IN THE MAGISTRATE COURT OF DELTA STATE OF NIGERIA
IN THE WARRI MAGISTERIAL DISTRICT
HOLDEN AT WARRI
ON FRIDAY THE DAY 10TH DAY OF JULY 2020

BETWEEN: CHARGE NO: MW/75C/2018

COMMISSIONER OF POLICE COMPLAINANT

V

MOMOH MOHAMMED MUNIRU DEFENDANT

PROSECUTION
V.Orawamen Esq
S.O Unuhieri

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DEFENCE
J.A Ajeni Esq

JUDGEMENT

The defendant is charged on two counts. Count I is for obtaining the sum of N7, 000,000 (seven million Naira) with intent to defraud one Abdul Rahim Shaibu which he paid into his company account Sazmats Royal Ventures with Zenith Bank plc Warri, Account No 1012991528 under the false pretence of lifting oil products a fact he knew to be false. The offence is brought under S.419 of the Criminal Code Cap C21 Vol 1 laws of Delta State of Nigeria 2006.

Count II is for obtaining the cash sum of N1, 250,000.00(one million, two hundred and fifty thousand Naira) with intent to defraud while doing business under the name of Mcube Muneeb Royal Resources Ltd from one Abdul Rahim Shaibu under the false pretence of lifting oil product, a fact he knew to be false. The offence in Count 11 is brought under section 419 of the aforesaid law.

The Defendant pleaded not guilty to the 2 counts whereupon the prosecution opened its case and called 3 witnesses. 12 exhibits were tendered by the prosecution. The Defendant on his part gave evidence on his own behalf and called no witnesses.The facts of the prosecutor's case is that the defendant represented to pw1 Abdul Rahim Shaibu, that he had a license for lifting and sale of oil products under his company name Mcube Muneeb Royal Resources Ltd.

The Defendant proposed to pw1 that they enter into a partnership in which pw1 invests 7 million naira while the defendant will invest 3 million Naira.

The profit sharing was to be 70% to 30% respectively. The partnership agreement dated 19th of April 2013 is Exhibit A. The Defendant represented to the Pw1 that he had an LPO which is Exhibit B. Pw1 paid the 7 million naira into the Defendant's account in Zenith Bank in the name of another of the Defendant's company named Sazmats Royal Ventures. Sometime in June 2013, the Defendant requested for a further sum of N1, 250,000.00 for logistical challenges which the pw1 paid to the defendant in cash. The amount was not receipted. The Defendant thereafter was evasive and the pw1 came to the realisation that he had been duped. All efforts to get a refund of the N8, 250,000.00 proved abortive hence the pw1 consulted a lawyer who petitioned the police. The Defendant was traced and arrested two years later at Auchi in Edo state.A fundamental Rights action filed by the Defendant against the police and Pw1 was unsuccessful.

The Pw2 is a banker with Zenith bank summoned by virtue of a witness summons Exhibit C. He tendered a certificate of compliance by way of affidavit as Exhibit D and also tendered the account statement and account opening package of Sazmats Royal Ventures as Exhibits D and E respectively showing that the signatory and passport picture on the account is that of the Defendant.

The Pw3 is one of the investigating police officers from Area Command Warri.

After placing surveillance and arresting the Defendant, the defendant made a total of four statements under caution. Two were made on 13/3/15 while two more were made on 19/3/17. The four statements are Exhibits G1, G2 ,G3, and G4 respectively. Since the Defendant made a confessional statement, he was taken before a senior police officer for attestation. The Attestation dated 20/1/17 is Exhibit H while the police investigation report is Exhibit J. On the admission made by the Defendant, Pw3 under cross examination said the defendant admitted to collecting N8, 250,000.00 from the Pw1 but did not admit that he defrauded him.

The Defendant in his defence testified on oath that it was the Pw1 that approached him in April 2013 to do business together. He informed the Pw1 that business was down at Warri depot as there was no product but that he had an LPO i.e local purchase order to supply diesel at N 80.00 per litre which could be sourced from other sources cheaper than government price. The pw1 was convinced of 100% profit margin and agreed to the partnership .The agreement was 70% contribution from Pw1 while he would bring 30%. The Defendant admitted that the Pw1 indeed paid 7 million Naira into his account, Sazmats Royal Ventures to make up the 10 Million Naira needed to mobilise the product to the place of supply. The Defendant also admitted giving Pw1 Exhibit A, the agreement which Pw1 took to his lawyer and they eventually signed. The Defendant then contacted some persons in Bayelsa state to mobilise the product for supply. He paid them and monitored until the product was taken into a vessel for supply. He gave one of the persons operating in a company name N3, 200,000.00 and obtained a receipt while he gave others cash as they had no accounts. The product was however later seized by the Nigerian Naval Forces and he informed the pw1 that the sum of N1, 250,000.00 was required for NHO (navy headquarters) approval which allows a vessel to sail in Nigerian waters. The pw1 paid the 1,250,000.00 to his (Defendant's) personal account. Unknown to them, the commander had already given order for auction of the product. He informed pw1 when he came back from a trip and the pw1 said "he was heard". Thereafter there was no further communication between them until January 2014 when pw1 called him while he was in Jigawa state that he wanted his money back and he had nothing to give him. In March 2015, he was arrested by the police in Auchi, Edo state.

He asked to call his family and friends but was asked to write his statement first. After he wrote his statement, the police officers said he and pw1 will be charged for economic sabotage that they went into bunkering and furthermore that courts were on strike so he will be kept in jail. The police advised him to write that he borrowed money from pw1 which he will pay back in instalments of N500, 000.00 due to the failure of the business and to state that he was duped by the persons he gave money to. He did so but due to constant harassment by the police to pay, he filed a fundamental rights action at federal high court, Benin which went on for two years and he travelled to the north. He asked for an undertaking for the matter to be settled. He was later advised by his lawyer that the matter was settled so he left to Auchi but was arrested on 17th March 2017 and remanded but later released on bail. He tried to reach settlement with the pw1 to no avail as the Pw1 filed a civil suit against him. The Defendant testified that the IPO of his case was one Inspector Celia and not the pw3 who gave evidence in court. He also named one Inspector Emmanuel as a member of the investigating team.

After the cross-examination of the Defendant, the written address of J.A Ajeni Esq for the Defendant was filed on 9/7/2019 while that of V.Orawemen Esq for prosecution was filed on 20/9/2019. Reply on point of law was filed by the Defence on 23/10/2019.
Their addresses were adopted on 10/12/19. However due to the need to further address the court on certain issues and the delay caused by the Covid 19 pandemic, leave was granted for and a further reply on point of law was filed on 19/05/2020 by the defence which was adopted on 1st of june, 2020. Prosecuting counsel further addressed the court orally on the same date 1st june 2020 and the case was adjourned for judgement.

I have taken into consideration the totality of the evidence adduced including the exhibits tendered as well as the submission of both counsel and authorities cited in their written and oral addresses to court.
Defence counsel submitted a sole issue for determination i.e. whether the prosecution has proved its case against the Defendant beyond a reasonable doubt. Prosecuting counsel on his part, submitted two issues for determination-

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(1) whether the prosecution has proved his case against the defendant beyond a reasonable doubt and (2) whether the transaction can be considered civil taking into consideration the method adopted by the defendant in obtaining the money in issue and having recourse to the rider in S.419 of the Criminal Code law of Delta State 2006 aforesaid.

In my view, the two issues for determination postulated by prosecuting counsel are necessary issues to resolve for a proper determination of this case and I therefore adopt same as the issues for determination taking into consideration that defence counsel has postulated one of same aforesaid issues.

I will now summarize the submission of both counsel on the issues raised.

On burden of proof, Defence counsel submitted that the prosecution has the burden to prove the guilt of the defendant beyond a reasonable doubt which burden does not shift. He cited Section 139 (1) of the Evidence Act 2011 (as amended), the case of **EGWUMI V. STATE (2013) ALL FWLR (PART. 678) SC.** And **ABDULLAHI VSTATE (2008) VOL. 164 LRCN PG 96 AT PG 113 PART AT PG 100 RATIO 3.** He also referred to S. 36 (1) of the constitution of the Federal Republic of Nigeria on the presumption of innocence of the defendant.

Counsel further submitted that the case was one of malicious prosecution as there was no iota of evidence linking the defendant to the commission of the offence and the PW1 has filed a civil suit against the defendant at the high court, Effurun. He cited the case of **EBENIGHE V. ACHI (2011) ALL FWLR (PART 580) 1316 AT 1330 PARA A – B**

On proof of false pretence, he listed the ingredients required to prove a charge of obtaining money or property under pretence, as follows:-

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(1) That there was a pretence
(2) That the pretence emanated from the Defendant
(3) That the pretence was false
(4) That the Defendant knew of the falsity of the pretence or did not believe its truth.
(5) That there was an intention to defraud
(6) That the property or thing is capable of being stolen
(7) That the Defendant deceived the owner to transfer his whole interest in the property.

He relied on several cases in this regard. **STATE V AJULUCHUKWU (2012) ALL FWLR (PT. 605) 362 AT PAGE 373 PARA C – D, CHUKWUEMEKA AGUBA V. FRN (2014) LPELR 23211 (CA) PG 1 AT PAGE 2 RATIO J.** also the case of **ONWUDUWE V.FRN (2006) ALL FWLR (PART 319) 774 AT 812 PARA G – F,** also **UGO-NGADI V. FRN (2015) LPELR – 24524 (CA) AND OLUWASHEUN V. FRN (2018) LPELR – 40168 (CA).**

He submitted that PW1 and the Defendant both knowingly entered into a contract of illegal oil bunkering and there was no evidence of intention on the part of the Defendant to defraud. In fact he was arrested at the address he gave the PW1 in their agreement. As such, the ingredients of the offence of obtaining by false pretence was not established.

Defence counsel submitted further that the evidence of PW3 as to the allegation of false pretence was hearsay evidence of what PW1 told him because the Defendant denied he was the IPO of the case which was the reason he was not sued in the fundamental rights action. He relied on S.38 of the Evidence Act and the case of **NWOFOR V. OBIEFUNA (2011) 1 NWLR (PART 1227) 205 CA o**n the inadmissibility of hearsay evidence and urged the court to discountenance the evidence of PW3.
Defence counsel further urged the court to discountenance the evidence of PW3 for non compliance with provisions of S. 17 (2) of the ACJL of Delta State, 2017.

Prosecuting counsel V. Orawamen Esq. on his part is in agreement as to the ingredients of the offence of false pretence and the authority cited by the Defence in this regard and that the prosecution has the burden to prove the guilt of the Defendant beyond a reasonable doubt. He however submitted that proof beyond a reasonable doubt does not connote proof beyond all shadow of doubt. He relied in the case of **ADEYEMO V THE STATE (2015) VOL. 249 LRCN PG 122 AT PG 129 RATIO 4.** And **STATE V GWANGWAN (2015) VOL. 49 LRCN PG 91 RATIO 13.**
Defence counsel's submission is that the prosecution cannot say the Defendant offered no defence as it is for the prosecution to prove its case beyond a reasonable doubt relying on the case of **ONONUJU V STATE (2015) ALL FWLP (PART 810) P.1198 AT 1223 PARAG F-G.** On this issue i agree that the burden of proof in a criminal case is always on the prosecution which does not shift and it must be proof beyond a reasonable doubt. However, where credible, cogent evidence has been adduced by the prosecution establishing the ingredients of an offence, the Defendant has to challenge or controvert such damaging evidence otherwise the court may have no option but to accept and treat such evidence as credible. See the case of **STATE V BABAWURO USMAN (SUPRA)** cited by the prosecution.

Where the prosecuting counsel and Defence counsel disagree is whether there was false pretence made with intention to defraud PW1. Prosecuting counsel referred to the testimony of PW1 where he said as follows:-

"Sometime in April 2013, the Defendant carrying out business under the name of Mcube Muneeb Royal Resources Ltd represented to me that he had licence for the buying and sales of oil products. Mr. Muniru Mohammed Momoh further proposed to

me that I should invest the sum of 7Million Naira, that he will invest 3Million Naira in partnership. He also proposed that profit sharing ratio should be at the proportion of 70% to me while he taken 30%"

He submitted that based on the Defendant's proposal, the PW1 was induced to enter into an agreement Exhibit A after Exhibit B the IPO was shown to him by the Defendant. That the money paid was evidenced by Exhibits "E" and "F" the statement of account of the Defendant showing the credit and the account opening documentation respectively as proof that the account is owned by the Defendant. That after obtaining the total sum in question, the Defendant became evasive. The prosecution cited the case of **ONWUDUWE V.FRN SUPRA RATIO 10** on when an offence would have been said to have been committed fraudulently.

Furthermore, he submitted that the Defendant did not controvert the evidence of the PW1 in any material particular and if he did, his evidence was contradictory. The prosecution urged the court to accept the evidence of the PW1 and PW2 as it is uncontroverted or unchallenged relying in the case of **STATE V. BABAWURO USMAN (2007) 5 ACLR PG 34 AT PG 41 RATIO 8.** Furthermore, that the Defendant in this evidence on 30/4/2019 admitted he told the PW1 he had an LPO and also admitted receiving the sum of N8, 250, 000.00 from PW1.The Defendant claimed he mobilized certain persons and alleged he even collected a receipt of N3, 250,000.00 from an individual operating under a company name but he never provided any such receipt either to the police or in court.

On the evidence of PW3, the position of the prosecution is that he is the lead IPO and operated as part of a team and as such, he is a competent witness.

On the issues raised by both counsel first, with regard to the evidence of PW3, I agree with the prosecution that there is nothing to show that the evidence of PW3 is hearsay as he was part of the investigation team. He tendered the police investigation report (PIR) from his department – Servicom that is Exhibit J without objection. I will therefore give his evidence due consideration.

With regard to S. 17 (2) of the ACJL of Delta State 2017, I agree with the prosecution that these provisions are inapplicable as the statements were taken before that law came into being on 15th March 2017 and was signed into law on 19th September 2017. Moreover, it is the statement of the Defendant which will be struck out if there is non- compliance and not the evidence of the witness PW3. Also Exhibits G1 and G2 are the main statements of the Defendant taken before 15th March 2017 while the other statements Exhibits G3 and G4 taken thereafter only contain admission as to receiving the money and undertaking to pay back .I therefore discountenance the argument of the defence on this issue.

On the defence put forward by the Defendant that he went into illegal oil bunkering to the knowledge of PW1, the prosecution submitted that it was frivolous allegation which could not be proved while on the issue of malicious prosecution raised by Defence counsel,, the prosecution's submission was that it was a misconstruction of the law in this regard. On this issue, I agree with the prosecution on this because the PW1 has the right to file a civil action to recover money he paid even while the criminal action is ongoing. The position of the law is that generally, civil proceedings can go on simultaneously with criminal proceedings where the facts give rise to both criminal and civil liabilities. The aggrieved party need not await the result of a criminal proceeding before filing and maintaining a civil suit. After all, criminal proceedings are irrelevant and inadmissible in civil proceedings except in the tort of malicious prosecution see **EBONG V SEC(2007) LPELR – 43547 (CA).**

Moreover, malicious prosecution means prosecution actuated by malice and entirely undertaken against a person without reasonable or probable cause, for instance where at the end of investigation of a complaint no case was revealed but the complainant insists that the police must charge the person to court or if the facts of the complaint are to the knowledge of a complainant false.
See the case of **M. I (NIG) LTD V HARRY (2009) LPELR – 4445 (CA).** The facts of this case in my view do not meet the requirements of malicious prosecution aforesaid.

On the issue of whether the transaction was a contract as such a civil matter, the prosecution referred to s.419 of the criminal code aforesaid under which the Defendant is charged which states-
"Any person who by any false pretence and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony, and is liable to imprisonment for three years.
If the thing is of the value of one thousand naira or upwards, he is liable to imprisonment for seven years
It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence."

The prosecution's position on this issue is that even though the money was delivered by means of contract, false pretence can still be present. Defence counsel's position is that the transaction between PW1 and the Defendant was purely a contract evidenced by Exhibit "A" the agreement between PW1 and the defendant. He relied on the case of **FELIX GEORGE AND COMPANY LTD V AFINOTAN & ORS (2015) ALL FWLR PART 778 PG 920 AT 948 PARAGRAPH C - D.** Also the case of **EDILICON NIG LTD V UBA**

PLC (2017) Vol. 270 LRCN 219 AT 247** and submits that where parties enter into agreement voluntarily with nothing to show such agreement was obtained by fraud, deception or misrepresentation, they are bound by the terms of the agreement. He argued that the contract was frustrated due to a third party (the Navy) that arrested the vessel/ product for illegal bunkering. The prosecution in reply submits that the case cited by Defence council supports the prosecution's case as there was misrepresentation and fraud in this case.

I have considered the submission of both counsel and authorities cited as to whether the transaction between the defendant and PW1 is merely a contractual one. I agree with prosecuting counsel that once false pretence is proved it is immaterial that the thing obtained was induced through the medium of a contract. See s.419 of the Criminal Code aforesaid.

Defence counsel also raised the issue of lack of jurisdiction of this court submitting that since the transaction involved crude oil supply; it falls under the jurisdiction of the Federal High Court by virtue of S. 251 (1) (n) of the 1999 Constitution as amended.

On the issue of jurisdiction, this charge relates to an allegation of obtaining money by false pretence by means of a contract. An allegation of false pretence arising from a contract to supply oil products and not crude oil does not in my view bring under admiralty jurisdiction of the Federal High Court. Prosecuting counsel has argued that this is not a charge of illegal oil bunkering or lifting of crude oil and I agree that this is a contract where there is criminal allegation that the money received was induced by means of an agreement of partnership to enter into a business to buy oil product and as such it falls under the criminal Jurisdiction of this court. On this see **ONWUDIWE V. FRN (2006) LPELR – 2715 (SC)** where the court held that determination of jurisdiction will be taken in light of the enabling law setting out the jurisdiction of the court viz a viz the charge proffered against the Accused .In the instant case, the charge is one of obtaining by false pretence which this court has jurisdiction to hear and determine,

The issue for determination as to whether the prosecution has proved its case beyond a reasonable doubt hinges on whether the ingredients of the offence of false pretence have been proved beyond reasonable doubt. See **EBENIGHE V. ACHI (supra)** for the ingredients of false pretence.

The Defendant admitted he received the sum of N7, 000,000.00 and N1, 250,000.00 from the PW1 so this fact is not in contention as facts admitted need no further proof. See S.75- of the Evidence Act. The money is a thing capable of being stolen. The issue to resolve is whether the Defendant did so under a false pretence with intention to defraud. Did the Defendant know of the falsity of the pretence?

S. 418 of the Criminal Code of Delta State 2006 defines false pretènce as
"Any representation made by words, writing or conduct, of a matter of fact, either past or present and which representation is false in fact and which the person making it knows to be false or does not believe to be true"

For the prosecution's case, the PW1 testified that the Defendant represented to him that he had a licence for buying and sales of oil products and proposed that the PW1 invest 7million Naira in a partnership while the Defendant invests 3million Naira with profit of sharing of 70% to 30% respectively. PW1 said he knows the Defendant from the Mosque as an Alfa, scholar and Imam and also that the Defendant comes to NNPC deport at Ekpan to purchase product.

PW1 further testified that the Defendant contacted him in June 2013 and requested for the sum of N1, 250,000.00 citing logistical challenges.

PW1 under cross-examination on 5/11/18 said the Defendant reported to him that he was buying the product from Matrix and that the price difference with NNPC was N1.00. He stated further that the Defendant never told him it was an illegal bunkering business and if he knew he would never have gotten involved in it and also the Defendant never told him that the product was seized by Naval personnel when coming from Bayelsa but rather that he had logistics problems.PW1 was not aware of payment of money to one Obinna Oguamanam to cook oil or that the Defendant made a loss as he showed him no evidence of same.

The Defendant on the other hand, testified that it was the PW1 who approached him to do business and he then informed him of a purchase order to supply diesel at N80 per litre and that they can source for the product from other sources which will be cheaper than government price.

After the agreement was signed and money was paid by PW1, the Defendant said he contacted some persons and paid a particular individual operating under a company name N3, 250,000.00 and collected a receipt while others were paid in cash. However, he never gave the receipt to the police or tendered any receipt in court.

I find it difficult to believe the testimony of the Defendant first because even though he says he was given a receipt for N3, 250,000.00 he never produced the receipt in court at least to convince the court that he did enter into the transaction with genuine intention.

Furthermore, he testified in court on 30/4/2019 that the product was seized by naval authorities and he collected the sum of N1, 250,000.00 from PW1 to recover the product.

This evidence is contradictory to his statement Exhibit G1 and G2 while he said he was duped by one Kingsley. He never mentioned naval authorities in his statement. When confronted under cross-examination about his statement he said he was advised by the police that if he admits he was involved in illegal bunkering he will be arrested. However, his statement was admitted in evidence without objection from the Defence.

He further said he informed the PW1`that the product was seized and PW1 said "he has heard me". And from that time, they never had any communication until January 2014. and at this time he was in Jigawa State.

I find it difficult to believe the Defendant that someone who invested N8, 250,000.00 in a business will say "I have heard you" and did not call him for another nine months. That appears unreasonable in my view. I rather believe the evidence of the PW1 that the Defendant was avoiding his calls. The Defendant admits in his evidence in court that he made no further communication with PW1 until 11th March, 2015 when he was arrested by the police.

Furthermore, the Defendant admitted under cross-examination that he does not have a licence to buy and sell petroleum product and that he does not need one except he is buying from PPMC and that he can buy without licence from independent marketers. This is contrary to what PW1 said he represented to him.

Under cross-examination, the Defendant admitted that although the LPO states the product was to be sourced from Agege Ramos in Bayelsa, he knew the product of that volume was not available there and he was to source for it elsewhere. He said under cross-examination, "I knew the product was not available there before I quoted for the IPO". The PW1 testified that the Defendant told him it will be sourced from Matrix and so he never had any idea of illegal bunkering.

There was further contradiction in the evidence of the Defendant where he said he had only one partner who is PW1 but in his statement to the police he said he had two other partners who were to raise N10,500,000.00 each making 30 million Naira for the business and whom he gave money to source for product. Under the heat of cross-examination, he referred to the persons mentioned by name in his statement as acquaintances and no longer as partners.
The Defendant under cross-examination also said the transaction with the PW1 was just one tranche of the LPO as over 30 million Naira was needed to finance the purchase order. This is quite different from the representation made to the PW1 as evidenced in their agreement Exhibit "Á"

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Also in his evidence before court, the Defendant said the PW1 paid N1, 250,000.00 into his account but in his statement to the police he admitted the PW1 gave him cash as PW1 testified and that he paid same in his account and gave the PW1 the teller. PW1 denies ever receiving the teller.

I do not believe the Defendant is a witness of truth. His evidence in court and his statement to the police Exhibit G1 and G2. Is contradictory. The Defendant cannot be way of oral evidence vary or add to the documentary evidence Exhibits "A" and "B" i.e the partnership agreement and LPO respectively. See S. 128 of the Evidence Act 2011 (as amended).The exceptions under that provision only apply where there is proof of fraud, illegality, etc and there is no proof of that in respect of Exhibit a and B.
The position of the law is that where the evidence of a witness in court is contrary to his extra judicial statement, his entire evidence is therefore unreliable and should be discountenanced. See the case of **UMANI V. STATE (1988) 1 NWLR (PT. 70) 274 RATIO 1 & OLADEJO V STATE (1987) 3 NWLR (PT. 61) 364 AT 427.**

I do not believe the Defendant's evidence that he wrote his statements based on the advice of the police that if he tells the truth, he can be arrested for illegal bunkering because apart from the issue of the source of the product there are still many contradictions between his evidence in court and his statement to the police.

The Defendant could not show as he claimed in his defence that the PW1 knew he was engaging in illegal bunkering. He claimed the product was seized by the Navy in his evidence but in his statement he claimed he was duped by one Kingsley. He could not even tender the receipt he claimed he obtained for payment of part of the money. Furthermore, the Defendant could not explain how the product could be supplied within the date specified in the LPO i.e Exhibit "B" as the completion date which was May 1st 2013. The LPO states that the order will be cancelled after two weeks without delivery.
The story the Defendant told the court as to the time it would take him to deliver after "cooking the oil" for 3weeks from 17th April, 2013 exceeded this date. His explanation was that the product will still be accepted after the completion date but he provided no evidence of it .This further leads me to doubt the entire story of the Defendant.

I do not believe he collected the sum of N1, 250,000.00 for any logistics problem as claimed in his statement. as he made a contrary claim in his evidence in court when he said it was to secure release of the vessel. Furthermore, under cross-examination on 21/5/19, the Defendant admitted he never told the police that the vessel was impounded. Rather he used the words logistics problems. He said further that his application for fundamental rights was not granted due to the negligence of his lawyer not attending court

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but in his evidence in court he said the lawyer told him the proceeding had concluded and he was free as a bird.

The entire evidence of the Defendant is fraught with inconsistencies and contradictions. I find his evidence unreliable and I discountenance same.

See the case of **ONWUDIWE V FRN (supra) PER TOBI JSC P. 53 PARA D – F.**

"For the offence of obtaining by false pretence to the committed, the prosecution must prove that the accused had an intention to defraud and the thing is capable of being stolen. An inducement on the part of an accused to make his victim part with a thing capable of being stolen or to make his victim deliver a thing capable of being stolen will expose the accused to imprisonment of the offence."

The Defendant in this case readily admits he was involved in illegal bunkering and there was no proof that the PW1 knew about it .He induced the PW1 with a legitimate LPO Exhibit B to enter into an agreement which is Exhibit A and obtained the sum of N8,250,000.00 from him under false pretence.

In the final analysis, I find that the prosecution has proved that the Defendant collected the sum of 7million Naira and N1, 250,000.00 under false pretence from the PW1 and that he did so under false pretence. The prosecution has proved all the ingredients of the charge of false pretence aforesaid. Once false pretence has been established, it is immaterial whether the thing obtained was induced through the medium of contract. See S. 419 of the Criminal Code law Delta state aforesaid.

The two issues for determination are therefore resolved in favour of the prosecution.
I therefore find the Defendant guilty in both Count 1 and Count 2.

ALLOCUTUS: J.A Ajeni Esq on behalf of the Defendant pleads with the court to tamper justice with mercy. That the Defendant has no criminal record, he has aged parents, a wife, children and siblings who depend on him for survival. He urged the court to give the Defendant an opportunity to be a better person and administer the least punishment on him.
RECORD: S.B Irabor Esq (DSP) holding the brief of V.Orawamen Esq for the prosecution says the Defendant has no criminal record.
SENTENCE: I have considered the plea for leniency by defence counsel on behalf of the defendant. I have also considered the fact that the Defendant has no criminal record. In

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addition, the complainant from the facts of the case has instituted a civil action to recover the money involved in this case from the defendant.

However, in order to serve as a deterrent, I sentence the defendant as follows:

COUNT 1: One year imprisonment or N50, 000.00 fine

COUNT 2: One year imprisonment or N50, 000.00 fine

The terms of imprisonment are concurrent while the fines are cumulative. Total fine therefore is N100, 000.00. I further order that the defendant be remanded at A division police station Warri pending payment of the fine due to the non-admission of convicts to Warri Correctional Centre due to the Covid 19 pandemic.

C.T.C — N500
paid vide a/n
DR07940462
17-12-2020

MAGISTRATE'S COURT
DELTA STATE
NIGERIA
DATE.
WARRI

E. M. SOWHO (MRS)
CHIEF MAG GD1 (S.G)
10/7/2020

CERTIFIED TRUE COPY
NAME: BLESSING ABIRHIRE
SIGN:
DATE: 17/12/2020
ASST DIRECTOR OF COURT