

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT KUBWA- ABUJA
BEFORE HIS LORDSHIP: HONOURABLE JUSTICE BELLO KAWU
SUIT NO: FCT/HC/CR/32/15

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA----- COMPLAINANT
AND
MUHAMMAD ISHAQ ----- DEFENDANT

JUDGMENT
DELIVERED ON THE 16TH DAY OF MARCH, 2017.

The Defendant was brought before this Honorable Court for offences bothering on fraud, forgery and using forged documents genuine contrary to section 1(1) (a) of the Advance fee fraud and other related offences Act, 2006 and Section 363 and 366 of the penal Code law. In order to establish the II count charges, the prosecution called three witnesses. The witnesses are:

1. Ahmed Abdulsalam Fazazi
2. Prince Ifeanyi Eke
3. Khadijat Kubura Ali.

The first prosecution witness (PW1) Mr. Fazazi Ahmed Abdulsalam informed the court that he work with the investigation department of the Economic and Financial Crimes Commission. He informed the court that the commission received a petition dated 08/01/2015 against one Mrs. Yinka Bonire from the chambers of Hammart & Co.. He said the petition alleged that Mrs. Yinka Bonire approached Alh. Grema through one Kabiru Aba who works with Alh. Grema that he has some plots of land for sale. The plots numbers are:

1. MF 45
2. E 293
3. E 294
4. E 295
5. E 296

He said Alh. Grema eventually bought the land and paid N24 million into the account of of Mrs. Yinka with Zenith bank. He said when the land was eventually found not to exist, Alh. Grema requested for the refund of his money, the refusal of which led to the petition to the commission. PW1, further informed the court that during interrogation Mrs. Yinka said she bought the lands from one Mr. Isaq Mohammed who was the Zonal manager of Abuja Municipal Area Council then for N5 million through one Junaidu. He said Mr. Mohammed Isaq was hunted and he made statement and admitted that he sold the land. PW1, further informed the court that enquiries from AMAC revealed that the plots do not exist.

Through the PW1, the petition written to EFCC was tendered and admitted as Exhibit I. the reply of letter written to AMAC was tendered and admitted as Exhibit 2, the land document were admitted and marked as Exhibits 3 while the statement of the Defendant was admitted and marked as Exhibit 4. He finally informed the court that at the end of his findings it was discovered that the plots are not genuine based on the reply received from AMAC.

Responding to question during Cross-Examination, PW1 said there is no any complaint against the Defendant, he also said there is no where the Defendant acknowledged to have received money. Responding to further questions PW1 said:

“As at that time, the Defendant was the Zonal Manager of Abuja Municipal Area Council but I don’t know whether he was in charge of the land in that area”.

PW2 by name Ifeanyi Anthony Jude Eke informed the court that he knows the Defendant as Assistant Director FCDA and former Zonal Land Manager of Abuja Municipal Area council. He said he bought the plots from the Defendant through his brother and resold the plot to a woman by name Mrs. Yinka Bonire and that when the woman complained about having problem on the land he called the Defendant's brother by name Junaidu Abubakar who told him to exercise patience that after several months the Defendant also pleaded with him to exercise patience and that the plots will be replaced with another plots.

He further informed the court that after some months EFCC invited him and he made statement which necessitated the situation of the Defendant. He said it was resolved that the Defendant should provide an alternative plots which he promised to do within two weeks but did not do even more than six months after, hence the reason why EFCC charged the matter to Court.

Responding to questions during Cross-Examination by Counsel to the Defendant PW2 said it is clear that the 1st transaction was between Mr. Junaidu Abubakar and not the Defendant. He also call the 36 plots he bought from the Defendant have problems. He also said he conducted window search before the transaction. Responding further he said none of the papers bear the name of the Defendant and that he has no power of Attorney or deed of Assignment nor sale agreement. Responding further he said:

“The original allocation is not allocated by the Defendant”.

He said he bought each of the plots at N3.5 million while residential is N1 million and paid to Junaidu Abubakar. He further said he did not survey the land before he purchased it because he was grounded with data which means that the land is in existence.

PW3 is by Name Khadijat Kubrat Ali Zonal Planning officer with AMAC. She said the Defendant is her supervisor. She informed the court that she received a letter from EFCC requesting for confirmation of the land papers attached to the letter. She said the said copies attached were not genuine and that she sent her response to EFCC on 16/2/2016.

She identified Exhibit 2 as the land documents that are not genuine. She further informed the court that she discovered that the papers are not genuine because the Apo Extension 3 layout is not in existence. Answering questions during Cross-examination PW3 said she has been working with AMAC since 31/05/2006 and that the Defendant was Zonal land Manager AMAC in 2006 or 2007, she said she was not sure. But she identified the year on the said allocation papers as 2003.

She further stated that it is possible for a land to be given to somebody and be revoked in the interest of justice and that if revoked it will still be in system that it has been allocated and revoked. Responding to further question she her letter to EFCC is on the letter-head of AMAC, Zonal Planning Office while the heading of the allocation paper is Ministry of Federal Capital Territory, Land, Planning and Survey Department, AMAC zonal planning office. She also said she did not know the Defendant to be dubious. This Honorable Court gave a Ruling on 26/10/2016 dismissing the Defendant's application for no case submission and directed the Defendant to enter defence.

Consequent upon which the Defendant testified for himself as DWI. He gave his names as Ishaq Mohammed Baba a civil servant with FCDA. He informed the court that he was in Court because he served as Zonal land Manager in AMAC.

He said as Zonal land Manager he was in charge of anything concerning land, building and development contract regarding land. He stated further that while in office, he received a call from Prince Ifeanyi saying that he had a land transaction with his brother Junaidu Abubakar and that there is a problem on the land. He said he asked him to come as to resolve the matter. He further informed the court that he later received a call from EFCC and was told that he sold plots of land to Mr. Ifeanyi and he informed the EFCC that he never know Ifeanyi until he called him on phone to complain about the land Junaidu sold to him. He said EFCC teleguided his statement and out of fear of detention he signed the statement.

He said the following week EFCC invited him and detained him till the following day before bringing him to court. During cross examination by the prosecution he said he has been Zonal Land Manager for 3 years and that he knows Ifeanyi but that he did not sale plot Ifeanyi Eke. He responded further that his name is on the exhibit but the signature not his own.

He said he did not know Abiola Adekunle, Adetemtee, Laurence Adekunle and Timda oil and gas Ltd. He responded further that he met with Ifeanyi about two months ago and that he did not give plots to Junaidu to sell. He said he was not part of the displaced persons and that the plots, court not allocated to fictitious persons. He respond further but he did not have the authority to allocate plots.

He also said Junaidu Abubakar is his brother. Responding to further question, he said he wrote the statement at EFCC under duress. He said he did not casters. The sum of ₦5 Million from Ifeanyi Eke on the plots that do not exist. He maintained that he did next sell plot to Ifeanyi.

On 27/01/2017 this Honorable Court granted an order permitting the prosecution to file final written address out of time after the oral application for the extension of time by the prosecution was objected to by the Defendant Counsel. Both parties eventually adopted their final addresses.

The Defendant Counsels his final address raised one issue for the determination of the honorable court. The issue is:

"Whether or not the prosecution has been able to proof their case beyond reasonable doubt to warrant conviction in view of the weak evidence by the prosecution during trial".

Learned counsel submitted that the evidence adduced by the prosecution through the testimony of PW1,PW2 and PW3 make it clear that the prosecution has not proven any case against of the Defendant. He submitted further that the burden of proving the guilt of the Defendant lies on the prosecution and in support he cited the following cases:

1. **Sunday Udoh Vs State (2011) 32 WRN 90.**
2. **Ojugbeli Vs state (2013) 5 WRN 74.**
3. **Nwobodoh Vs Onah (2007) EFR 180.**
4. **Okejidi Abimbola Vs Atitola (2010) 7 EPR 104 at 120.**

He argued that in the instant case the prosecution has failed woefully to prove the allegation of crime leveled against the Defendant both from the contents of the charge and the evidence of the prosecution before the Honorable Court. Learned counsel submitted further that to secure conviction the prosecution has the duty to show by credible evidence that the essential element of the offence charged has been proved.

Counsel for the defendant argued further that the petition which is the origin of this case did not complain against the Defendant; and that there is no nexus between the Defendant and all the documents tendered as exhibits before the Honourable Court. Learned Counsel submitted further that the failure of the prosecution to invite Mrs. Yinka Bonire on whose behalf the petition was made as a witness is fatal to the prosecution case. He argued further that there is no link between the evidence of the PW2 and the defendant more so when PW2 confessed that none of the five land documents bears the name of the Defendant. It is also the contention of the Counsel to the Defendant that the prosecution is incurably bad and controvenes the provision of section 196(c) of the Administration of Criminal Justice Act of 2015 which provides:

"The charge shall contain such particulars as to the time and place of the alleged offence and the Defendant, if any against whom or thing, if any in respect of which it was committed as are reasonably sufficient to give the Defendant notice of the offence with which he is charged".

Finally, he urged the Honorable Court to discharge and acquit the defendant.

The prosecution in its final address which was filed out of time with the leave of the court also raised one issue for the determination of the honourable court. And the issue is:

“Whether from the overwhelming oral and documentary evidence addressed by the prosecution. The prosecution has proved the ingredients of the offence as contained in the charge against the Defendant beyond reasonable doubt as required by section 135 of the Evidence Act 2011 (as amended)”.

Learned Counsel for the prosecution submitted that from the totality of the evidence adduced at the trial and exhibits tendered the prosecution has proved the ingredients of the offence as contained in the charge against the defendant beyond reasonable doubt as required by law. He argued that the standard of proof required in criminal cases is beyond reasonable doubt and not beyond every shadow of doubt. He cited **Michael vs The State (2008) 13 NWLR (Pt. 1104) 361 at 368 paras O – F in support.**

He submitted further that where all the essential ingredient of the offences charge is proved or established as done in this matter. The charge is proved beyond reasonable doubt. Learned Counsel argued further that the guilt of the defendant in a criminal trial may be proved by:

1. The confessional statement of the accused; or
2. Circumstantial evidence; or
3. Evidence of eye witness.

He refer the Honourable Court to the case of **Emeka Vs State (2001) 14 NWLR (pt. 734) 666 at 683.**

Learned Counsel submitted that the prove the offence of obtaining by false pretence; the prosecution is required to prove that:

1. There is a false pretence which emanated from the accused person
2. That the false pretence was made by the Accused person to his victim.
3. The false pretence operated in the mind of the victim from whom money was obtained.
4. The pretence was false to the knowledge of the Accused person.
5. Money was obtained as a result of the pretence.
6. The Accused person did same with intent to defraud.

He referred the court to the following cases:

1. **Make Vs State (1991) 7 NWLR (Pt. 205) 567 at 591.**
2. **Onwudire Vs Federal Republic of Nigeria (2006) 10 NWLR (pt. 985) 382 at 429 – 430.**

Learned counsel also stated the ingredients of the offence of forgery as:

1. That there is a document in writing
2. That the document or writing is forged
3. That the forgery emanated from the Accused
4. That the Accused knows that the document or writing is false
5. That the Accused intend that the forged document be acted upon by the victim with the belief that it's genuine.

Learned Counsel made reference to the statement of the defendant and that of the PW3. It is the contention of the Prosecution Counsel that the Defendant fraudulently presented fake title document to PW1 who paid him Five Million Naira. He argued further that the prosecution has proved all the necessary ingredients of the offence of forgery against the Defendant. He also cited the case of **Agwuna Vs Attorney General Federation (1995) 5NWLR (Pt 396) 418 at 438 para F-G.**

He also urge the Honourable Court to an irresistible inference that the Defendant forged the title documents, because he was zonal manager AMAC. Learned Counsel also argued that the burden of proving that the signature of the Defendant on the title papers were forged rest on the Defendant.

Prosecution Counsel submitted further that it's charged of using forged document as genuine, the prosecution must prove:

1. The document or writing is false
2. That it was uttered knowingly or fraudulently
3. That the document was used as genuine.

He urged the Court to hold the act of the fraudulent sale of the plot of land situate at Apo extension III with fake title document issued in fictitious name amounts to using same as genuine.

He referred to:

1. **F.R.N Vs Nvene (2010) ECLRI.**
2. **F.R.N Vs Odtawa (2010) ECLR 19 at 96.**
3. **Ukpe Vs State (2001) 18 WRN 107.**

He said contrary to the Defendant Counsel submission on the issue of statement, what PW1 wrote for the Defendant is cautionary and not the statement.

He submitted further that the prosecution is the best position to determine who to call as witness. And on the evidence of PW3, the Prosecution Counsel submitted that the time PW3 was employed is irrelevant and same is the opinion of PW3 3 as to the character of the Defendant.

Counsel also contended that the objection to the statement of the defendant is belated having failed to make use of the opportunity he had to challenge same. Counsel submitted further that what is admitted need no further proof; and in subpart he cited the case of **Akpa Vs State (2008) NWLR (pt 1106) 72 at103 and referred to section 20 of the Evidence Act.**

Learned Counsel also argued that section 302 and 357 of the Administration of Criminal Justice Act, 2015 cited by the Defendant Counsel is not applicable in this case.

He argued further that the contention of the Defendant Counsel that the charge sheet against the Defendant is incurably bad and contravened section 196 (1) ACJA 2015 is misconceived as the defendant has failed to state the particular of the defects he so alleges.

Finally, he urged the Honourable Court to hold that the prosecution has prove it's case beyond reasonable doubt and convict the Defendant accordingly.

I have considered the case of the prosecution and the Defendant together with all the documents tendered before the Honourable Court. I am of the view that the issue that calls for the determination of this court is:

“Whether the prosecution has proved their case against Mahammad Ishaq beyond reasonable doubt”.

In **Fabian Nwafuruocha Vs The State (2011) 2-3 Supreme Court (pti) III** it was held that:

“where all the essential ingredients of an offence charged have been proved or established by the prosecution the charge is proved beyond reasonable doubt.”

It is trite that before it can be rightly said that the prosecution has proved its case beyond reasonable doubt, every ingredient of the offence charged must be established; if one element is left out, then there is no proof beyond reasonable doubt. See **Tajudeen Alabi vs The State (1993) a SCNJ 109.**

At this point it is necessary to state the ingredients of the alleged offences with a view to examine whether the prosecution has proved the alleged offence beyond reasonable doubt.

1. For the offence of obtaining by false pretence, the prosecution must prove the following:
 - a. That there is a false pretence which emanated from the Accused person.
 - b. That the false pretence was made by the Accused person to his victim.
 - c. That the false pretence operated in the mind of the victim from whom money was obtained.
 - d. That the pretence was false to the knowledge of the Accused person.
 - e. That money was obtained as a result of the pretence.
 - f. That the Accused person did so with intent to defraud.

From the evidence of all the witnesses that testified before this Court there is no where PW2 said he paid money to the Defendant; rather he said he gave the money to the defendant's brother by name Junaidu

Abubakar. The said Junaidu Abubakar was not called as witness nor charged as Defendant. The failure of the prosecution to call the Junaidu as a witness or charge him along with the defendant is fatal to the case of the prosecution. **Fabian Nwaturuoha Vs State (supra)**. It was further held that in the process of establishing the guilt of an Accused, the prosecution has to prove all the charges, while discharging the responsibility of proving all the ingredients of the offence, vital witnesses must be called to testify during the proceeding.

One of the ingredients of the offence of obtaining under false pretense is that the false pretense was made by the Accused person to his victim.

The next question is that who qualify as the victim of the Defendant in this matter; if is the PW2 Prince Ifeanyi Eke and the said PW2 informed the Court that he bought the land in question from the Defendant's brother by name Junaidu Abubakar and paid to him. can me rightly conclude in the circumstance that the false pretence was made by the Defendant to his victim? The answer is no. It follows therefore that the prove prosecution has failed to proved all the necessary ingredients of the offence of obtaining by false pretence.

2. For the offence of forgery, the prosecution must prove the following ingredients.

- a. That there is a document in writing.
- b. That the document or writing is forged .
- c. That the forgery emanated from the accused
- d. That the accused knows that the document or writing is false.
- e. That the accused intends that the forged document be acted upon by the victim with the belief that it is genuine.

The prosecution also failed to prove necessary ingredient of the offence of forgery because the PW2 never met with the Defendant before he allegedly purchased the land. As I stated earlier failure to call Junaidu Abubakar as witness or even charged him with the Defendant has created a doubt which this Honourable Court is bound to interpret in favour of the Defendant. It is trite that any doubt in the prosecution case must be resolved in favour of the accused. See the following cases:

1. **Ndidi vs. State (2007) 13NWLR (pt. 1052) 633.**

2. **Igabele vs. State (2006) 6NWLR (pt. 975) 100.**

This Honourable Court also expresses serious doubt about the alleged confessional statement of the Defendant especially with the forceful submission of the Counsel to the Defendant, that it was the Investigation Prosecution officer that make the statement, though he did not challenge the statement before it was admitted in evidence, **Kolawole vs. State(2015)** LPELR 24781 (CA) it was held:

"It is not rather ironic, that the trial judge having entertained some doubts in his mind as regard the voluntaries of the said confessional statement still went ahead to rely heavily on the retracted confessional statement in grounding a conviction of death by hanging on the Appellant. This is clearly in contradiction to the position of the law. It is well established that in Criminal cases, where it is incumbent on the prosecution to prove its case beyond reasonable doubt, all evidence before the Court must be perused carefully by the Court to determine whether in fact the accused did commit the crime. In a situation where the Court entertains even the slightest doubt that should be resolved in favour of the accused"

3. For the offence of using a genuine, the prosecution must prove;
 - a. That the document or writing is false
 - b. That it was uttered knowingly or fraudulently
 - c. That the document was sued as genuine

From all available evidence before this court, the prosecution has also failed to establish that the Defendant used the said document as genuine. There is serious doubt as to who actually used the document for the victim. I repeat that the Economic and Financial Crimes

Commission did a very fundamental mistake by failure to charge Junaidu Abubakar along with the defendant or even call him as a witness.

I have stated the reason why it is unsafe to rely on the alleged confessional statement of the Defendant and I also agree with the submission of Counsel to the Defendant that it is the duty of the prosecution to prove the case against the accused beyond reasonable doubt and that the burden never shifts even where the accused in his statement to the police has admitted committing the offence.

It is therefore my findings that the prosecution has failed to prove all the necessary ingredients of the alleged offences and there is serious doubt in the case of the prosecution.

In view of the above, the Defendant is hereby discharged and acquitted.

Hon. Justice Bello Kawu
Presiding Judge
16/03/2017

Appearance(s):

- i. M. Iliyasu with me is Shayibu Yahya for the Defendant.
- ii. Y.Y. Tamfa and the Prosecution .

Hon. Justice Bello Kawu
Presiding Judge
16/03/2017