He further identified Exhibit K1 – K5, photographs before the Court, and identified the farm in which he worked as reflected in Exhibits K1 – K5 respectively.

Under –Cross examination, he DW2 stated that he does not know PW1. He said he is in Court because DW1 told him that PW1 made an allegation against him, that there was no farming. He stated that what he told the Court is what the Defendant told him,. He stated that he does not know the owner of the farm. He said he did not make a statement to the Police.

There was no re-examination of DW2.

DW3 is Ikechukwu Nwose. He stated that he knows the Defendant and PW1. He said that sometime in November, 2017, the Defendant invited him for a farm set up at Onokobare, Orerokpe.

During the course of the set up, according to him, he met pw1 on two occasions, once when fuel was required to pump water for the farm and so he went to meet her to collect money for fuel, and the other time, in Church which she attends with the Defendant. He said he stopped working in the farm in January, 2017. He said PW1 gave him N3,000 for fuel. He further identified Exhibits K – K1 and stated that the said farm he referred to is as reflected in the said Exhibits.

He said a pumping machine was hired to pump water. He said the workers on the farm were four, with himself inclusive, receiving salaries. He said due to insufficiency of funds, agricultural practices which ought to have been followed were not followed.

The statement of DW3 made at the Police station is Exhibit M. He said he was not around when Exhibits K – K5 were snapped. He stated that he is not privy to the negotiations between PW1 and DW1. He said he was just working with the Defendant . He said he worked in the farm with one Efe and another man popularly referred to as "Ose". He said that he does not know the name of PW1.

There was no re-examination of DW3.

DW4 is Festus Akpocha. He said that the Defendant was once his tenant at Onokabare Community, Ovu, Ethiope East Local Govt. Area, where the Defendant planted cucumber. He said that there was an agreement to that effect, and, so further identified Exhibit G at that shape, as well as Exhibit K – K5 respectively, which are the photographs.

He said he was present when the borehole was sunk and, that the Defendant gave to him the sum of N10,000 with which he in turn gave to the youths in that

Community. He said he assisted the Defendant with two workers from the Community..

Under cross Examination, he stated that he does not know PW1 but, knows DW1 as his tenant, because he has leased land twice to the Defendant. He said he could not recall the dates when the borehole was sunk or when he gave workers to the Defendant.

There was no re-examination of DW4.

DW5 is Felix Ojefia. He is an Agro Consultant. He stated that he is the partner of the Defendant, and, then operated from No. 156, PTI Road, Effurun, at the material time. He said in the year 2019, he moved office to No. 60, Airport Road, Effurun. He said that he is aware of the farm at Olokubaye Community. He said the Defendant introduced one Bulu at the office at No. 156, PTI Road, Effurun, whom the Defendant stated that he was going to set up a farm for him. DW5 said he visited the said farm at Olokobare Community thrice. He also further identified Exhibits K1 – K5 respectively. He said the Defendant was running the farm on behalf of Mr. Buno.

Under cross examination, DW5 stated that he is not the maker of Exhibits K1 – K5, and was not there when they were snapped.

Furthermore, that he know the farm because he has been there. Also that he did not make a statement to the Police.

There was no re-examination.

That was the case for the Defence

In the Written Address, Learned Counsel to the Defendant, the Learned Counsel as earlier stated, presented two issues before this Court. In respect of Issue No. 1, it is the contention of the said Learned Counsel that the prosecution has woefully failed to prove it's case. Section 137 of the Evidence (Amendment) Act, 2023, was referred to. The case of Onwudiwe V. F.R.N. (2006) LPELR – 2715 (SC) was cited to highlights the elements ingredients of an offence brought under section 419 of the Criminal Code of supra.

It is submitted that the Prosecution has not established the commitment of the said offence as contemplated by Section 419 of the Criminal Code and, that contradictions have been thrown up on the case of the Prosecution. The evidence of PW1 was referred to, and heavy weather was made as to whether it was one Million Naira or N900,000 or almost N900,000 as reflected in Exhibit C. The Case of Saleh V. Bank of the North (2006) LPELR – 2991 (SC) was cited to show that the last proof of payment into a Bank account is by production of a

Bank Teller duly stamped by the Bank. It is further emphasized that PW1 has not produced any statement of Account, Bank Tellers, receipt or instrument evidencing payment of N773,000, as well as the alleged payment of N127,000 in cash.

The case of *Onubogu V. State* (1974) LPELR – 2700 (SC) was cited to highlight the effect of contradictions. It is submitted that the Prosecution has failed to establish beyond reasonable doubt that the Defendant did not set up a Cucumber farm or that he misrepresented to PW1 to invest money to enable the cucumber farm to be set up. It was further emphasized that PW1 stated that there was no farm set up, and so, she was scammed, and yet in another breath, under cross examination, stated that her husband visited the farm site once and saw nothing there.

Also, it was stressed that PW1's husband Mr. Bolu Ojuade is a vital witness which the Prosecution failed to call, on vital witness, the case of *Sunday Odeh V. Federal Republic of Nigeria* (2018) LPELR-4370 (CA) was cited in support. It was also contended that the said PW1's husband neither made a statement to the Police nor, testified in Court to explain to the Court what he saw on his visit to the said farm which PW1 claimed never existed. Furthermore, it is contended that what PW1 told this Court about what her husband saw on the visit to the said farm amounts to hearsay evidence.

On eye witness account carries weight, the case of *Oyache V. The State* (2006) All FWLR (Pt. 305) 703 at 720 was cited in support. It is further submitted that the failure to call PW1's husband to testify is fatal. Furthermore, that PW2, the IPO visited the farm in 2021, and so, her visit pales to insignificance, because, from the evidence, the cucumber farm was cultivated between November, 2017 and February, 2018.

It was further stressed that the Prosecution failed to establish that the Defendant had an intention to defraud PW1. Exhibit A was attached since it is headed (Proposed Agribusiness Project", and, it is submitted that Exhibit A is merely a proposal and cannot constitute a valid Agreement, since it was unsigned. On proposal and it's definition, the Court was referred to Black's Law Dictionary (ante) P. 1339 as being something for consideration so acceptance.

On unsigned documents, and it's effect being worthless, the cases of *Kwara Investment Co. Ltd. V. Garuba* (2000) 10 NWLR (Pt. 674) 25 – 39 and *Dantiye V. Kanya* (2009) 4 NWLR (Pt. 1130) 13 were cited in support.

The evidence of PW1 was referred to, and it was highlighted that PW1 has not been able to show that the photographs sent to her in relation to the farm were fake, or for her to produce the real owner of the farm.

Furthermore, that from the evidence the Defendant did not bolt away from his office. The evidence of DW5 was referred to and it is stressed that it is an undeniable and uncontroverted fact that if the Defendant wanted to defraud PW1, he would not have used his account in his aforementioned paid company to assist PW1 and her husband to get the One Million Naira from Mr. Ajayi for investment purposes. Furthermore, the fact that he, the Defendant paid One Million Naira into PW1's husband account shows his level of trustworthiness.

It was stressed that from DW3's statement to the Police and his evidence before the Court that there was evidence to show that workers worked in the farm, and that fuel was bought to pump water for the said cucumber farm. PW1's evidence in that regard was also referred to.

It was submitted also that from Exhibit F, the Defendant spent the sum of N115,380 to purchase agrochemicals on the 21st of November.

The Cases of FRN V. Mgboemena (2020) LPELR-50536 (CA) and Bello V. FRN (2018) LPELR – 43688 (CA) to stress that the ingredients necessary for the offence of obtaining by false pretences must be proved conjunctively and wholly too, and, that if any ingredient is lacking, there can be no conviction sustained.

On issue No. 2, the submissions relating to issue No. 1 were relied upon and adopted. It is submitted that the prosecution attempted to call a spade a shovel, because, the transaction between PW1 and the Defendant is firmly rooted as a purely civil transaction, not in the realm of a criminal liability. It is submitted that the transaction was frustrated by PW1's inability to fund the contract Exhibit C was referred to, which as the statement of PW1 where she claimed that PW1 has refused to give her back capital and interest totaling the sum of N3,600,000. Also, referred to is her evidence before Court that when she did not get her capital and return, she then caused Exhibit B, a Petition to be written.

It is submitted that if PW1 believed that the Defendant wanted to defraud her, then why did she enter into another transaction with the Defendant? Her evidence before Court was referred to, in which she admitted that there was another business between herself and DW1 existed.

The case of Anubalu V. State (2019) LPELR-48088 (CA) was cited to highlight the fact that the only remedy available to PW1 was to have instituted a civil action for either specific performance of the contract, restitution and or seek for damages for breach of contract.

The evidence as to low yield of the cucumber arising from insufficiency of funds was referred to, and, in particular in this regard to the evidence of DW1 – DW4. This Court was finally urged to discharge and acquit the Defendant.

Undoubtedly, it is incumbent upon the Prosecution to prove its case beyond reasonable doubt. See Section 135 (1) of the Evidence (Amendment) Act, 2023. See also the case of John Ogbunbinjo & Anor. (2001) 2 ACLR527 at 588. Certainly, and, also undeniably, the presumption of innocence as enshrined and encapsulated in Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, enures in the favour of the Defendant.

Clearly, like crystal, the Prosecution has the bounden duty to prove the essential ingredients of an offence as contained in the Charge before this Court. The case of Adejobi V. The State (2011) All FWLR (Pt. 588) 850 Ratio 6 refers. In this instant case, the burden of proof rests with the Prosecution, and, it will not shift. See the case of Obriki Kingsley V. The state (2012) 6 NWLR (PT. 1191) 593 AT 601 – 610. See further the case of Lawal V. The State (2016) 14 NWLR (Pt. 1531) 69 at 85.

In this instant case with reference to the lone offence as contained in the Charge, in respect of an offence, punishable under Section 419 of the Criminal Code, supra, the Prosecution is expected to prove the following essential ingredients or elements as stated in the cases of Alake V. The State (1991) of NWLR (Pt. 205) 567 at 591 and also the case of Onwadiwe V. F.R.N. supra, to be:

1. That there is a pretence,
2. That the pretence emanated from the Defendant,
3. And that it was to be,
4. That the Defendant knew of its falsity or did not believe in its truth,
5. That there was an intention to defraud
6. That the thing is capable of being stolen
7. That the Defendant induced the owner to transfer his whole interest in the property. It should be noted that offence could be committed either by oral communication, or in writing, or even by conduct of the Defendant. An honest belief in the truth of the statement on the part of the Defendant which later turns out to be of the false, cannot found a conviction on false pretence

Furthermore, in the case of The State V. Leticia Osler (2005) 4 ACLR 502 at 514 it was stated that "It is trite law that a pretence as to future conduct is not within the /section and a charge that alleges the obtaining of a sum of money by false pretence that the Accused (now Defendant) will use the money for a particular purpose disclosed no offence"

See further the case of Achonra V. Police (1958) 3 F.S.C. 30.

Now, from the evidence before this Court, is easily discernible that there was a transaction between PW1 and the Defendant with the understanding that

PW1 was to provide funds for the seasonal planting of cucumber. From PW1's evidence, she stated that herself and another friend of hers invested the sum of One Million Naira in this business with DW1. She stated that she paid into the Defendant's account the sum of N773,000= and then paid the sum of N127,000 in cash to the Defendant. She however left the sum of N100,000= unpaid when, according to her, she discovered that there was no farm and that she had been scammed.

It was expected by the parties that there would be four planting seasons for the said cucumber in a year, with the first planting season commencing in November, 2017, which was to be harvested in February, 2018. The Defendant was expected to sell cucumber, and, then return back proceeds of sale along with interest. It is clear from the evidence that PW1 never visited any farm being operated by the Defendant, because, she was pregnant at that period, but, she stated that her husband visited the farm which the Defendant claimed was operating, but saw nothing there. It is PW1's husband's who should come and tell the Court what he saw, and not PW1. Her evidence relating to what her husband saw on the visit therefore becomes hearsay evidence, and, so inadmissible.

It is clear from the evidence too that the Defendant, PW1 and her husband were all attending the same Church, and, as at that material time, the Defendant's office was at No. 156, PTI Road, Effurun. It is also clear from the evidence before the Court that from the Defendant, he did not deny the fact that he received the sum of N823,000 which he gave a breakdown of in respect of the project, worth N1,661,000 as reflected in the Cost Analysis, which is Exhibit E1 before this Court. Heavy weight was made about whether the sum of N900,000 was paid or about the sum of N900,000 or N897,000 being the summation of monies paid by PW1 to the Defendant. It is clear and evident that from PW1's evidence, the sum of N897,000 was paid, which is about N900,000. The Defendant received these monies from PW1. There is no denying the fact that the Defendant did not receive a kobo from PW1.

At this stage, this Court will prefer at this stage to tackle issue No. 2 first.

It is clearly obvious from the evidence of PW1 and the Defendant, DW1, that there was a transaction relating to cucumber farming between the parties. It is clear from the evidence that PW1 invested money into the business of the Defendant in this respect for the farming of cucumber. It is evidence from the evidence that there was another transaction between PW1 and Defendant upon which the Defendant gave consent for his company Chevaah Nig. Ltd., to be used to borrow money from a Co-operative Society which PW1

approached. It is also from the evidence that one Mr. Ajayi Friday paid One Million Naira to the Defendant's said account, and, to which, the Defendant transferred same to PW1's husband. Exhibits H and H1 which were not controverted clearly reinforces the Defendant's assertion.

Furthermore, Defendant said he refunded the sum of One Hundred Thousand Naira only to the PW1. That fact has not been denied by PW1 too.

From the facts and surrounding circumstances of this case, it is very glaring that this matter revolves around the realm of civil law, and, cannot in any guise ripen to criminality. Exhibit A is a mere proposal not binding on the parties, and, not signed by the parties even. Unsigned documents have no effect. However, clearly from the conduct of parties, and, the fact that oral contracts exist, there is clearly a contract between the Defendant and PW1.

It is clear from the evidence before the Court that the complaint was based and founded on purely a civil matter, since, from the evidence before this Court, shows no element of criminality. For avoidance of doubt, the Prosecution has not been able to establish the elements needed or required to sustain a conviction for an offence punishable under Section 419 of the Criminal Code, *supra*. From the evidence there was no false misrepresentation emanating from DW1, the Defendant to PW1.

In the case of *Dr. Olu Onagoruwa V. The State* (1998) 1 ACLR 435 at 483, His Lordship, Tobi, JCA, as then was stated:

"While breach of the earlier agreement with the Wema Bank cannot be ruled out, it is not my understanding of the law that such a breach ripens into criminality... There is no law known to me where a breach of an agreement between two parties which has no element of criminality, can result in a criminal charge and subsequent conviction. At best, it can be a breach of a contractual relationship which in the criminal law lacks legal capacity or competence to enforce or punish."

This Court is well guided and it is clear that there is a breach of contract in this instant case, and that cannot ripen into criminality. The remedy lies in civil litigation, available to PW1, who has furnished consideration in respect of the said transaction to institute an action for either specific performance of the contract, restitution and or seek for damages for breach of contract, and not to engage the Police to enforce a commercial contract between the parties on the platform of a criminal charge. See the case of *Anubalu V. State*, 2019, *supra*.

The Police has no business to dabble into contractual disputes between parties arising from purely civil transactions. See the case of *Mclaren V. Jennings* (2003)

FWLR (Pt. 154) 528 See further the supreme Court case of Kure V. C.O.P. (2020) LPELR – 49378 (SC) at 22-25 paras A – E per Galinye, JSC, and Abba-Aji JSC at 32-33. See further Ibiyeye V. Gold (2012) All FWLR (Pt. 659) 1074.

There is evidence before the Court that in respect of this matter took steps to carry out the contract, but unfortunately, it turned out to be a poor harvest. He employed workers DW2, and DW3 refer. There was a lease in respect of land to be used for farming of cucumber. The evidence of DW1, DW4, DW2 and DW3 refer. Exhibit G refers. There were photographs of the farm Exhibits K1 – K5 refer. PW2's visit to the said scene is of no moment, because, she visited the scene after the relevant period, which is between November, 2017 and February, 2018. This Court has not been shown by the Prosecution how the Defendant, DW1 intended to defraud PW1. He even paid N100,000 to the said PW1 as part of the investment yield.

The invertible points to a breach in a contractual relationship.

It is my finding that this case revolves around Contract. It cannot ripen to the realm of criminal law. On two score, this Charge totally fails. It is not necessary to dabble into issue No. 1 again, since this Court has arrived at this conclusion, coupled with the fact that the Prosecution has not been able to prove it's case beyond reasonable doubt,. Or establish the elements of the said offence before this Court. There is no criminality in the part of the Defendant. That is my finding, and I so hold. It is not the business of this Court to enforce Exhibit D, statement of the Defendant in a criminal trial. She should go to the relevant Court.

In consequence of that, the Charge is dismissed. The Defendant is discharged and acquitted in respect of this Charge.

Dated at Effurun, this 11th day of September 2023.



E. A. ODJUGO, ESQ.
CHIEF MAGISTRATE GD. I
(SPECIAL GRADE)