IN THE HIGH COURT OF DELTA STATE OF NIGERIA
IN THE EFFURUN JUDICIAL DIVISION
HOLDEN AT EFFURUN.
BEFORE HIS LORDSHIP HON. JUSTICE MICHAEL NDUKA OBI, (JUDGE)
ON THURSDAY, THE 27TH DAY OF JUNE, 2024

CHARGE NO: EHC/7C/2020

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA..............COMPLAINANT

AND

ANAYO NWANKWOALA......................... DEFENDANT

JUDGMENT

Anayo Nwankwoala (Defendant) was arraigned in this Court on the 22nd of March 2021 on a five-count charge contained in information filed by the Economic and Financial Crimes Commission on the 6th of February 2020. The said counts are:

1. **COUNT I: STATEMENT OF OFFENCE:**

   Stealing contrary to Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006, and punishable under Section 390(9).

   PARTICULARS OF OFFENCE

   That you ANAYO NWANKWOALA (m) while you were staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, within the jurisdiction of this Honourable Court between 23rd of October, 2015 to 14th July, 2016, being entrusted with the responsibility of receiving School fees and other levies approved by the School, did fraudulently stole various amount of money as contained in the School fees cash receipts to the aggregate sum of =N= 1,943,500.00 (One Million, Nine hundred and forty-three thousand Five hundred Naira) only being payment for 2015/2016, first term School fees and full day feeding property of Sterling School Ekpan received by you and thereby committed an offence.

2. **COUNT II: STATEMENT OF OFFENCE:**

Stealing contrary to Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006, and punishable under Section 390(9).

PARTICULARS OF OFFENCE

That you ANAYO NWANKWOALA (m) while you were staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, within the jurisdiction of this Honourable Court between 8th of August, 2016 to 5th January, 2017, being entrusted with the responsibility of receiving School fees and other levies approved by the School, did fraudulently stole various amount of money as contained in the School fees cash receipts to the aggregate sum of =N= 6,012,630.00 (Six Million, twelve thousand Six hundred and thirty Naira) only being payment for 2016/2017, first term School fees and full day feeding property of Sterling School Ekpan received by you and thereby committed an offence.

3. **COUNT III: STATEMENT OF OFFENCE:**

Stealing contrary to Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006, and punishable under Section 390(9).

PARTICULARS OF OFFENCE

That you ANAYO NWANKWOALA (m) while you were staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, within the jurisdiction of this Honourable Court between 17th January 2017 to 28th June 2017, being entrusted with the responsibility of receiving School fees and other levies approved by the School, did fraudulently stole various amount of money as contained in the School fees cash receipts to the aggregate sum of =N= 3,013,100.00 (Three Million, thirteen thousand one hundred Naira) only being payment for 2016/2017, first

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16 JUL 2024
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HIGH COURT OF JUSTICE
EFFURUN
OFFICIAL

term School fees and full day feeding property of Sterling School Ekpan received by you and thereby committed an offence.

4. **COUNT IV: STATEMENT OF OFFENCE:**

Stealing contrary to Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006, and punishable under Section 390(9).

PARTICULARS OF OFFENCE

That you ANAYO NWANKWOALA (m) while you were a staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, within the jurisdiction of this Honourable Court between 10th of April, 2017 to 27th April, 2017, being entrusted with the responsibility of receiving School fees and other levies approved by the School, did fraudulently stole various amount of money as contained in the School fees cash receipts to the aggregate sum of =N= 814,500.00 (Eight hundred and fourteen thousand five Naira) only being payment for 2016/2017, first term School fees and full day feeding property of Sterling School Ekpan received by you and thereby committed an offence.

5. **COUNT V: STATEMENT OF OFFENCE:**

Obtaining by false pretence contrary to section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under 1(3) OF THE SAME Act.

PARTICULARS OF OFFENCE

That you ANAYO NWANKWOALA (m) while you were a staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, within the jurisdiction of this Honourable Court, being entrusted with the responsibility of receiving School fees through the School Bank Accounts approved by the School between 2015 to 2017, did with intent to defraud Sterling School Ekpan, at Effurun, Delta State, you received various School fees by cash from parents of the Children in Sterling School and falsely issued out School fees receipts to parents, under the false pretence that you have remitted the said monies to the School accounts meant for Sterling School fees, knowing to be false and thereby committed an offence under Section 1(3) of same Act.

He pleaded not guilty to all five counts on the information. In proof of the case against the Defendant, the Prosecution called five witnesses and closed its case, while the Defendant testified in defence of the charge and called no witnesses. At the close of the case of the Defendant, Counsel to the Defendant filed his Written Address dated 27th of November 2023 out of time with leave of the Court. The said Address was deemed filed on the 4th of December 2023. Prosecuting Counsel filed his Address on the 9th of January 2024 while Counsel to the Defendant filed a Reply on Points of Law on the 18th of January 2024. The Addresses and Reply on Points of Law were adopted on the 7th of May 2024. While adopting his Address and Reply on Points of Law, Learned Counsel for the Defendant challenged the jurisdiction of this Court to hear and determine this suit on the ground that the Economic and Financial Crimes Commission does have the prosecutorial powers to prosecute this suit and the charges against the Defendant fall outside the purview of the **Economic and Financial Crimes Commission Establishment Act 2004**, from which the Economic and Financial Crimes Commission derives its powers to prosecute. Counsel for the Defendant referred this Court to **Section 46**, which is the Interpretation section of the said **Act**, which provides that:

> ***"Economic and Financial crimes" means the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery,***

looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking, and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc."

He referred this Court to the case Supreme Court decision in **NWOBIKE v. FRN (2021) LPELR-56670(SC)** and submitted that the only financial crimes the EFCC can prosecute must violate existing legislation governing the economic activities of the government and its administration. In response, Learned Prosecuting Counsel submitted that the submission of Counsel to the Defendant is misconstrued **Section 46** (supra) does not limit the prosecutorial powers of the EFCC to only financial crimes that violate existing legislation governing the economic activities of government and its administration. Counsel referred this Court to **Section 7 (2) of the Economic and Financial Crimes Commission Establishment Act 2004 as well as Amadi Vs FRN (2008) 18 NWLR Part 119 PG 259**. Learned Prosecuting Counsel submitted further that the case **NWOBIKE v. FRN** (supra), had nothing to do with financial crimes.

I have considered submissions as well as read the authorities referred to by Counsel. The Defendant stands charged for the offence of Stealing and Obtaining under false pretence, money belonging to Sterling School Ekpan, a private school where the Defendant worked as a Bursar.

Section 7 of the Economic and Financial Crimes Commission Establishment Act 2004, which deals with functions of the EFCC provides that:

(1) The Commission has the power to

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DEPUTY DIRECTOR OF COURT

HIGH COURT OF JUSTICE
EFFURUN
OFFICIAL

(a) cause investigations to be conducted as to whether any person, corporate body, or organisation has committed an offence under this Act or other law relating to economic and financial crimes;

(b) cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's lifestyle and extent of the properties are not justified by his source of income.

(2) In addition to the powers conferred on the Commission by this Act, the Commission shall be the coordinating agency for the enforcement of the provisions of-

(a) the Money Laundering Act, 2004; 2003 No. 7. 1995 No. 13;

(b) the Advance Fee Fraud and Other Related Offences Act, 1995;

(c) the Failed Banks (Recovery of Debt) and Financial Malpractices in Banks Act, as amended;

(d) the Banks and Other Financial Institutions Act, 1991, as amended;

(e) the Miscellaneous Offences Act; and

(f) any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

Section 7(2)(B) (supra) provides that EFCC shall be the coordinating agency for the enforcement of the provisions of-

the **Advance Fee Fraud and Other Related Offences Act, 1995**;

Count 5 on the information as stated above is Obtaining by false pretense contrary to **section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under 1(3) of the same Act.**

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NAME: OBIKU URUEMU
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HIGH COURT OF JUSTICE
EFFURUN
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The Economic and Financial Crimes Commission by the clear provisions of **Section 7(2)(b)** (supra) has the prosecutorial powers to prosecute the Defendant on count 5 on the information.

Now to counts 1-4, the offences which are contrary to **Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006, and punishable under Section 390(9). Section 7 (2) (f)** (supra) provides that EFCC can enforce any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code. By the provision of **section 7(2)(f)** (supra), EFCC can prosecute a crime in the Criminal Code relating to Economic and Financial Crimes. On the face of counts 1-4, stealing contrary to **Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006**, and punishable under **Section 390(9)**, could be classified as a financial crime. The pertinent question seeking an answer is if the interpretation of Economic and Financial Crimes as defined by the EFCC Establishment Act would cover the financial infractions alleged to have been committed in counts 1- 4 in the Information of this suit.

I have read the case of **Amadi Vs FRN (2008) 18 NWLR (PT. 1119) 259** relied on by the Prosecuting Counsel and the facts and holding in Amadi's case are distinguishable from the facts in this case. In Amadi's case a fiat was issued by the Attorney General of Lagos State to the Chairman of the Economic and Financial Crimes Commission and the contention therein was whether the Chairman could delegate the powers delegated to him to an officer under him to wit: Hassan the EFCC officer who signed the information. The said scenario is different from this case where no fiat was issued rather the contention is whether the financial crime being prosecuted in counts 1 -4 is contemplated by the interpretation of economic and financial crime as contained in **Section 46 of the EFCC Establishment Act**.

Counsel to Defendant relied heavily on **NWOBIKE Vs FRN** (supra). The Supreme Court per TIJJANI ABUBAKAR, JSC in Nwobike's case, in interpreting what constitutes corrupt malpractices as contained in **Section 46 of the EFCC (Establishment) Act** stated thus:

> ***"I have given careful consideration to the natural, ordinary, and plain interpretation of the expression "corrupt malpractices", which is not defined under the EFCC (Establishment) Act, and with all due respect, find it difficult to accept that the literal interpretation is effective in discovering the intention of the legislature concerning ascertaining the scope of the expression "any form of corrupt malpractices" used in Section 46 of the EFCC (Establishment) Act If the literal meaning is adopted, it means that the powers of the EFCC will be at large and open-ended, because, by that interpretation, every criminal and illicit activity committed will fall within the scope of "corrupt malpractices" and consequently be regarded as an economic and financial crime, which the EFCC will be empowered to investigate, so doing will make a pigmy of other legislations and render them barren and sterile. Again, if the definition of "corrupt malpractices" is not properly defined and demarcated, the Economic and Financial Crimes Commission will assume some supernatural strength to render it all in all, thereby dwarfing other similar Agencies vested with powers to investigate and prosecute criminal offences and bring the EFCC assume the corresponding powers of the Chief Law Officer of the Country. Such open-ended powers if not defined will escalate the status of the Agency to that of a ruthless ungovernable monster, I am sure this is not the intention of the legislature necessitating the establishment of the EFCC and enacting the Act. I must at this stage have recourse to the United Nations Convention***

against Corruption which gave rise to and compelled the enactment of the Economic and Financial Crimes (Establishment Act) 2004. The United Nations General Assembly Resolution 58/4 of 31st October 2003, brought the Convention into force. The Statement made by the United Nations Secretary-General Kofi Anan (of blessed memory) is important, he said "...The Convention introduces a comprehensive set of standards, measures, and rules that all countries can apply to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. And it makes a breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen. These provisions- the first of their kind- introduce a new fundamental principle, as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds. Corrupt officials will in the future find fewer ways to hide their illicit gains. This is a particularly important issue for many developing countries where corrupt high officials have plundered the national wealth and where new Governments badly need resources to reconstruct and rehabilitate their societies..." The Convention required each State party to the convention to enact a law criminalizing certain acts, I must add that from the statement of purpose of the convention, the criminalization sought from State parties to the convention is designed to curb corruption as expressly captured in the preamble to the convention. Part of the Preamble to the Convention is also reproduced as follows: "Preamble The States Parties to this Convention, Concerned *about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law, Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering, Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States, Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential, Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively, Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively, Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law, Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery, Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights, Bearing in mind that the prevention and eradication of corruption is a responsibility*

of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective, Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption." The United Nations Convention Against Corruption, particularly Article 15 provides for the domestication and criminalization of offences under the convention by State parties, in line with this obligation therefore, Nigeria enacted the EFCC Act. Article 15 of the Convention provides as follows: Article 15. Bribery of national public officials Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally: I think it is at this stage, improper to import and encompass all criminal offences under the Economic and Financial Crimes Commission (Establishment Act) 2004, the criminal offences contemplated by the Convention must be offences fitting the statement of purpose of the Convention, the criminal offences must not be at large as to include every conceivable criminal offence."

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16 JUL 2024
NAME: OBIKU URUEMU
DEPUTY DIRECTOR OF COURT

Though the phrase corrupt malpractices is what is been interpreted in Nwobike's case, the judgment gives a helpful insight as to how the prosecutorial powers of the EFCC are to be viewed. The EFFC has the power to prosecute economic and financial crimes. The Defendant contends that these powers by the interpretation section of the Act establishing the EFCC only relate to financial crimes that violate existing legislation governing the

HIGH COURT OF JUSTICE
EFFURUN
OFFICIAL

economic ***activities of the government and its administration (emphasis mine)***. It is alleged that the Defendant, while a staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, being entrusted with the responsibility of receiving School fees and other levies approved by the school, did fraudulently steal various amounts of money. While **Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006** is an existing legislation that makes stealing a crime; the question however is whether the alleged stealing in this case affects the economic ***activities of the government and its administration?.***

Having read Nwobike's case extensively, I am of the firm view, that it would be expanding the frontiers of the prosecutorial powers of the EFCC beyond the contemplation of the legislature as the allegations against the Defendant in counts 1-4 have bothered on stealing from a private institution that has no bearing whatsoever with the economic activities of the government and its administration. When in the interpretation section of the EFCC Establishment Act, it is stated:

> **"…….and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking, and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc"**

The above-mentioned crimes or any other crimes that the EFCC can prosecute must relate to the existing legislation governing the economic activity of the government and its administration. This is because these activities not only violate specific laws and regulations but also undermine the economic integrity and administrative order of governments. They often have wide-ranging negative impacts on society, including financial losses, harm to public health and safety, and erosion of trust in institutions. However, the same cannot be said of the alleged crime levelled against the Defendant which borders on stealing from his former employers; a privately owned school.

Accordingly, I hold that the EFCC does not have the prosecutorial powers to prosecute counts 1-4 on the information, consequently, this Court lacks jurisdiction to hear and determine the said charges. As stated earlier, the EFCC can prosecute count 5 which is:

> ***Obtaining by false pretence contrary to section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under 1(3) OF THE SAME Act.***

The particulars of the offence state thus:

> That you ANAYO NWANKWOALA (m) while you were a staff and the Bursar of Sterling School Ekpan, at Effurun Delta State, within the jurisdiction of this Honourable Court, being entrusted with the responsibility of receiving School fees through the School Bank Accounts approved by the School between 2015 to 2017, did with intent to defraud Sterling School Ekpan, at Effurun, Delta State, you received various School fees by cash from parents of the Children in Sterling School and falsely issued out School fees receipts to parents, under the false pretence that you have remitted the said monies to the School accounts meant for Sterling School fees, knowing to be false and thereby committed an offence under Section 1(3) of same Act.

The particulars of the offence of count 5, suggest that Defendant did with intent to defraud Sterling School Ekpan, at Effurun, Delta State, received various School fees in cash from the parents of the Children in Sterling School. In other words, money was received from parents falsely to defraud not the parents from whom the money was received but to defraud Sterling School.

Having read the charge and heard the evidence of both parties, the question now is whether the particulars of the offence align with the charge?.

It is the submission of Counsel to the Prosecution that **Section 1(1) of the Advance Fee Fraud and Other Fraud Related Act 2006** provides thus:

> ***"Notwithstanding anything contained in any enactment or law, any person who by any false pretence, and with intent to defraud***
>
> ***a) Obtains, from any other person, in Nigeria or any other country for himself or any other person; or***
>
> ***b) Induces any other person, in Nigeria or in any other country to deliver to any person; or***
>
> ***c) Obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act.***

Counsel further submitted that flowing from the above section of the law the following ingredients of the offence of obtaining by false pretence can be deduced:

1. That there was a pretence.
2. That the pretence emanated from the accused person
3. That the pretence was false
4. That the accused knew it was false
5. That the property obtained by the accused person is a thing capable of being stolen
6. That the accused person induced the owner of the property to transfer his whole interest in the property.

Counsel referred this Court to the case of **DARLINGTON V. FRN (2018) LPELR-43850 (SC)**, where the Apex Court enumerated the ingredients of the offence of obtaining under false pretences as thus:

1. That there was a pretence made by the accused person

2. That the thing stolen or obtained is capable of being stolen.
3. That the accused did the same with intent to defraud

Counsel referred to **ONWUDIWE v. FRN (2006) 10 NWLR (PT 988) 382**

It is the Counsel's submission that from the totality of the evidence adduced before this Honourable Court, the Prosecution has proved all the essential ingredients of the offence of obtaining under false pretence against the Defendant as contained in Count 5. The pertinent question is what is the evidence the Prosecution presented in proof of the said charge?.

It is the submission of Counsel to the Defendant that the burden of proving obtaining money by false pretence like the burden in all criminal cases is beyond a reasonable doubt. All elements of the offence of obtaining money by false pretence must be established beyond a reasonable doubt to sustain the allegation and the Prosecution was not able to prove any of the above ingredients. He submitted that the charge in count 5 is not sustainable to sustain the offence envisaged in **Section 1(1)(a) punishable under Section 1(3) of the Advance Fee Fraud and Other fraud related offences Act, 2006**. He contended that there is no proof that the Defendant **"obtains, from any other person, in Nigeria or in any other country for himself or any other person"** to sustain the charge. It is his submission that the Prosecution was unable to establish that there was "pretense" on the part of the Defendant to defraud Sterling School Ekpan, in that, the evidence of the Prosecution witnesses that is PW1 is that the Defendant was the Bursar of the Sterling School between 2013 -2017, and between the 2015-2017 academic session, he was not able to pay salaries as such he requested that the Defendant submits to him the lists of defaulters, school's expenditures and uncleared Cheques. These documents the PW1 admitted he received from the Defendant. The only reason the Defendant is now in Court is because the PW1 refused to take into consideration lists of defaulters, school's expenditures, and uncleared Cheques which has now resulted in a deficit that the PW1 now wants the Defendant to forcefully pay to his bank account. After all, they were not approved by him. He submitted that the Prosecution woefully failed to adduce cogent and irresistible evidence to prove the guilt of the Defendant in count V.

On their part, the Prosecution contends that through PW1 they tendered the school fees receipts of monies collected by the Defendant which were never remitted into the school account (we refer to **Exhibits PA1-47, PB1-92, PC1-63, and PD1-18)**. Counsel referred to the evidence of **PW2 Mrs Faith Agboola**, who they say is one of the victims of the Defendant and whose evidence was never denied or controverted by the Defendant. PW2 stated thus in **paragraph 5 of her written deposition**

> *"I paid Mr. Anayo (the defendant) who was the bursar of Sterling School my children's school fees in cash to assist me deposit into the school account and he issued a school fees receipt to me..."*

she went further to state in **paragraph 6** as follows:

> *"sometime in July 2017, to my utter dismay, I got a call from the school management that I have not paid my children's school fees".*

Further in her **Paragraph 7**

> *"I came to the school and showed the school fees receipt issued to me by the school bursar Anayo (the defendant) showing evidence of my payment but the defendant did not remit same to the school account."*

PW2 further identified exhibits PB66 and PB67 as School fee receipts issued to her by the Defendant. Prosecuting Counsel submitted that the above evidence of PW2 was not denied by the Defendant and PW2 was also not contradicted during cross-examination as to this material piece of evidence, in fact during cross-examination PW2 reiterated that the Defendant issued her receipts giving her the impression that he has paid the fees into the School Bank Account and further stated that the records from the Bank showed that she was still indebted to the School. Counsel then submitted that the offence of obtaining by false pretences as contained in Count 5 even without further evidence has been established against the Defendant through the evidence of PW2. Prosecuting Counsel submission further is that the money obtained from the PW2 by the Defendant is a thing capable of being stolen, the Defendant made false pretence to PW2 about payment of the money into the School account for school fees, the Defendant had the intent to defraud as he failed to pay the money into the School account as he pretended to PW2. Counsel referred to the case of **AWBOTU v. STATE (1976) LPELR-649 (SC)** where the Supreme Court held thus:

> **"put shortly 'with intent to defraud' means with intent to practice fraud on someone or another. Someone in general will suffice. If anyone may be prejudiced in any way by the fraud, that is enough."**

I have considered the submissions of both Counsel. There is no dispute that Defendant was the Bursar of the School and so he did not hold himself out falsely to the parents. He issued PW2 and PW3 with the School's official receipt, evidencing that he collected money from them for school fees. The allegation is that he ought not to have collected cash from the parents but ought to have directed the parents to pay the fees in the bank or ensure that he remitted the money to School accounts. Would collecting money from parents in first place amount to obtaining under false pretence? I do not think so, because he is the School's Bursar.

On the definition of false pretence, the Supreme Court in **ENUOKA v FRN (2018) LPELR-43822 (SC)** held that false pretence" ***means any representation, whether deliberate or reckless, made by word, in writing or by conduct of a matter of fact or law, either past or present, which the person making it knows to be false or does not believe to be true."***

The main allegation is the fact that the money collected from their parents was not remitted to the school's account but rather converted to his personal use. With due respect to the Prosecution the allegation would not by any stretch of

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16 JUL 2024

HIGH COURT OF JUSTICE
EFFURUN
OFFICIAL

interpretation amount to obtaining under false pretence. Prosecution in my view is giving a bizarre interpretation to the crime of obtaining under false pretence. To the Prosecution, when he collected the money from the parents as the School's Bursar without an intention of remitting the said money into the School's account, that amounts to obtaining under false pretence. I do not agree with the Prosecution on this. If he was not the School's Bursar and he held out himself as one to unsuspecting parents and collected money from them, then it would be apt to say he obtained money from the parents under the false pretence that he was the Bursar and the parents were induced to give him the money.

In order to clarify the crime of obtaining by false pretence, the Appellate Court in **FRN V Talal (2022) LPELR-57088 (CA)** stated the following

"Indeed, it is the law, that to proof the falsity of a statement or representation or false pretence, the prosecution must show that the person accused, made the representation which is deliberate or reckless, either by word or conduct and which representation is found to be false. Thus, Section 20 of the Advance Fee Fraud and other Related Offences Act (Supra), defines "false pretence" to mean: "...a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true". The gist of false pretence, in my view, is that the representation made must evince some elements of deceit. It means the representation must be intentionally intended to lead the person to whom the representation is made, to believe in the existence or non-existence of something. It must be a statement or conduct made either knowingly or recklessly, with the intent that the person to whom it is represented, will act on it."

Not only did the Defendant collect the money in his capacity as the School's Bursar, which he was. What is more, the Defendant issued an official school receipt evidencing that they paid for what he collected the money for. By that singular act, it cannot be said that he intended to defraud them as they had proof that they made payment to him. Consequently, the Prosecution failed to prove that the Defendant had the intention to defraud the parents who paid for their children's school fees through him and obtained the money they gave to him through false pretence. I therefore find the Defendant not guilty on count 5. He is discharged and acquitted on that count.

Having held earlier that the Economic and Financial Crimes Commission does not have the prosecutorial powers to prosecute Counts 1 – 4, and having found the Defendant not guilty on Count 5, this would have been an appropriate place to end this judgment but the fact that this is a Trial Court and if I turn out to be wrong in my position with regards to the prosecutorial powers of the EFCC, the Appellate Court might order a retrial. Therefore, I shall determine the merit of counts 1 – 4.

Section 383 (1) of the Criminal Code Law of Delta State provides thus:

A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his use or to the use of any other person anything capable of being stolen, is said to steal that thing.

While sub-section 2 of Section 383 (supra) provides that:

A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents-

(a) an intent permanently to deprive the owner of the thing of it,

(b) an intent permanently to deprive any person who has any special property in the thing of such property;

(c) an intent to use the thing as a pledge or security;

d) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform.

(e) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

f) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterward to repay the amount to the owner.

The ingredients the Prosecution must prove beyond reasonable doubt upon which this Court would find the Defendant guilty of stealing are as follows (i.) The ownership of the thing stolen. (ii.) That the thing stolen is capable of being stolen. (iii.) The fraudulent taking or conversion. **See Otti v. State (1991) 8 NWLR (Pt. 207) 103; Muhammed v. State (2017) 13 NWLR (Pt. 1583) 386; Chyfrank Nig. v. F.R.N. (2019) 6 NWLR (Pt. 1667) 143.**

The allegation against the Defendant as contained in counts 1-4 in the information is that the Defendant stole the amount contained in the Charge and this amount was arrived at from the receipts (as shown in exhibits PA1-47, PB1-92, PC1-63 and PD1-18) issued by the Defendant on behalf of Sterling School to parents and guardians of students of the school and not remitted to the School account by the Defendant. His defence to the said allegation is that the said amount which is said to be a shortfall of money paid for school fees and money remitted into the school account was indeed used for the operation of the School and constituted expenditure used for running the School. His case is that he got the blessing of the Administrative head of the School to use the cash received from parents for running the school and tendered exhibits D1 – D6 to show the expenditure incurred which would cover the alleged shortfall for which he is charged.

Section 36(5) of the Constitution of the Federal Republic of Nigeria provides that ***"every person who is charged with a criminal offence shall be presumed to be innocent until he is proven guilty"***. Let me right away say that the provisions of the said section are very clear and unambiguous and require no aid for their interpretation. By the provisions of the said section, a Defendant is presumed to be innocent till the Prosecution proves otherwise. It is not the duty of a Defendant to prove his innocence, it is the duty of the

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Prosecution to prove the guilt of the Defendant beyond reasonable doubt. This much was established in **ADIO Vs. FRN (2021) LPELR-54517 (CA)** where it was held that

> **"It must be recognized that, throughout the length and breadth of our Criminal Law, one thread that runs through criminal proceedings is that it is not the duty of an accused person to prove his innocence. An accused person is presumed innocent until proved guilty. The burden is on the prosecution to prove the guilt of an accused person and a Court will not convict an accused until his guilt is proved beyond reasonable doubt by the prosecution.**

There is no dispute that the Defendant collected money from parents of Sterling School for fees of their children and wards. There is also no dispute that receipts were issued by Defendant to the parents evidencing receipt of the said money. There is no dispute that the amount on the issued receipts (exhibits PA1-47, PB1-92, PC1-63, and PD1-18) was not paid into the school account. The issue for determination therefore falls within a narrow compass and that is whether the amount that was not paid into the School's account was stolen by the Defendant and converted to his personal use, thereby making his defence that the amount was expended in running the School baseless.

Let me make it clear at this stage that the mere fact that the Defendant collects money from parents for School fees rather than asking the said parents to pay directly to the School's account or he (Defendant) remitting the money to the School account would not ground a conviction under **Section 383(1) of the Criminal Code CAP. C21 laws of Delta State of Nigeria 2006**, and punishable under **Section 390(9)**. It is imperative to state this because the Prosecution seems to place a heavy premium on this fact, The Prosecuting Counsel submitted in paragraph 4.7 of the Prosecution's Address

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that the Defendant had not remitted the said sum to the school is evident that he had appropriated the monies.

To ground a conviction, the Prosecution ought to lead credible evidence to show that the Defendant **fraudulently converted the said money to his own use**. So where is that evidence that the Defendant **fraudulently converted the said money to his own use**? As stated earlier the Defendant's explanation for the money not remitted to the school's account is that it was expended for the operation of the school. PW1 in his evidence on the other hand stated that he sent monies to the Defendant's account from the School account for the school's expenses and imprest as shown in **exhibit P29.** These monies sent to the Defendant's account by PW1 for school expenses were both in form of bank transfers and cheques.

In resolving the point of whether the money used for expenditure carried out by Sterling School for its operations was provided for by PW1 or Defendant used the money not remitted to the School's account for such expenditure, I find the evidence of PW4 not helpful at all. The forensic audit tendered by PW4 only captured expected income and actual income as reflected in the school's account. It failed to show the expenditure of the school and how the said expenditure was funded. Evidence PW2 and PW3 were also not helpful in this regard. This leaves this Court with the evidence of PW1 and PW5. Neither PW1 nor PW5 tendered the financial report of Sterling School which captured the expenditure and how the said expenditure was funded.

In my firm view that is the crux of the matter. The Prosecution ought to have shown what the expenditure of the School was and then juxtaposed the expenditure with the amount sent by PW1 to the account of the Defendant and then shown to the Court that the Defendant could not have used the money for School fees for School expenditure. One vital witness who would have cleared the air as to what the money paid by parents for School fees that were not remitted to the School's account was used for is Mrs. Patricia Eruemu the

Head of the school. Counsel to Defendant submitted that Defendant informed PW1 that the approval and authorization for the expenditures were given by the Head of School Mrs. Patricia Eruemu. PW5 was told about Mrs. Patricia Eruemu in Exhibit P32 but he failed to verify this fact.

Although the Prosecution is not under any obligation to call a particular witness to prove its case, see **STATE V OLATUNJI (2003) LPELR-3227 (SC)**; however, the Prosecution is under an obligation to call a vital witness. In **ADAMU V STATE (2019) LPELR-46902 (SC)** it was held that

> **"From the record, three witnesses were listed including one Benjamin James, stated as only eye witness at the scene of crime according to the evidence of PW1 but only PW1 testified. It is true that prosecution is not obliged to call all listed witnesses nor the need for a host of witnesses to get a conviction but where there is a particular vital witness whose evidence is very crucial and important to the case of the prosecution in proof of the guilt of the accused, then such a witness must be called as failure to do so would occasion a fatality in proof of the charge as it would produce the presumption of withholding evidence suggestive of the fact that if that evidence were produced it would work against the prosecution and favour the accused. See Section 167 (d) of the Evidence Act, 2011. Stated another way is that the vital witness is that witness whose evidence is fundamental as it determines the case one way or the other and failure to call that vital witness by the prosecution is fatal to its case.**

Mrs. Patricia Eruemu was a vital witness which the Prosecution for one reason or the other failed or refused to call as a witness. Her testimony certainly would have decided this case one way or the other. Counsel to the Defendant rightly contended that if PW5 had done his work by inviting Mrs. Patricia Eruemu to take her statement, it would have assisted the Court in concluding whether or not she authorized these expenditures and unfortunately, Mrs.

Patricia Eruemu was not called as a witness to buttress these facts even as she is a vital witness for the Prosecution. Responding on this point, Prosecuting Counsel submitted thus:

> *"........ with all due respect to the defence counsel that this was not the assertion of the prosecution but the assertion of the defence as part of their defence. The case of the prosecution is that the PW1 sends monies to the defendant's account for impress (sic) and expenditures and being the proprietor, he was fully in charge of the day-to-day running of the school.*

"My Lord the claims involving P. Eruemu, Mr. Imasuen, etc as to the expenditures emanated from the Defendant and it behooves on him to prove same".

The Prosecution must prove the case against the Defendant beyond reasonable doubt and not for the Defendant to prove his innocence as stated earlier. Contrary to the submission of Learned Prosecuting Counsel, once the Defendant stated that he got instructions from his supervising boss to have cash in hand to take care of expenses for running the school and that the cash he collected from parents was used for the expenses in running the school, to the knowledge of the supervising boss, it was the duty of the Prosecution to show that it is not true and not the duty of the Defendant to prove it was true. It would remain a mystery why PW5 did not see the need to hear from the said Mrs. Patricia Eruemu and why she was not called to testify. Is it possible that she would have corroborated the evidence of the Defendant?. Unfortunately, this Court will never find out as Mrs. Patricia Eruemu was not called to testify.

Clearly, from the facts before me, Sterling School was not an organized institution when it came to its financials. Nothing to show that they had a yearly budget that showed their expected income and projected expenditure, no financial report showing their yearly actual expenditure, and there was no designated account for operations. Money was paid into the Defendant's account for use in running the School. It is amazing, to say the least, for PW1 to be transferring money to the Defendant's account for expenditures incurred by the School. Failure to call Mrs. Patricia Eruemu to tender the books of expenditure and show how it was funded is fatal to the case of the Prosecution. While I agree that the Prosecution would not need to call a host of witnesses, Mrs. Patricia Eruemu is a vital witness. At the risk of repetition, the evidence of Mrs. Patricia Eruemu and the School's financials would lay to rest the assertion of the Defendant. I have looked at exhibit P23, the undertaking said to be made by the Defendant and I have considered the evidence of the Defendant with regards to the circumstances it was made, when read along with the extra-judicial statements it would be clear that it was not made voluntarily. Nowhere in the seven extra-judicial statements made by the Defendant did he admit being responsible for the unaccounted funds. What is more, the Defendant denied making the said extra judicial statement voluntarily. The Prosecution insists that the said extra judicial statements were voluntarily made.

Section 14 (4) of the Administration of Criminal Justice Laws of Delta State which was the extent Law at the time the extra-judicial statements were made provides that:

> **when a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means: Provided that in the absence of video facility such statement shall be made in writing in the presence of any person of his choice.**

Section 17 (1) of the ACJL of Delta State 2016, which was the extant law when the offence was committed provides this:

Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.

While **Section 17(2)** supra provides thus:

Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an officer of any agency of government providing legal aid or an official of a Civil Society Organisation or Justice of Peace or any other person of his choice.

Were exhibits P31-P37 recorded in compliance with **Sections 14(4) and Section 17(2) of the Administration of Criminal Justice Law, of Delta State 2016**, which was the extant law at the time the said exhibits were recorded? I see no evidence that the said provisions were complied with. In **CHARLES VS. STATE OF LAGOS (2023) 13 NWLR (PART 1901) PAGE 213,** Ogunwumiju JSC while interpreting **Section 9(3) of the Administration of Criminal Justice Law of Lagos State 2011 and Sections 17(2) and 15(4) of the ACJA 2015**, which are in pari materia **Sections 14(4) and Section 17(2) of the Administration of Criminal Justice Law, of Delta State 2016**, held as follows:

Section 9(3) ACJL is a mandatory procedural law against infractions on the constitutional rights of a defendant as enshrined in Section 35(2) of the CFRN (as altered). Any purported confessional statement recorded in breach of the said provision is of no effect. It is impotent and worthless

His Lordship stated further that:

Usually, objections raised as to the admissibility of confessional statements pose one of the greatest challenges to criminal trials

as it slows down the pace of the proceedings when there is a trial within a trial. It is for this reason that Section 9(3) of the Administration of Criminal Justice Law of Lagos State 2011 and Section 17(2) and 15(4) of the Administration of Criminal Justice Act 2015 have been put in place to ensure that the Police and other agencies who have the power to arrest, obtain confessional statements from suspects without any form of oppression or illegality. The effect of the said provision is that every confessional statement must be recorded on video so that the said recording can be tendered and played in Court as evidence to prove voluntariness or a legal practitioner or any person as specified under Section 17(2) of the ACJA must be present. The essence of the video/audio-visual evidence is obviously so that the Court will be able to decipher from the demeanor of the Defendant and all other surrounding circumstances in the video if he or she voluntarily made the confessional statement.

.........Evidence of a video recording or the presence of a legal practitioner would have been conclusive proof that the confessional statement was obtained voluntarily. It makes it imperative in the circumstances, particularly in cases of armed robbery where a death sentence is a sanction on conviction, that confessional statements should be taken according to the provisions of the law. Even where the prosecution has ignored the provision of the law as sacrosanct as this, the trial judge should have brought it up suo motu. The judge cannot pick and choose which extant law to enforce. These provisions are not outside the realm of what is achievable by the Police and other security agencies. Incidents of recording confessional statements in the absence of a legal practitioner and/or electronic recording are no

longer legally permissible. The truthfulness of a confession should be corroborated by independent evidence.

The provisions of the ACJL of Delta State were not complied with in taking the statements of the Defendant. In the light of the position of my Lord reproduced above, I cannot place any weight on exhibits P31-P37, especially in the light of the retraction of the Defendant that he did not make them voluntarily and the fact that there was no positive and direct admission that he converted for his own use the money paid to him for school fees that he did not remit to the School's account. Evidence of Mrs. Patricia Eruemu may have corroborated the Defendant's story. A detailed financial report showing expenditure of the school for the period in issue and how it was funded, may have corroborated the case of the Defendant. The Prosecution needed to come up with more evidence and not just rely on expected and actual income in the bank account of the school. In the circumstances, the Prosecution fails with regards to counts 1,2,3, and 4. I find the Defendant not guilty on counts 1,2,3, and 4. He is discharged and acquitted on those counts.

These shall be the orders of the Court.

HON. JUSTICE MICHAEL NDUKA OBI
(JUDGE)
27th June, 2024

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REPRESENTATION:

- *I.M. Elodi (Ms) for the Prosecution.*
- *Collins Obi Esq., for the Defendant.*

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