IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE EFFURUN JUDICIAL DIVISION
HOLDEN AT EFFURUN
BEFORE HIS LORDSHIP HON. JUSTICE MICHAEL NDUKA OBI, (JUDGE)
ON THURSDAY, THE 21ST DAY OF MARCH, 2024

SUIT NO.: EHC/21C/2022

BETWEEN:

THE STATE ---- COMPLAINANT

-AND-

1. EMEKA EMMANUEL UDOH ---- DEFENDANTS
2. JUSTICE IRIKEFE

JUDGMENT

Macaulay Ekiribi, hereinafter referred to as PW1 in this judgment, serves as the Managing Director of MOE Inland and Offshore Services Limited. Subsequent facts revealed in this Judgment indicate his pivotal role within the company. In April 2020, PW1 was approached by three individuals identifying themselves as Timi Benedict, Joseph, and Stellabel. They expressed a need for a supplier of AGO, commonly known as diesel, for their tankfarm in Lagos, claiming to represent PGM Energy Limited, with Offices at 191B Jide Oki Street, Ligali Ayorinde, Victoria Island, Lagos, and a branch at Fenaga Plaza Hotel on Refinery Road, Warri.

A meeting was arranged in Warri, during which a conference call was organized with members of PGM Energy Limited from their Lagos office. These individuals introduced themselves as Vincent Udoh, Emeka Emmanuel Udoh (bearing the same name as the 1st Defendant), and Peter Omohimi. Discussions revolved around the quantity of AGO required, with PW1 being asked to collaborate with the group in Warri. Vincent Udoh and Emeka Udoh subsequently sent an electronic Local Purchase Order and a Memorandum of Understanding (MOU) to Benedict. PW1, acting on behalf of MOE Inland and Offshore Services

Limited, executed the MOU. A scanned copy was transmitted to the Lagos office, where it was also executed.

Following the execution of the MOU, Joseph, one of the individuals who initially approached PW1, urgently requested 30,000 liters of AGO for Bavida Tank Farm, purportedly on behalf of PGM Energy Limited, identifying himself as the Security Coordinator. Assured by these representations, PW1 supplied the requested quantity through Joseph to PGM Energy Limited for their Bavida Tank Farm in Lagos. Approximately a month later, PW1 transported five truckloads of AGO to Lagos, as stipulated in the Local Purchase Order issued by PGM Energy Limited.

Upon arrival in Lagos, PW1 contacted Joseph to ascertain the location of Bavida Farm Tank. He was informed that PGM Energy Limited had relocated to a new station distinct from the Bavida Farm Tank, a change confirmed by Vincent Udoh. To further assure PW1, a new agreement was drafted and executed by Vincent Udoh and Peter Omohimi, accompanied by a revised Local Purchase Order reflecting the new supply location. Emeka Emmanuel Udoh transferred N5,000,000 (Five Million Naira) to MOE Inland and Offshore Services Limited, representing payment for the initial 30,000 (Thirty Thousand Naira) liters of AGO supplied.

Five truckloads of 177,000 liters of AGO valued at N31,305,000 (Thirty One Million, Three Hundred and Five Thousand Naira) was delivered at the new location and the supply was received by the 2nd Defendant. Waybill and Invoice were signed by representative of both company. Several months after the supply Vincent Udoh paid N5,500,000 (Five Million, Five Hundred Thousand Naira) and requested for more AGO. PW1 refused to make any more supply until the debt owed him is liquidated.. He reached out to Vincent Udoh on phone, who informed him that the AGO he supplied PGM Energy Limited had been sold and the proceed of the sale was not remitted to the company but taken by the company lawyer one Barrister Charles and Peter Omohimi and told him to report the matter to a Law Enforcement Agency or Court. PW1 at this point started to suspect foul play. He accidentally ran into Vincent Udoh several weeks later at Fecho Intel Filing Station, which he claimed to belong to him and where the AGO was delivered. Vincent tried to evade paying him the balance due but PW1 refused to accept all the explanations Vincent came up with. Vincent then issued him three cheques for the balance due on the supply made. The cheques turned out to be dud.

PW1 reached out to Vincent who told him to represent the cheques as the account was a new account. Four months later he represented the said cheques after getting a go ahead from Vincent Udoh, who assured him that the other members of the company had promised to fund the account. The cheques were returned unpaid. At this point he could not reach Vincent Udoh again. Vincent Udoh refused to take his call. PW1 called Timi Benedict, Joseph, and Stellabel. They all told him that they had been transferred from the Warri branch to their branch at Akwa Ibom. It was at this point that it dawned on PW1 that he had been scammed. He visited the Warri office only to find out that it had been shut down. He then found out that the 1st Defendant and Vincent were signatories to PGM Energy Limited account with Providus Bank. PW1 then headed to Fecho Intel Filing Station in Lagos, where the AGO was delivered. He met the 2nd Defendant, who took delivery of the supply and was the manager of the said station. He enquired from 2nd Defendant if Vincent Udoh was his boss and 2nd Defendant answered in the negative. His investigation revealed that the 1st Defendant and Vincent Udoh are Directors of PGM Energy Limited, the 2nd Defendant is a member of staff of PGM Energy Limited. PW1 lodged a complaint with the Police when it was clear to him that he has been defrauded. It was on the strength of his complaint that the Defendants were apprehended and charged to Court. They were three who were initially charged to Court but the office of the DPP discontinued against the 3rd Defendant, while Emeka Emmanuel Udoh and Justice Ireikefe were arraigned on the 24th of January 2023 for the following charges:

STATEMENT OF OFFENCE: COUNT I

Conspiracy to commit a felony, to wit: Obtaining money by False Pretence, punishable under Section 8 of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

EMEKA EMMANUEL UDOH (M), JUSTICE IRIKEFE (M) and IGBADODE JOSEPH (M), between the months of May and June, 2020 at Orhuwhorun, within the Effurun Criminal Division, conspired among one another to commit a felony, to wit: obtaining money under false pretence.

STATEMENT OF OFFENCE: COUNT 2

Obtaining Money by False Pretence, punishable under Section 1(3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

PARTICULARS OF OFFENCE

EMEKA EMMANUEL UDOH (M), JUSTICE IRIKEFE (M) and #GBADODE JOSEPH (M), between the months of May and June, 2020 at Orhuwhorun, within the Effurun Criminal Division, with intent to defraud, obtained 177,000 liters of AGO (diesel) valued Thirty-One Million, Three Hundred and Five Thousand Naira (31,305,000.00) from MOE Inland & Offshore Service.

They both pleaded not guilty to the two counts on the information. PW2, (the Investigating Police Officer), confirmed that her investigation revealed that the 1st Defendant and Vincent Udoh are Directors at PGM Energy Company, and the said company was registered by both of them. The initial supply of AGO by MOE Inland/Offshore to PGM

Energy Company was paid for by the 1st Defendant. The Providus Bank cheques which were issued to MOE Inland and Offshore Company by PGM Energy Company were returned unpaid. The account opening details of PGM Energy Company with the said Providus Bank shows that the 1st Defendant and Vincent Udoh are the only signatories to the account with their BVN and other details as Directors of the company are contained in the account opening forms. The fake office apartment at Fenega Plaza, Refinery Road, Effurun and Fecho Intel Filling Station, off lekki Expressway, Lagos State were immediately vacated after defrauding PW1.

For the 1st Defendant he says he is a victim of circumstances as he is innocent of the crimes alleged against him. He admits that he transferred the sum of N5,000,000 (Five Million Niara) from his account to the account of MOE inland and offshore Service Limited, but it was done on the instructions of his brother Vincent Udoh, who informed him that he had issues with his account and need his help to transfer the said amount. His brother had told him that the money would hit his account and he should transfer the said fund. He denied conspiring with his brother or anyone else to defraud or obtain under false pretense MOE inland and offshore Service Limited's 177,000 liters of AGO or any money. He also denied issuing any dud cheque, being part of a conference call as alleged by PW1 and that he was never part of any discussions bothering on AGO or anything near it. His case is that he has never done any business with his brother Vincent Udoh and that he is not a beneficiary of any transaction neither is he a privy to any documents between MOE inland and offshore Service Limited and PGM Energy Company. He insists that he is neither a member of staff nor owner of PGM Energy Company or Fecho Intel (Nig) Limited.

On his part, the 2nd Defendant evidence simply put is that he is a Manager with Fecho Intel (Nig) Limited. Vincent Udoh rented an office space and two underground tanks for his company PGM Energy Company. On instructions of his boss, the Managing Director of Fecho Intel Nig Limited he received AGO on behalf of the PGM Energy Company. He had no dealing with how PGM Energy Company sourced the said AGO.

The Prosecuting Counsel and Counsel to the Defendants filed their respective Addresses after the close of the case of the Defendants. The said Addresses were adopted on the 25th of January 2024. The Addresses are hereby incorporated into this Judgment and when the need arises, I shall refer to the relevant part of the Address.

I have read the Addresses and the various authorities relied on by Counsel. Clearly, Counsel are on the same page on the established fundamentals of our law. Firstly, that it is the duty of the Prosecution to prove beyond reasonable doubt that the Defendants committed the crime levelled against them. Secondly that the Prosecution can achieve this by eyewitness testimony, confessional statement of the Defendant or by circumstantial evidence, which by undersigned coincidence is capable of proving with a clear-cut accuracy the guilt of the Defendant. They all cited authorities that establish these principles and I have no intention to bore anyone with the litany of authorities on these points.

Counsel for the Defendants and Prosecuting Counsel are in agreement and once again they cited the relevant authorities that in order for conspiracy to be proven, which is count one on the information, there must be a shared criminal plan or agreement between two or more individuals to commit or refrain from committing a criminal act. They also agree that the *offence of obtaining by false pretences denotes the crime of knowingly obtaining title to another person's property by misrepresenting a fact with the intent to defraud that person as provided by section 20 of the Advance Fee Fraud and Other Fraud Related*

Offences Act and the ingredients prosecution must prove to establish the offence of obtaining by false pretence-

1. *That there was a pretence;*
2. *That the pretence emanated from the accused person;*
3. *That it was false;*
4. *That the accused person knew of its falsity or did not believe in its truth;*
5. *That there was an intention to defraud;*
6. *That the things capable of being stolen; and*
7. *That the accused person induced the owner to transfer his whole interest in the property*

The only area of dispute from the Addresses of Counsel is whether the facts presented by the Prosecution have established that the Defendants who are before me were part of an agreement to obtain under false pretence and all the ingredients in establishing the offence of obtaining by false pretense were met.

The main issue for determination in this suit therefore falls within a narrow compass and that is whether the facts presented before this Court establishes beyond reasonable doubt the culpability of the Defendants to the charges they are facing.

The following facts are not in dispute:

1. PGM Energy Limited entered into a Memorandum of Understanding with MOE Inland & Offshore Service Limited wherein PGM Energy Limited (PGM) approached MOE Inland and Offshore Services Limited (MOE) for supply of Diesel to PGM upon requisition from time to time by Local Purchase Order (LPO) see exhibit P11.

2. On the strength of exhibit P11 above, LPO were issued by PGM to MOE for supply of diesel see exhibits 5,6 and 7.
3. MOE supplied PGM with 177,000 liters of diesel at Fencho Intel KM30 Lekki/Epe Expressway opposite Lexis Hotel Ibeju Lekki as evident in exhibits P12, P13 and P14 the waybill and invoice issued by MOE to PGM.
4. The 1st Defendant and Vincent Udoh are Directors in PGM see exhibit P4 a Certified True Copy of the search report from the Corporate Affairs Commission.
5. Three Providus Bank cheques issued by PGM to MOE totaling N26,305,000 were returned unpaid see exhibits P1, P2 and P3.
6. On the 3rd of June 2020 the 1st Defendant transferred N5,000,000 to MOE for payment of AGO as annotated in exhibit P10.

The evidence of PW3 which is not challenged is that all the offices of PGM both in Effurun and Lagos have been shut down. The major characters who were acting on behalf of PGM have now disappeared and cannot be located and the money due for the AGO remains unpaid. It is without doubt therefore that some individual through PGM under the false pretense of dealing in oil and gas obtained from MOE (in which PW1 is the alter ego), 177,000 litters of diesel. The pertinent question is whether the Defendants were part of the syndicate behind PGM.

I shall on purpose start with the 2nd Defendant. His evidence as I have summarized above (but for emphasis shall repeat), is that he was employed as manager of Fecho Intel Limited, which ran a Station where diesel and petrol were sold. PGM through Vincent Udoh rented an office space in Fecho Intel Limited complex as well as two underground tanks. As a manager with Fecho Intel Limited, he superintended over the station and on the instructions of employers, he took delivery of diesel meant for PGM, with strict instruction to check any product that is brought and ensure it is not a product from bunkering. He carried out the instructions of his employers and he had nothing to do with PGM's dealing or transactions with 3rd parties. His evidence in Court was in exact terms with his extra judicial statement he made to the Police. There is no evidence that PW3 the Investigating Police Officer checked out his story with his employers. When asked specifically if she cross checked with the 2nd Defendant's employers if his story was true PW3 gave a categorical no.

Failure to verify if the 2nd Defendant was carrying out his job schedule as a manager of Fecho Intel Limited that operates a Station that deals with petroleum products is fatal to the Prosecution's case. There was no eyewitness who saw the 2nd Defendant conspire with others to obtain under false pretense neither did anyone see the 2nd Defendant actively participate to obtain under false pretense. Also, the 2nd Defendant did no confess to committing the crime he is charged with; see exhibit P16.

Nevertheless, conviction for conspiracy is usually predicated on circumstantial evidence, which must be of such a quality that irresistibly compels the Court to make an inference as to the guilt of the accused. This Court is now left with circumstantial evidence. Circumstantial evidence ought to be cogent and conclusive, it is only then that conviction thereon can be secured leaving no room for other explanations except the Defendant's guilt. See **NWEKE VS. SATE (2001) 2 S.C 9.**

The Supreme Court in **MOHAMMED VS. STATE (2007) VOL. 37 WRN 1** Per Mohammed, JSC defined circumstantial evidence thus:

> ***"It is the proof of circumstances from which, according to the ordinary course of human affairs the existence of some fact may reasonably be***

presumed. Put in a mathematical language, it is that evidence of surrounding circumstances which by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics. See ***AKINMOJU VS. THE STATE (1995) 7 NWLR (PT. 406) 204 AT PAGE 212."***

In the same case, Aderemi JSC defined it thus:

> ***"Circumstantial evidence in criminal law is often described as the narration of surrounding circumstances which by undersigned coincidence is capable of proving with a clear-cut accuracy the guilt of the person."***

So where is that evidence that irresistibly compels this Court to make an inference as to the guilt of the 2nd Defendant? I have diligently read through the evidence of the Prosecution witnesses. It would remain a mystery why the Police did not see the need to verify the story of the 2nd Defendant. I cannot send a man to prison for doing his job. The Prosecution ought to have shown that when 2nd Defendant was receiving the diesel supplied by MOE, he was not carrying out his job schedule but acting as an active participant to obtain under false pretense. I see no evidence that points to the fact that the 2nd Defendant conspired to obtain under false pretense and obtained under false pretense. The Prosecution clearly failed to discharge the burden of proof beyond reasonable doubt that the 2nd Defendant conspired with others at large to obtain under false pretense and obtained under false pretense. In **CHUKWUMA v FRN (2011) LPELR-863 (SC)** it was held that;

The burden of proof in our adversarial system of criminal justice is for the prosecution to prove its case beyond

reasonable doubt. In the process, the requirement of the law is that the prosecution has the duty to prove all the essential elements of an offence as contained in the charge. The law places the burden on the prosecution to produce vital material evidence and witnesses to testify during the proceedings before a trial court comes to the conclusion that an offence had been committed by an accused person. The prosecution does not require a magic wand in order to attain to it's proof to be "beyond reasonable doubt". All the prosecution is required to do simply is to put forward to the court evidence which is so strong, compelling and convincing against the accused such that it leaves no reasonable man in doubt as to the probability of the accused person committing the alleged offence. That in effect is the interpretation given by our superior courts to the common law origin phrase of "proof beyond reasonable doubt" which has been embellished in Section 138 of the Evidence Act

Unfortunately for the Prosecution and I will add fortunately for the 2nd Defendant, the Prosecution failed to put before this Court strong, compelling, and convincing evidence linking the 2nd Defendant to the charges against him. In the absence of same, I accordingly find the 2nd Defendant not guilty on counts 1 and 2. He is discharged and acquitted.

Now to the 1st Defendant. PW1 never met the 1st Defendant prior to the arrest of the 1st Defendant, he was however categorical that one of the person who joined in the conference calls during the discussion stage was Emeka Emmanuel Udoh, which happens to be the name of the 1st Defendant. After the initial supply made by PW1's company, the said Emmanuel Emeka Udoh who he was speaking to assured him that he would be paid and thereafter he got payment of N5,000,000 (Five

Million Naira) from an account bearing the name of the 1st Defendant. The 1st Defendant wants this Court to believe that he knows nothing about the said transfer of funds to the account of MOE. Exhibit P10, the account statement of MOE was clear that it was payment for AGO. The 1st Defendant knew what the money was being paid for. For reasons which he did state, the 1st Defendant was silent as to where the funds came from. He is a Director in PGM, a fact he claimed ignorance of. Evidence which he did not challenge is that he is a signatory to the company account. He had no explanation on how he became a signatory to the company account if there is any truth in the fact that he knew nothing about the company.

PW1 was categorical that the 1st Defendant was part of the conference call, and it was no coincidence that MOE received payment just after the conversation. The combined effect of the oral testimony of PW1 and the documentary evidence tendered, puts the 1st Defendant as one of the persons behind PGM, who conspired to obtain under false pretense and did obtain under false pretense. His story does not add up that his younger brother hates him so much that he incorporates a company without telling him, made him a signatory to the company account without telling him (how is this account opening by proxy possible), set up a meeting and gets someone else to bear the name of 1st Defendant and then get him to transfer money, money that came from a source he failed to tell this Court. The 1st Defendant story comes across as a cock and bull story. In ***IMAM & ORS V SHERIFF & ORS (2004) LPELR-7315 (CA)*** *it was stated that,* ***when the testimony of a witness has reached or attained the height of insipid or important exaggerations, it should be disregarded as mere petulance and treated with ignominy.***

I believe PW1, the 1st Defendant is part of the syndicate, there is no doubt in my mind that the 1st Defendant was one of the conspirators who obtained from MOE Inland and Offshore Services Limited 177,000 liters of AGO under false pretense of owning a farm tank. In **ONWUDIWE V FRN (2006) LPELR-2715 (SC)** obtaining by false pretense was defined as

> ***knowingly obtaining another person's property by means of a misrepresentation of fact with intent to defraud. See Bryan A. Gamer, A Dictionary of Modem Legal Usage, Second Edition, page 348. Section 419 of the Criminal Code provides for the offence of obtaining by false pretences. The section provides in part: "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***

On what constitutes obtaining by false pretense, it was held in **Ezeani V FRN (2019) LPELR-46800 (SC)**

> ***1. That there was a pretence. 2. That the pretence emanated from the accused persons including the appellant. 3. That the pretence was false. 4. That the appellant and his co-accused person knew that it was false. 5. That there was an intention to defraud 6. That the monies (property) obtained from the PW1 was capable of being stolen, and 7. That the appellant induced the owner of the money to transfer his whole interest in the property. (Emphasis mine)***

Vincent and the others may be on the run but the long arm of the law has caught up with the 1st Defendant, and will no doubt catch up with his gang in due time. All the above ingredients of the offence of obtaining by false pretence are clearly seen in the transaction which gave rise to this charge. There is no doubt about that. I therefore find the 1st Defendant guilty of the two counts on the information.

ALLOCUTUS:

The 1st Defendant is a first time offender and a family man. I pray Court to grant him reduced sentence.

SENTENCING:

1. For the first count of Conspiracy to commit a felony with others now at large, to wit: Obtaining money by False Pretence, I hereby sentence the 1st Defendant to two years in the Correctional Center without the option of fine.
2. For the second count of Obtaining Money by False Pretence, I hereby sentence the 1st Defendant to nine years in the Correctional Center without the option of fine.
3. This court hereby order the 1st Defendant to make restitution to the nominal complainant to the tune of ₦28,805,000.00 (Twenty-Eight Million, Eight Hundred and Five Thousand Naira Only) for the balance of 177,000 litres of AGO supplied and room for inflation that has reduced the value of the balance since 2020.

   Both sentences shall run concurrently.

HON. JUSTICE MICHAEL NDUKA OBI
(JUDGE)
21st March, 2024

REPRESENTATION:

- P.E. Onomakpome (Ms) CSC for the State, with E.L. Ukubeyinje (Mrs) for the State.
- I.P.O. Ibu Esq., for the 1st Defendant.
- C.I. Ayadubu Esq., for the 2nd Defendant.