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 25TH DAY OF JANUARY, 2024

SUIT NO.: EHC/23C/2021

BETWEEN:

THE STATE ---- COMPLAINANTS

-AND-

1. PATRICIA NGOZI
2. CHUKS APENE **DEFENDANTS**

JUDGMENT

Patricia Ngozi and her son Chucks Opene were arraigned before this Court on the 1st day of March 2022 on two count information filed on the 7th of September 2021. They are charged on count 1 for Conspiracy to commit a felony to wit: Obtaining Money under false pretence, contrary to Section 8 (a) but punishable under **Section 1 (3) of the Advanced Fee Fraud and other related offences Act 2006**. The particulars of offence state that the Defendants conspired with each other to obtain money by false pretence. While on count 2, the charge against the Defendants is that they obtained money under false pretence contrary to **Section 1(1)(2)** but punishable under **Section 1 (3) of the Advanced Fee Fraud and other related offences Act 2006**. The particulars of the offence of count 2 is that the Defendants on or about year 2018/2019, at Ekpan, within the Effurun Criminal Division, defrauded one Uchechi Abalogun 'F' of the sum of N24,100,000.00 (Twenty-Four Million, One Hundred Thousand Naira), under the pretence of assisting her in securing visas and admissions for her daughters to study abroad (Canada).

The Defendants pleaded not guilty to the two counts on the information.

The Prosecution called three witnesses- **Musa Umaru**(the initial IPO – PW1), **Uchechi Abalogun (**victims of the alleged crimes,- PW2) and **Francis Idogei** (PW3) the Investigating Officer at Sate CID Asaba.

The Defendants testified in Defence of the action and closed their case. At the close of the case of the Defendants, Learned Counsel for the Defendant filed an Address dated 24th October, 2023, while Learned

Counsel for the Prosecution filed an address dated 23rd of October 2023. Learned counsel to the Defendants filed a Reply on Points of Law dated 24th of October 2023. The said Addresses and Reply on points of Law were adopted on the 29th of November 2023.

I have read through the evidence of all the witnesses and listened to them during cross-examination. The allegation made against the Defendants from the evidence of PW1 and the Defence to the said allegation from the evidence of the 1st Defendant was well captured by the Counsel to the Defendant in his Address. I shall thus reproduce it in this judgment verbatim-

The complainant who testified as PW2 stated in evidence that she desired to send two of her daughters to continue their education abroad. So she discussed the said plan of sending her children abroad with the 1st Defendant. She stated that the 1st Defendant assured her that she can help to make the necessary contact and processes to facilitate their admission abroad. Based on that she commenced giving the 1st Defendant money and presently the 1st Defendant has defrauded her of about N24,000,000.00 (Twenty Four Million Naira). The 1st Defendant on the other hand denied receiving the sum of N24,000,000.00 (Twenty Four Million Naira) from the complainant. She stated in evidence that she received only N20,900,000.00 (Twenty Million, Nine Hundred Thousand Naira). She gave evidence of the application for visa she made to Canadian High commission for the children of the complainant Mercy Abalogun and Gift Abalogun in the month of February,2020 and how final decision was not taken due to Covid 19 epidemic wherein all the embassies were shutdown. She also gave evidence on the admission she got for the children of the complainant and their school fees paid to the University of Manitoba. She gave evidence that she worked with one Francis Buoyancy. Inspite of all these done for the complainant, she reported the matter to the Police that the 1st Defendant defrauded her of the sum of N24,000,000.00 (Twenty Four Million Naira). Hence this criminal proceedings.

The Court in **Duru v. FRN (2019) All FWLR part 985 page 404** clearly exemplified *what constitutes offence of obtaining by false pretences-*

'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 [P. 440; para. E]"

The Court in Duru (supra) went further to state in Ratio 8, the *ingredients prosecution must prove to establish the offence of obtaining by false pretence-*

'From the provision of ***section 1 (1) of the Advance Fee Fraud and Other Fraud Related Offence Acts****, the prosecution, irrespective of the fact that the accused did not lead evidence, must prove its essential ingredients which include the following:*

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.*

[Onwudiwe v. FRN **(2006) ALL FWLR (Pt. 319) 774, (2006) LPELR- 2715 (SC), (2006) 10 NWLR (Pt. 988) 382;** ***Ikpa v. State*** **(2017) LPELR -42590 (SC);** ***Smart v. State*** **(1974) LPELR-3076 (SC), (1974) 9 NSCC 575;** ***Ijuaka v. Commissioner of Police*** **(1976) 6-7 SC 285, (1961) LPELR- 1466 (SC);** ***Omotosho v. C.O.P.*** **(1961) LPELR- 24986 (SC), referred to [*****P.441; paras. B-E]*** *referred.*

Parties are on the same page with regards to the above position of law. It behooves therefore on the Prosecution to prove that there was a pretence on the part of the Defendants, which was false, and the falsity was known to the Defendants, with an intention to defraud. That the Defendants induced PW2 to transfer her money to 1st Defendant.

The following facts are clearly not in dispute-

1. That the 1st Defendant agreed with PW2 to secure admission for her daughters in a University abroad and also to apply for visa to enable her children travel abroad for schooling.
2. The 1st Defendant collect money from PW2 for this purpose.

The 1st Defendant's testimony is that she secured an admission at the University of Manitoba in Canada and paid their fees. Exhibits P5, P6 and P7, which I have looked at were relied on by the 1st Defendant to show that in line with the agreement with PW2 she carried out the task. There is no evidence that those exhibits are forged documents. PW1 and PW3 did not write to the University to confirm if the said documents were genuine. There is no evidence that the fees were not paid.

The next task the 1st Defendant was to carry out was to assist with the application for visa from the Canadian High Commission. The undisputed evidence before me is that an application for the requisite visa was made to the Canadian High Commission. The 1st Defendant ascribed the covid pandemic lockdown as the reason for the delay in processing the visa.

Prosecuting Counsel submitted that-

> "The 1st Defendant pretended that she could do something she could not, which is securing admission for PW2's children and do everything they will need to go abroad and this includes getting visa. The 2nd Defendant pretended that he was assisting them with the visa process, yet hid the content of the envelope, because he knew they have not done something right".

On his part, Counsel to the Defendants submitted that there was no pretence as the evidence on record by PW2, the 1st Defendant only assured her thus:

> "That the 1st defendant assured me that she can help to make the necessary contact and processes to facilitate their admission".

Under cross examination PW2 also admitted the money she gave is for visa processing, school fees and admission thus:

> "The money I paid to the 1st defendant is for admission, visa processing, and school fees for my children to school in Canada".

However, the said PW2 admitted under cross examination that her children attended the visa interview when she admitted thus:

"My children presented themselves for visa interview".
"My children are presently with their passport".

Also under cross examination PW2 admitted thus:

"Yes, I was given a tracking number in respect of the visa process"

PW2 did not give evidence that she is the one that applied for the visa. The above evidence of PW2 reveals clearly that 1st Defendant actually applied for the visas for the daughters of PW2. There is therefore no false pretence concerning the issue of visa application.

Furthermore, PW2 also admitted under cross examination thus:

"Yes, am I aware that the Canadian High Commission uses VFS for processing their visa".

Apart from the evidence of PW2, PW3 who is also an IPO under cross examination admitted thus:

"Yes, Chioma and Chinyere Abalogun went to Abuja for their Mercy & Gift Abalogun visa application"

The above admission by the Prosecution witness PW3 also shows that the 1st Defendant indeed applied for the visa for the daughter of PW2. Furtnermore, PW3 also under cross examination admitted that he saw the VFS Global of Mercy Abalogun and that the daughters of PW2 had their tracking numbers for the visa application, he admitted under cross examination thus:

"Yes, I came across VFS global to Mercy Abalogun"
"The children had their tracking number for visa".

I am persuaded by the submission of Counsel to the Defendants that there was no pretense on the part of the Defendants in their dealings with PW2 as admission was secured and visa was applied for. Prosecuting Counsel in her submission tried to change the narrative when Counsel submitted that the 1st Defendant paid less than the amount the 1st Defendant collected for school fees. No one led that evidence as to deferential in amount collected for school fees and the amount paid and that was not the case against the Defendants. The Prosecution failed to prove beyond reasonable doubt that the Defendants obtained money under false pretence on or about year 2018/2019, defrauded one Uchechi Abalogun 'F' of the sum of

N24;100,000.00 (Twenty-Four Million, One Hundred Thousand Naira), under the pretence of assisting her in securing visas and admissions for her daughters to study abroad (Canada). I accordingly fine the Defendants not guilty on count 2.

On count 1, On the charge of conspiracy in counts 1, There are three ways to prove the commission of a crime and they are:

1. Direct evidence of eyewitness;
2. Confessional statement of the Defendant;
3. Circumstantial evidence

There was no evidence of an eyewitness who saw the Defendants conspiring to obtain under false pretense neither is there a confessional statement of the Defendants admitting guilt of the offence of conspiracy.

In **ODUNEYE V. STATE (2001) 2 NWLR (PT.697)311** the Supreme Court per Achike, J.S.C. held that:

> *"for the offence of conspiracy to be established there must exist a common criminal design or agreement by two or more persons to do or omit to do an act criminally. Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties it is rarely capable of direct proof; it is invariably an offence that is inferentially deduced from the acts of the parties thereto which are focused towards the realisation of their common or mutual criminal purpose."*

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.

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 Accused person'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 Defendants? I have diligently read through the evidence of the Prosecution witnesses; I see no evidence that points to the fact that the Defendants conspired to obtain under false pretence. The Prosecution clearly failed to discharge the burden of proof beyond reasonable doubt that the Defendants conspired with others at large to obtain under false pretence. I accordingly find the Defendants not guilty on count 1.

The Defendants are not criminals, it was all about lack of trust and poor communication that led to this criminal suit. The Defendants had no control of issuance of student visa and definitely not in 2020 during the pandemic. When the 1st Defendant held out herself to assist the PW2 and received money from her, it was not under false pretense and they never set out to defraud the PW2.

In the final analysis, having found the Defendants not guilty on the two counts they are accordingly discharged and acquitted.

HON. JUSTICE MICHAEL NDUKA OBI
(JUDGE)
25th January, 2024

REPRESENTATION:

- A. Tuoyo Utieyione (Mrs) PSC for the State.
- Akpoebi Bebenimibo (Mrs) for the Defendant.