THE MAGISTRATE COURT EDO STATE OF NIGERIA
IN THE OREDO MAGISTERIAL DISTRICT
HOLDEN IN BENIN CITY

BEFORE HIS WORSHIP A. P. SAIKI (ESQ.) MAGISTRATE GRADE II
ON TUESDAY THE 19TH DAY OF JUNE, 2018

CHARGE NO. MOR/669C/17/A.

BETWEEN:

COMMISSIONER OF POLICE .... COMPLAINANT.

AND

STEPHEN OJIETOHAMHAN .... ACCUSED PERSON.

Accused person is present.

Inspector M. S. Shuaibu for the prosecution.

P. Isiekwene (Esq.) for the accused person.

JUDGEMENT

The Accused Person was arraigned before this Honourable Court on two – count charge punishable under sections 516 and 419 of the Criminal Code, Cap. 48, Vol.II Laws of the defunct Bendel State of Nigeria 1976 now applicable in Edo State.

The Accused Person elected summary trial, pleaded not guilty to the two – count charge and trial commenced.

In proof of the prosecution's case, it called three witnesses and tendered Four Exhibits, while the accused person testified for himself called one witness and tendered three Exhibits.

The summary of the prosecution's case is as follows: -

PW1 is Nosakhare Osabuohien. He told court that he is a businessman and that he knows the accused person. He stated that he told his sister who resides in Spain that he wanted a trailer head and she told him that she has a friend who can help him for the supply of the said trailer head. That his sister told him that the said Harrison also resides in Spain is her boyfriend. PW1 stated that he called Harrison who tol to deposit the sum of ₦1,300,000.00 and the he would be able to supply him the t head. That the said Harrison sent him a First Bank Account number bearing the na the defendant, where he made payment on four installments to wit: - ₦410,0 ₦435,000.00, ₦435,000.00 and ₦25,000.00 totaling ₦1,323,000.00. That after he the above payment, Mr. Harrison told him that he would ship in the trailer head week. He stated that after the one week elapsed, he called Mr. Harrison to ask consignment but he told him that it would soon arrive. That uptill the mo December, 2016, he did not see th4 consignment and that Harrison kept promisi it was coming, so he had to call his sister who also started meeting with Mr. H over there but nothing was done. PW1 told court that he had to report to the that Harrison had conspired with the account holder to dupe him which led arrest of the defendant. He told court that he made statement at the state CID he has not gotten his money or the trailer head.

Under cross – examination, PW1 told court that he has never met Mr. and also has not met the defendant before now. He stated that the money the accused of the defendant belongs to him and that he paid the money into account by himself. He further stated that he did not record the conversatio with Mr. Harrison but that Mr. Harrison sent a picture of the trailer head. Th not tell the police in his statement that Mr. Harrison sent a picture of a trailer stated that he does not know one Odeahan O. Beatrice and Happy Mary bu Harrison sent an account number belonging to Happy Mary when his sister (sister) was stranded. He stated that he did not cook up these stories be Harrison drove his sister out of the house for infidelity and that he does not cost of a trailer head.

PW1 further stated that the duration of the installmental payment was for three months and that the payment of the money into the defendant's Account was meant for the purchase of trailer head. That he paid the money into the account of the defendant on the instruction of Mr. Harrison.

PW2 is Sergeant Adegahi Abu with Force N0:340988, attached to the Special Anti – Robbery Squad, Edo State Police Command, Benin City. That on the 18th day of June, 2017, a case of conspiracy and obtaining money by false pretence was referred to him for his investigation and report. He stated that on receipt of the petition, he contracted the petitioner and recorded statement from him voluntarily and that investigation activities was sent to the First Bank Plc., which led to the arrest of the defendant at Ayobo police station, Lagos state command and later brought to Benin. PW2 stated that the defendant was cautioned in English Language, and that his statement was read to him to his understanding afterwhich he signed while he (PW2) counter signed as the recorder. The statement of the defendant was admitted and marked as EXHIBIT 'A'.

PW2 told court that he extended his investigation to First Bank Plc with a valid court order to furnish them with the account details of the defendant. The investigation activities, Bank order and statement of account of defendant were admitted and marked as EXHIBITS B1, B2, and B3, that after his investigation, the matter was charge to court.

Under cross – examination, PW2 stated that he is the IPO that investigated this case and that it was one Lucky that gave the account details of the of the defendant to PW1. He stated that there was no written agreement between PW1 and the defendant but that there was proof that ₦1,300,000.00 was paid into the account of the defendant. He stated that he does not know the relationship between the defendant and Harrison Lucky now at large and that the defendant told him that the said Harrison Lucky is his younger brother.

PW3 is one [illegible]au Osaw[illegible]. He told court that he is a relationship manager with First Bank Plc., Sakponba Road Branch, Benin City. He stated that he is an account officer or relationship manager and that PW1 has been his customer since the year 2016 and that he has been managing his account since then. That PW1 pays in cash almost on a daily basis and then transfer to different beneficiary accounts. And that sometime in the year 2017, the branch received a letter from the Nigerian Police Force requesting for the statement of account of PW1 and any other information that could assist in the investigation of the account. That they also requested for the statement of account of the defendant. He identified EXHIBITS B1, B2 and B3.

Under cross – examination, PW3 told court that PW1 is an agent of Bureau De charge and that he does not know PW1 to be involved in other businesses. He further stated that EXHIBIT 'B3' was made on the instruction of PW1 and that he did not know the purpose of payment of transfer.

The summary of the case of the defence is as follows: -

DW1 is the defendant: - He told court that he is a technician in the repair of Refrigerators and Air conditioners and that he saw PW1 for the first time at the police station. He stated that he did not commit the offences as stated in the charge sheet and that sometime in the year 2016, his younger brother Harrison Lucky called him that he was going to send money through PW1 who is his in-law that does bureau de charge into his account for him to use the money to build a two – bedroom flat on his land. He stated that when he got the alert of ₦410,000.00, he called the said Harrison Lucky and also took the photographs of the house.

The photograph of the house was admitted and marked as EXHIBIT 'C'.

The defendant told court that he received the sum of ₦410,000.00, ₦435,000.00, another sum of ₦435,000.00 and ₦25,000.00 afterwhich he told his brother Harrison lucky which he confirmed to be correct. He stated that he called his brother that the building was ready but that what was left was the roofing. He further stated that PW1 paid money into the accounts of two of his younger sisters, Happy Mary and Beatrice O. Odeahan. The statements of account of both of them were admitted and marked as EXHIBITS 'D1' and 'D2'.

The defendant stated that in the year 2017, he went to his ATM to collect money where his ATM Card was seized and was arrested upon a complaint. He told court that he was arrested and taken to Benin and that the IPO showed him the petition and said that if he does not put down his statement, he would shoot him. That the IPO refused to take his additional statement when he requested.

Under cross – examination, the defendant told court that his brother has been sending money to him through other agents before PW1 paid money into his account. That he does not have anything to show that the money paid into his account was meant for the building project and that he does not have anything to show that the house in EXHIBIT 'C' belongs to Harrison lucky. That he did not know PW1 before he was arrested and that his brother did not use him to defraud PW1.

DW2 is Happy Mary, She told court that she is a businessman and that PW1 is her customer. That Harrison Lucky used to send money through PW1 to her and that Harrison Lucky and sister of PW1 (Doris) had a quarrel afterwhich PW1 called her and threatened her saying he would deal with her. She further identified EXHIBIT 'D1'.

Under cross – examination, DW2 stated that she was not there when the defendant and DW1 discussed the issue of sending money but that they never discussed the issue of trailer head. She further stated that it was at the station that she heard from PW1 that the money sent was meant for trailer head and that she does not know anything about this case in court.

Counsel to the defendant filed his written address dated the 11th day of April, 2018 and adopted same on the 16th day of May, 2018, he urged court to discharge and acquit the accused person as provided by law.

I have carefully and thoroughly considered the evidence of the prosecution witnesses, the defence witness, the Exhibits tendered and well as the final written address filed on behalf of the accused person. I find the following facts established by evidence;

(1.) PW1 paid the sum of ₦1,323,000.00 to Mr. Harrison lucky vide First Bank Account for the supply of a trailer head.

(2.) That the said First Bank Account belongs to the defendant.

(3.) That the said Harrison Lucky is the younger brother of the defendant.

(4.) That the said sum of ₦1,323,000.00 was paid into the defendant's First Bank Account in four installments.

(5.) That the trailer head was not supplied and the said sum of ₦1,323,000.00 was not refunded.

The issue for determination is whether the prosecution has been able to prove the alleged offences as contained in counts I and II of the charge beyond reasonable doubt as required by law.

It is trite law that in criminal cases, the prosecution has a duty to prove the case against the accused person beyond doubt as mandated by the provision of section 36(5) of the constitution of the Federal Republic of Nigeria 1999 (as amended) by which an accused person is presumed innocent until proven guilty. Furthermore, section 135(1) of the Evidence Act 2011 also provides that an allegation of crime even in a civil proceeding must be proved beyond reasonable. See <u>Idi V State (2017) LRCN 89, Ratio 2.</u> It is evidence to state also that before a trial court including this court comes to the conclusion that an offence had been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that the acts of the accused person come within the confines of the particulars of the offence. See <u>Afolalu V State (2011) 194 LRCN 136, Ratio 10.</u>

It has already been held that the proper approach to an indictment which contains offence of conspiracy as a charge and a substantive charge is to deal first with the main charge and then the charge of conspiracy. See Okanlawon V State (2015) 248 LRCN 1, @ 14, Ration 9.

In line with the above principle of law as laid down by the Supreme Court. I shall deal firstly with count II which is the substantive charge in this case.

In count II of this charge, the accused person in charged under section 419 of the criminal code. For the prosecution to secure a conviction under this count, it must prove the following ingredients;

(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.

(5.) That there was an intention to defraud.

(6.) That the thing is capable of being stolen.

(7.) That the accused person induced the owner to transfer his whole interest in the property.

See Onwudiwe V FRN (2006) 141 LRCN 2336, Ratio 13.

PW1 told court that he paid the sum of ₦1,323,000.00 for the supply of a trailer head into the First Bank Account of the accused person given to him by Mr. Harrison Lucky. On the other hand, the accused person told court that he received the said sum of ₦1,323,000.00 but was instructed by Harrison lucky to us the money for his building project.

From the evidence before court, it is uncontradicted and unchallenged that the sum of ₦1,323,000.00 meant for the supply of the trailer head was paid into the Bank Account of the accused person. The accused person told court that the money was meant for a building project which has gotten to roofing level and EXHIBIT 'C' was tendered in proof of same. I have considered EXHIBIT 'C', it is only evidence that a two – bedroom flat was built up to roofing level. There is no evidence before me that the money was used for the building project as per EXHIBIT 'C', EXHIBIT 'C', could be any building. In the circumstance, I shall attach no weight to EXHIBIT 'C', same is accordingly discountenanced and I so hold.

I wish to state that as to pretence, it must be as to an existing fact. The offence of false pretences is committed where a person fraudulently represents as an existing fact that which is not an existing fact and as a result of obtaining money. See Alake V State (1991) 7 NWLR, Pt. 205, 567 @ 591.

In this instant case, it is clear that the Bank account of the accused person was the medium used by Mr. Harrison lucky to defraud the PW1 of the sum of ₦1,323,000.00 meant for the supply of a trailer head.

The purpose of the money paid into the account of the accused person is immaterial and inconsequential and that the money was meant for building purposes as stated by the accused person is an afterthought and of no moment; it is merely a storm in a tea cup. The accused person cannot hide under the umbrella of the fact that the said Mr. Harrison lucky had a quarrel with one Doris who is the sister of the PW1.

Counsel submitted that the accused person never induced the PW1 to transfer money and that there is nothing to show that the pretence emanated from the accused person as no documents were tendered in court to show either in writing or any documented evidence.

There is evidence before this court as per EXHBIIT 'B1', 'B2' and "B3' that the said money was paid into the account of the accused person on the instruction of the said Mr. Harrison lucky under the pretence to supply PW1 a trailer head. Furthermore, the accused person cannot be exonerated by virtue of section 7(b) of the criminal code. In this count, there is an intention to defraud the PW1 of the sum of ₦1,323,000.00

through the first Bank Account of the accused person under the pretence of supplying him with a trailer head which he knew to be false and I so hold.

Counsel further submitted that he (Accused person) only met the PW1 at the police station and that there was no agreement between him and his brother (Harrison Lucky) to commit an illegal act. It does matter that the accused person met the PW1 for the first time at the police station; the Bank account used to defraud the PW1 belonged to the accused person and I so hold. He also submitted that PW1 usually change his money and paid into account of the accused person and the other two sister's accounts as per Exhibits 'D1' and 'D2'. It is trite law that a document speaks itself. EXHBITS 'D1' and 'D2' are only evidence that money was paid into the accounts of the sisters of the accused person; same does not exonerate the accused person from the commission of the offence as stated in the charge sheet.

Without more, I hold that the prosecution has been able to prove count II of this charge beyond reasonable doubt as required by law.

In count I, to ground a conviction for the offence of conspiracy, the following essential ingredients of the offence must be established beyond reasonable doubt: -

(1.) An agreement between the accused person to do or cause to be done some illegal act or some act which is not illegal by illegal means.

(2.) Some act besides the agreement was done by one or more of the accused persons in furtherance of the agreement.

(3.) That each of the accused person individually participated in the conspiracy.

It is not necessary in order to establish conspiracy that the conspirators should know each other or like those who murdered Julius Caesar of Shakespeare's play, that they should be seen together coming out of the same premises at the same time. Conspirators do not have to know each other so long as they know of the existence and the intention or purpose of the conspiracy. See Jimoh V State (2014) 235 LRCN 119, @ 135, Ratio 19.

From the evidence before this Honourable Court, there is a clear conspiracy between the accused person and the said Harrison Lucky to obtain the said sum of money from PW1 by false pretence and I so hold. In the circumstance, I hold that the prosecution has also proved count I of this charge beyond reasonable doubt as required by law.

It is trite law that the two fold aim of criminal justice is that the guilt shall not escape, on the other hand, the innocent cannot be allowed to suffer injustice. See Aikhadueki V State (2014) 227 LRCN 188, Ratio 8.

Accordingly, I find the accused person guilty in Counts I and II of the charge.

ALLOCUTUS: He is a first offender and I urge court to temper justice with mercy.

PREVIOUS CRIMINAL RECORD. NIL

SENTENCE: To serve as a deterrent, the accused person is hereby sentenced without an option of fine to a term of imprisonment of three calendar months in Counts I and 2 of this charge.

A.P. SAIKI (ESQ) MAGISTRATE EDO STATE JUDICIARY

A. P. SAIKI (ESQ.)
MAGISTRATE GRADE II

19/6/2018.