

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON THURSDAY, 9<sup>TH</sup> DAY OF MARCH, 2017**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**CHARGE NO. FCT/HC/CR/126/2014**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA      ---      COMPLAINANT**

**AND**

**1. NWAOTOLE FRANK  
2. LIGHT MARITIME LIMITED      }      DEFENDANTS**

**JUDGMENT**

On 7/7/2014, the defendants were arraigned before the Court on a 1-count charge filed on 4/6/2014. However, on 28/11/2014, the prosecution sought and obtained the leave of the Court to file an amended charge. The Court deemed the amended charge filed on 21/11/2014 as properly filed and served. The amended charge reads:

**COUNT 1**

*That you, Nwaotule Frank [being the Managing Director of the Light Maritime Limited], and the Light Maritime Limited, sometime in May, 2013 in Abuja, within the jurisdiction of the High Court of the Federal Capital Territory, with intent to defraud, obtained the sum of Five Million*

*Naira [N5,000,000.00] from one Onuwaje John Omare on the false pretence of sale of a 700 square meter plot of land in Ambassadors Estate, Landlords owner-occupier programme in Mbora District, Abuja when you knew you had no such plot of land and thereby committed an offence contrary to section 1[1][a] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1[3] of the same Act.*

## COUNT 2

*That you, Nwaotule Frank, being the Managing Director of the Light Maritime Limited] and the Light Maritime Limited sometime in May, 2013 in Abuja, within the jurisdiction of the High Court of the Federal Capital Territory, with intent to defraud, obtained the sum of one hundred and twenty thousand Naira [N120,000.00] from one Onuwaje John Omare under the false pretence that the said money is payment for Application form and Certificate of Occupancy for a purported 700 square meter plot of land in Ambassador's Estate, Landlord's owner occupier programme in Mbora District, Abuja, when you knew you had no such plot of land and thereby committed an offence contrary to section 1[1][a] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under sec 1[3] of the same Act.*

Each of the defendants pleaded not guilty to the 2 counts; the 1<sup>st</sup> defendant represented the 2<sup>nd</sup> defendant and pleaded not guilty on its behalf. At the trial, which started on 28/11/2014 and ended on 9/3/2016, the prosecution called 2 witnesses while the 1<sup>st</sup> defendant testified for the defence.

Omare John Onuwaje testified as PW1. His evidence is that 1<sup>st</sup> defendant is the managing director of 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant's company name is also known as Ambassadors Estate. On 21/5/2013, two ladies met him in his office and said they were the sales representatives of the 1<sup>st</sup> defendant. They told him that the 1<sup>st</sup> defendant has an Estate at Mbora District, FCT, Abuja behind CITEC. They promised to take him to the land and to the office to meet the 1<sup>st</sup> defendant. The next day [22/5/2013], they went to the land; there, he saw signboard of the Estate and tractors opening the roads. They went to 1<sup>st</sup> defendant's office in Utako where he met 1<sup>st</sup> defendant. On inquiry, the 1<sup>st</sup> defendant said the land belonged to Lt. Gen. Jerry Useni [Rtd.] and some permanent secretaries. 1<sup>st</sup> defendant said he was fronting for them. 1<sup>st</sup> defendant showed him the approved drawings and designs of the Estate and lists of House of Representative members and Senators who have subscribed to the estate.

1<sup>st</sup> defendant told him that if he subscribes or keys into the estate project, he [the 1<sup>st</sup> defendant] will give him the approved drawing of the prototype for him to build. The 1<sup>st</sup> defendant said the space for duplex is 700 square meters and the cost was N12 million. PW1 said he offered to pay N11 million and to make an initial payment of N5 million, while the balance of N6 million would be spread and paid within one year as he is developing the plot. The 1<sup>st</sup> defendant agreed; and requested him to pay N20,000,00 for a form and N100,000.00 for certificate of occupancy. The 1<sup>st</sup> defendant said upon payment of N5 million, the drawings will be given to him and a plot shown to him within one week. He gave the 1<sup>st</sup> defendant 2 cheques; one

for N5 million and another for N120,000.00. He said he made photocopy of the cheques where 1<sup>st</sup> defendant acknowledged receipt. When his account was debited for the said sums, the 1<sup>st</sup> defendant gave him 2 receipts for the sums paid.

The further evidence of PW1 is that 1<sup>st</sup> defendant gave him form to fill, which he filled and returned to him. He made photocopy of the form. He called the 1<sup>st</sup> defendant severally week after week for about 3 months and each time, 1<sup>st</sup> defendant said he should give him the next week for the plot and the drawings. Later, he met the 1<sup>st</sup> defendant and he promised to give him [PW1] the drawings and to show him the plot the next month. After several times of 1<sup>st</sup> defendant's failure to give him the plot and drawings, he became suspicious of the transaction. He then asked 1<sup>st</sup> defendant for his money. The 1<sup>st</sup> defendant asked him to write a letter of refund of the N5 million and that it will be refunded within a week. 1<sup>st</sup> defendant said the N120,000.00 is not refundable. He agreed and wrote the letter. At a point, 1<sup>st</sup> defendant stopped picking his calls and he did not refund the money. He then wrote a petition to EFCC.

When PW1 was cross examined, he denied that the N5 million he paid was to enable 1<sup>st</sup> defendant to get the necessary approvals for the project. After the payment of N5 million, he did not go to the estate where they showed him before he made payment. The 1<sup>st</sup> defendant did not tell him that they are still processing the approval for the estate; he did not also tell him that 2<sup>nd</sup> defendant's directors and the directors in Federal Capital Development Authority [FCDA] are working on the approval.

ASP Lawal Mainasara, a Police officer attached to Land and Property Fraud Unit, EFCC, gave evidence as PW2. His evidence is that a petition dated 17/2/2014 was minuted to his unit. After going through the petition, they invited the complainant [the PW1]. PW1 adopted his petition. The 1<sup>st</sup> defendant was invited and shown a copy of the petition. He voluntarily wrote his statement and signed it. Letter was written to Corporate Affairs Commission to determine who the directors of 2<sup>nd</sup> defendant were. Two letters were written to First Bank Plc. Investigation revealed that the 2<sup>nd</sup> defendant floated Ambassadors Estate with the aim to deceive and defraud unknown public in the pretext of selling plots of land as owner/occupier. 2<sup>nd</sup> defendant and 1<sup>st</sup> defendant [its managing director] had no such land for sale in Abuja. Several times, the investigating team requested 1<sup>st</sup> defendant to produce a document showing that he or the 2<sup>nd</sup> defendant had any allocation of plot from FCDA or any of the Area Councils in Abuja. The 1<sup>st</sup> defendant could not produce any document.

The PW2 tendered the following documents:

1. PW1's petition dated 17/2/2014 together with attached documents are Exhibit A.
2. First Bank Plc. cheques for N120,000.00 dated 23/5/2013 and N5 million dated 22/5/2013 are respectively Exhibits B1 & B2.
3. Letter dated 28/2/2014 from EFCC to Corporate Affairs Commission is Exhibit C1; while letter dated 8/4/2014 from Corporate Affairs Commission to EFCC [together with the attached documents] are Exhibit C2.

4. Letter dated 28/2/2014 from EFCC to First Bank is Exhibit D1. Letter from First Bank to EFCC dated 24/3/2014 [together with the attached documents] are Exhibit D2. Letter from First Bank to EFCC dated 24/2/2015 [together with the attached documents] are Exhibit D3.
5. The 2<sup>nd</sup> defendant's receipt for N120,000.00 and receipt for N5 million both dated 24/5/2013 issued to PW1 are respectively Exhibit E1 & E2.
6. Statement of PW1 to EFCC dated 3/3/2014 is Exhibit F.
7. Statement of the 1<sup>st</sup> defendant to EFCC dated 4/3/2014 is Exhibit G.

During cross examination, PW2 stated that in the course of investigation, he was not taken to any land in respect of this transaction; and no form of allocation document was shown to him. During his investigation, he did not go to the defendants' office.

The evidence of 1<sup>st</sup> defendant as DW1 is that he is the managing director of the 2<sup>nd</sup> defendant. He is into estate development and marine logistics. Sometime in 2013, his friend from World Trade [an estate marketing company] brought John Onuwaje [PW1] to him and said he has agreed to buy a plot in his estate. He [PW1] came with a cheque for N100,000.00 and said he wanted to confirm the office and to know the managing director of the company selling the plot. Before they came, World Trade and John Onuwaje had already concluded discussions on the price of the plot i.e. N12 million and the modalities for paying the balance. The monies were paid and his company receipt was issued to him for the sum paid. Their agreement was that the N4 million he paid was to settle the Gwari people

for the economic trees on the whole plots in the estate and that at the end of clearing and movement to site, he [PW1] will be given his plot and an approved plan to build his house. They further agreed that before he starts development on his plot, he will pay the balance of N8 million.

Before they finished the clearing of the site, they had a problem with Gwari people because they needed complete payment of their money for the economic trees being N28 million. There was delay; PW1 was not happy with the delay and he started embarrassing the people who brought him to the company. When this was brought to his attention, he asked them to request a refund of John's money. He asked them if John had ever gone to the site and they said no. John wrote a letter of refund and the letter showed that it was copied to EFCC. He did not respond to the letter since John copied EFCC. He called John on phone and he said he has already reported the case to EFCC. When he went to EFCC, he was granted bail. They [EFCC staff] asked him to bring the money to their office and they never visited the site. Later, he was advised to settle with the complainant and he agreed. He was eventually charged to court.

DW1 further stated that presently, over 34 units of houses are standing in the estate and 2 are completed and furnished as a prototype. Most of the developments are on credit to enable him reach a certain milestone to be able to market the houses. Once he is able to raise money, he will pay John the sum he paid. He concluded that he did not cheat John; he is selling a product.

When DW1 was cross examined, he stated that his property is located at Mboru District, Abuja. He is doing a joint venture with the owner of the land. He is to develop the land and give the owner 30% of the profit after sale. Kabiat Construction Company is the owner of the plot; Mr. Kabra is its managing director. When asked if he can present any document to show the partnership, DW1 said he has a strategic alliance agreement dated 19/5/2015; the first agreement was on 31/10/2014. He conceded that the said agreement was entered into after the transaction he had with PW1. He explained that the first allottee [General Procurement Services] had to transfer the land to his partner before his agreement with his partner. The transfer from the original allottee to his partner was delayed while work had commenced on site. DW1 maintained that as at the time PW1 filled the form for the plot and as at 23/5/2013 when PW1 issued the cheques for the total sum of N5,120,000, he had a valid land to sell.

At the end of trial, Osuwa Okechukwu Esq. filed the defendants' final address on 27/5/2016. Sylvanus Tahir Esq. filed the final address of the prosecution on 24/6/2016. On 12/7/2016, Mr. Osuwa Okechukwu filed a reply on points of law. Learned counsel for the parties adopted their final addresses as their oral submissions on 28/11/2016.

Mr. Osuwa Okechukwu Esq. posed these three issues for determination:

1. Whether the accused had intention to defraud the public with the project or not.
2. Whether the project was real or not.

3. Whether there was intervention by a third party.

On the other hand, Mr. Sylvanus Tahir, on behalf of the prosecution posed one issue for determination, to wit:

Whether from the overwhelming oral and documentary evidence adduced by the prosecution, the prosecution has proved the ingredients of the offence as contained in the charge against the defendants beyond reasonable doubt as required by section 135 of the Evidence Act, 2011 [as amended].

In the two counts, the defendants are charged under section 1[1] of the Advance Fee Fraud and Other Fraud Related Offences Act. It provides:

*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 in any other country, for himself or any other person;*

*[b] .....*

*[c] .....*

*is guilty of an offence under this Act.*

Section 1[3] of the said Act provides:

*A person who is guilty of an offence under subsection [1] or [2] of this section is liable on conviction to imprisonment for a term of not less than ten years without the option of a fine.*

Learned counsel for the defendants posited that from the evidence of PW1 and DW1, it is evident that the defendants' project was real. This is because PW1 stated that when he was taken to the site, he saw the defendants' sign board and tractor clearing the site; and that he did not visit the site again. PW2 did not visit the site. It was argued that the delay in allocating the plot to the PW1 was circumstantial; orchestrated by the act of the natives which took time to resolve. Counsel posited that the intervention of the natives exonerates the defendants from criminal liability. It was submitted that the defendants had no intention to defraud the public. Mr. Osuwa Okechukwu referred to Alade v. Aborisade [1960] 5 FSC 167 to support the principle that he who asserts must prove. He concluded that the prosecution failed to prove the case beyond reasonable doubt when it could not establish that the estate is non-existent, noting that title of the estate is not in dispute.

For his part, learned counsel for the prosecution referred to the case of Alake v. State [1991] 7 NWLR [Pt. 205] 567 for the ingredients of the offence of obtaining by false pretence. Counsel argued that the defendants' assertion that they started clearing the land when the natives chased them away demanding the sum of N28 million is completely misleading and untrue. Mr. Tahir pointed out that in the extra-judicial statement of DW1, he stated that he had made application to the FCT Minister to procure a parcel of land; but as at the time he was making the statement, the land had not been approved. According to learned counsel, the question is: *"how will then the Defendants go ahead clearing a land that was never allocated to*

*them?*” On the submission of defence counsel that PW2 did not visit the site, Mr. Tahir argued that the evidence of PW2 was that all efforts for the defendants to present any document to prove the existence of the said land proved abortive. Thus, there was nothing to direct PW2 to any land.

In the case of **Aguba v. F.R.N. [2014] LPELR-23211[CA]**, it was held that the fundamental ingredients or elements that are required to be proved to establish the charge of obtaining money by false pretence are that:

- i. There was a pretence;
- ii. The pretence emanated from the accused person;
- iii. The pretence was false;
- iv. The accused person knew of the falsity of the pretence, or did not believe its truth;
- v. There was an intention to defraud;
- vi. The property or thing is capable of being stolen; and
- vii. The accused person induced the owner to transfer his whole interest in the property.

See also the cases of **Onwudiwe v. F.R.N. [2006] 10 NWLR [Pt. 988] 382** and **Alake v. State [supra]**.

All the ingredients except the fifth will be taken together. The evidence of PW1 is that he was taken to the land on 22/5/2013; there, he saw signboard of the estate and tractors opening the roads. Thereafter, he met the 1<sup>st</sup>

defendant in his office. 1<sup>st</sup> defendant did not deny that he told PW1 that he had a plot of land to sell. The 1<sup>st</sup> defendant gave PW1 the 2<sup>nd</sup> defendant's application form for subscription into Ambassadors Estate Landlords Owner-Occupier Programme, which he filled. The application form is part of the documents attached to Exhibit A [i.e. the petition of PW1 to EFCC]. It is also not in dispute that PW1 paid the total sum of N5,120,000.00 to the defendants as part payment of the purchase price for a piece of land in the said Estate plus processing fees. The question is whether, on 22/5/2013 when a parcel of land was shown to the PW1 and on 24/5/2013 when the defendants issued receipts to PW1 for the sums paid, they had any plot of land to sell to PW1.

DW1 did not present any document or any other evidence to show that the defendants had any land to develop and/or sell. When the DW1 was cross examined, he said he is doing a joint venture with the owner of the land; Kabiat Construction Company. The DW1 did not produce any document to prove his assertion that the plot was allocated to General Procurement Services. He did not also produce any document of transfer of ownership of the plot from General Procurement Services to Kabiat Construction Company. DW1 admitted that the agreement with Kabiat Construction Company was entered into after the transaction he had with PW1. So, the point remains that when defendants told the PW1 that they had a plot to sell and PW1 paid N5,120,000.00, they had no land to develop and/or sell.

DW1 maintained in his evidence that he had a valid land to sell; and that presently, over 34 units of houses are standing in the estate and 2 are

completed and furnished as prototype. Based on this evidence, learned defence counsel submitted in his reply on points of law thus: *“That today 34 units of 4 bedroom duplexes are built on the estate, My Lord it is a fact that speaks for itself and needs no further proof.”* There is no evidence before the Court to prove this assertion. At the trial, the defence counsel did not apply to the Court to visit the *locus in quo* to confirm that the defendants have a plot, where they have built 34 units of houses. One wonders how the defendants can build 34 units of houses when there is no evidence that they have any plot of land to develop and/or sell.

The counsel for the defendants also complained that the PW2 did not visit the site in the course of investigation. I note the evidence of PW2 that the 1<sup>st</sup> defendant was unable to produce any evidence of allocation of any land. As Mr. Tahir rightly stated, there was nothing to direct PW2 to any land. Further, in the extra-judicial statement of the 1<sup>st</sup> defendant dated 4/3/2014 [Exhibit G], he stated that:

*Since 1999, the company has application submitted to the Honourable Minister for the said plot as a company. ... However, the process of allocation is still yet to be concluded, the company has concluded the arrangement for settlement of the economic crops in the land ...*

This statement shows that the defendants did not have any plot to develop and/or sell as at the date they represented to the PW1 that they had a plot of land to sell and as a result of the representation, PW1 paid them the sum of N5,120,000.00. I need to add that in Exhibit G, DW1 did not mention that

he and/or the 2<sup>nd</sup> defendant had a joint venture agreement with Kabiat Construction Company or that the original allottee of the plot is General Procurement Services. In his reply on points of law, Mr. Osuwa argued that the submission of prosecuting counsel on the non-existence of the estate “*was based on suspicion and doubt*”. He cited **Onah v. State [1985] 2 NWLR [Pt. 12] 236** and **Ahmed v. State [2002] FWLR [Pt. 90] 1358** to support the principle that suspicion cannot take the place of legal proof. With due respect, I reject this submission. As I had said, the facts before the Court do not show that the defendants had any land to develop and/or sell as at the date of their transaction with PW1.

Section 17 of the Advance Fee Fraud and Other Fraud Related Offences Act defines “*false pretence*” as “*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*”. See **Uzoka v. F.R.N. [2009] LPELR-4950[CA]**. From all that I have said, I hold that the representation made by the defendants to the PW1 that they had a plot of land to sell was a false pretence; and the defendants knew that it was false. The defendants, by false pretence, induced or made PW1 to transfer his money to them; and the money paid is capable of being stolen. I hold the humble view that the prosecution has proved beyond reasonable doubt the first, second, third, fourth and sixth elements of the offence charged.

In respect of the fifth ingredient, learned defence counsel pointed out that Corporate Affairs Commission confirmed that the 2<sup>nd</sup> defendant was duly

registered and the 1<sup>st</sup> defendant is a director of the company. First Bank also confirmed that defendants have an account in the bank. He submitted that these facts vitiate the intention to defraud. Mr. Osuwa Okechukwu further reasoned that: *“It is important to note that the office address of the Accused is still at No. 11 Moses Majekodumi street, Utako Abuja and that he has not relocated. More so, it is evident that 2 units of duplexes had been completed as prototype while 32 units have reached 70% completion which is a fact that speaks for itself because the buildings are there and a visit to locus in quo will buttress that fact.”* He concluded that the prosecution has not proved the offence charged beyond reasonable doubt.

Learned counsel for the prosecution referred to the case of **Onwudiwe v. F.R.N. [supra]** for the definition of fraud. Mr. Sylvanus Tahir argued that: [a] the 1<sup>st</sup> defendant misrepresented to PW1 that he is the owner of the property; [b] PW1 parted with his money due to the misrepresentation; and [c] at the time 1<sup>st</sup> defendant agreed with PW1 to sell the land and gave him the application form to fill, made him pay money, took him to a purported site, he knew he did not own the land in question. It was therefore submitted that the prosecution has proved beyond reasonable doubt that defendants had the intention to defraud the PW1. The Court was urged to convict the defendants; and to order the 1<sup>st</sup> defendant to make restitution of N3,620,000.00 to PW1, being loss he sustained as a result of the false pretence pursuant to section 11[1][a] of the said Act.

In **Onwudiwe v. F.R.N. [supra]**, it was held that fraud, the noun variant of fraudulent, is:

- a) an action or a conduct consisting in a knowing misrepresentation made with the intention that the person receiving that misrepresentation should act on it;
- b) the misrepresentation resulting in the action or conduct;
- c) an action or a conduct in a misrepresentation made recklessly without any belief in its truth, but made with the intention that the person receiving that misrepresentation should act on it, and so on and so forth.

It was further held that a fraudulent action or conduct conveys an element of deceit to obtain some advantage for the owner of the fraudulent action, or conduct, or another person, or to cause loss to any other person. In fraud, there must be a deceit or an intention to deceive; flowing from the fraudulent action or conduct to the victim of that action or conduct. An offence is said to be committed fraudulently, in the context of the instant case, if the action or conduct is a deceit to make, obtain or procure money illegally. By the fraudulent action or conduct, the accused deceives his victim by pretending to have abilities or skills that he does not really have. In one word, he is an imposter. In **Vulcan Gases Ltd. v. G. F. Ind. A. G.** [2001] 9 NWLR [Pt. 719] 610, it was held that fraud, in most cases, involves dishonesty. Actual fraud takes either the form of a statement which is false or a suppression of what is true.

In the instant case, I have already found that when the defendants made representation to PW1 that they had a plot to sell, they knew that it was

false. They intended that PW1 should act on the misrepresentation and he acted on it by paying the sum of N5,120,000.00 to the defendants. The acts of the defendants fall under the definition of fraud in Onwudiwe v. F.R.N. [supra]. The defence counsel relied on the evidence of PW1 that he was taken to a site where he saw signboard of the estate and tractors opening the roads. Based on this evidence, learned counsel posited that defendants' project on the land was real.

With profound respect, I am not persuaded by this view. It seems to me that since, as I had found, the defendants had no plot to develop and/or sell, the fact that PW1 was taken to a site - where he saw signboard of the estate and tractors opening the roads - strengthens the fact that the defendants' misrepresentation to PW1 that they had a plot to sell was with the intention to defraud. The inference is that PW1 was taken to a site in furtherance of the intention to defraud.

Finally, I have considered the evidence of DW1 that his agreement with PW1 was that the money he paid was to settle the Gwari people for the economic trees on the plots in the estate. My view is that it does not accord with common sense and reasoning that the PW1 agreed to pay money for the defendants to settle Gwari people for economic trees. Moreover, this piece of evidence is not credible in the light of the fundamental fact that the defendants did not adduce any evidence to show that they had any plot of land to develop and/or sell. The defendants ought to have a parcel of land before the issue of payment of compensation can arise.

From all that I have said in respect of the fifth ingredient of the offence charged, I hold that the prosecution has proved beyond reasonable doubt that the defendants had the intention to defraud the PW1.

### **CONCLUSION**

All said, I hold that the prosecution has proved beyond reasonable doubt the charges in counts 1 and 2. The verdict of the Court is that defendants, Nwaotole Frank and The Light Maritime Limited, are guilty of the charges of obtaining money by false pretence in counts 1 and 2, contrary to section 1[1][a] of the Advance Fee Fraud and Other Fraud Related Offences Act and punishable under section 1[3] of the same Act.

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**HON. JUSTICE S. C. ORIJI  
(JUDGE)**

### ***Appearance of Counsel:***

1. M. O. Babawale Esq. for the prosecution.
2. Okechukwu OsuwaEsq. For the defendant.