

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 12, SPECIAL OFFENCES COURT 1,
BEFORE THE HON. JUSTICE M. A. DADA (MRS.)
TODAY FRIDAY THE 31ST DAY OF MAY, 2019.

SUIT NO: LD/6514C/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

... **COMPLAINANT**

AND

1. **ALHAJI ADAMU MOHAMMED DOGUWA**

2. **AMDO DOGUWA NIGERIA LIMITED**

... **DEFENDANTS**

JUDGMENT

The Defendants were arraigned on a 5 Counts 1st Amended Information dated 26th September, 2018 of Obtaining Money by False Pretences contrary to **Section 1 (1) (b) and 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, No.14 of 2006**, Stealing contrary to **Section 278 (1) (f) of the Criminal Law of Lagos State, 2011** and Issuance of Dud cheque Contrary to **Section 1 (1) (b) and (i) of the Dishonoured Cheques (Offences) Act, Cap D11 Laws of the Federation of Nigeria 2004.**

The 1st Defendant for himself and on behalf of the 2nd Defendant pleaded not guilty to each of the 5 Counts and the Prosecution called 5 Witnesses while the 1st Defendant testified for the defence.

PW1 was Kabiru Ibrahim, a staff of NASCON PLC. He testified thus:

I know the Defendant. He is a friend to my friend in the office who introduced him as a Transporter and wholesaler of commodities like sugar, salt, animal feed brown wheat offal. My company screened him and confirmed him and we started giving him contract of haulage for moving finished goods. We became friends and any time they have jobs, we take part in the activities. We became very close. I started transacting my personal business with him on commodities principally brown wheat known as animal feed offal, a bye-product of wheat. I tried him once and bought one Truck from him and he delivered it to me. I kept transacting with him for like 4 years. Sometime around September-October 2016, I had a discussion with him that I wanted to buy 3 Trucks of the animal feed but we agreed that I would first pay for 1 (one) Truck and after delivery, I would pay for the other 2 Trucks. But after the payment of the 1 Truck, before he delivered it to me, I paid for the other 2 Trucks and he promised to deliver it 2 weeks and he delivered it in one month. He promised to deliver the remaining 2 Trucks in 2 weeks. I think I paid him N870,000 on the 2 Trucks, he said there was an increase. I paid N1.9M through Mobile Banking transfer in my office and in my presence he received the alert and he testified. On the expected delivery date of 2 weeks, I called him, he postponed it to another 2 weeks and he kept on postponing for another 2 weeks seven times. At last, he came to



say the price has gone up too much that he could not deliver. He promised to refund my money in 2 weeks and I agreed with him, but he kept on promising and postponing for 2 weeks 3 times. One day I received an alert of N930,000 from him through my GTB Account. I called and asked him why, he said that is all he had that I should please exercise patience for another 2 weeks again. All his promises were 2 weeks- 2weeks. He failed again and again. As a friend I went to his office, I did not find him. So I called him to come to my office and I explained that the money belongs to my friend who is also a friend to him Alhaji Rabiun Isah and that I would send him to Rabiun who like him is in Apapa while I am at Oregun and of course they are neighbours. When I called Alhaji Rabiun that he would receive his money from the Defendant he was very angry with me and said he would not participate in any transaction with the Defendant. I pleaded with him and we now prepared an Undertaken but the Defendant did not come. But later he wrote an Agreement with Rabiun and issued a cheque on 04/08/16 but the cheque bounced. Rabiun came to my house with the drafted Agreement and the cheque and said I must pay him his money. So I paid Rabiun but since then the Defendant refused to pick my calls. If I go to his office, they would not allow me to see him several times and I became tired. Then I petitioned to EFCC not knowing that Shehu had already petitioned against him and they brought him out from custody and they asked me if he is the one and I said yes. They asked me to write my statement and I did. We agreed that any time I had goods to carry, he would use his use his trailer as enjoined by the Madam IPO who was brokering. Since the Defendant said he had no money anytime I had work. When I had work to carry salt to Berger, his friend who was acting for him while he was in custody, brought a Trailer, I paid him N20,000 for fuel. The haulage is N150,000 and I paid the driver N10,000, making N30,000. So they did the work for me leaving an outstanding of N120,000 from the total. I went to tell Madam IPO but she said she had already filed the case in Court as the Defendant was not ready to pay my money as there's no money in Adamu's Account. I was called to come to Court yesterday. My salary is N58,000. The money I am using for the business was inherited from my father who died. He has spoilt all my money for me, because I paid Rabiun his money. I want him to pay me my money. I will take it by instalment. The outstanding is N900,000.

The witness was not cross-examined by the defence counsel who was not ready and so witness was discharged and he was not recalled for any purpose.

PW2 was Shehu Usman Bala. His evidence in chief is thus:

I do business in brown golden Penny wheat and animal feeds. I've known the Defendant for over 12 years as a Dangote Transporter. He told me he had 3 Trucks of wheat offal brown and I gave him N3,420,000 and for 3 Trucks I paid him N5,040,00. He told me he would deliver after 2 weeks. Then he started promising 2 weeks, 2 weeks. After 3 months, he went to report me to Area B Police Station that I was disturbing him and they should assist him. I did not follow him to the Police Station, the person that owes me to go and report me? So I went to report him at Zone 2 Division. He wrote cheques covering all the money and gave to the Police. The cheques were N10,440,000. We are 3 that own the money and we cashed N1.8M but when we took the N1.2M to the Bank, no money in his Account. Then he brought N500,000 cash and N1.2M cash and wrote an Undertaken to pay N2M every month. After 2 months that we did not see any



money, we went to report to EFCC. The total he gave me out of N10,440,000 was N3.5M. My own money was N8,460,000 out of which he gave me N2,150,000.

Under cross-examination, he testified thus:

Yes, I've known him since 12 years ago in the same area, not as friends. He called me that he had goods in Dangote. Yes, that is why I gave him money to supply the goods. He promised 2 weeks but he couldn't supply and he kept promising every 2 weeks, 2 weeks 4 times. He did not tell me why he was not able to supply. I know his office. I don't know where he lives. I gave him the money in the Bank. Yes, the Defendant's office is still operating. He first went to report me to the Police. Yes, when I went to report him, he was still doing the business at Dangote. Yes, I complained to a soldier that the Defendant took money from me. Yes, it was after this the Defendant went to report to the Police. At Zone 2, I complained that the Defendant took money from me and went to report me to the Police and I wanted them to help me recover my money. Zone 2 collected N3.5M on behalf of myself and Audu Bako out of N10,740,000 (Ten Million, Seven Hundred and Forty Thousand Naira). I went to report to EFCC because the Police charged us money. They collected N50,000 to get Bank Statement but they never did. EFCC did not recover anything for us of the balance of N6,310,00 (Six Million, Three Hundred and Ten Thousand Naira). Yes, EFCC tried very much to recover the money. I told them to charge him to court when they could not get him to pay. I mentioned to EFCC that the Defendant had already paid N3.5M. Yes, if he offers to pay us our money, we will offer to stop this trial.

PW3 was Alhaji Ahmed Bako Nahuge. His evidence is thus:

I am a Transporter and Fertilizer dealer. Yes, I know the Defendant about 15 years ago. My colleague, Adamu Doguwa, i. e. the Defendant told me he had an allocation at Dangote where he covers. We are living in the same area. He brought the allocation that we should pay N1,140,000 (One Million, One Hundred and Forty Thousand Naira) for one Trailer. My colleague and I paid him N2,280,000 for 2 Trailers. I sent that money on 9/11/17. The Defendant promised to give me goods in 2 weeks. It became one month, 2 months, 3 months, 4 months but he never brought any goods. Instead he carried us to Area B. He reported us to the Police stating that we are disturbing him. So we went to Zone 2 where the Defendant gave N1,350,000 with the balance of N2,145,000 remaining with the Defendant. He gave us a cheque but it bounced, no money at all.

Under Cross-Examination, he stated thus:

Yes, I've known the Defendant for 15 years now. This is the first business I have with him. Yes, the Defendant is a Transporter and Supplier of goods. Even now his business is continuing. I did not doubt him then. Yes, my problem is that he did not deliver what he promised to deliver. Yes, I went to the Police in Zone 2 because I wanted my money back. Yes, I complained that the Defendant did not want to pay me my money. Yes, he paid me N1,350,000. The money is much. It is my brother's money. He sent me the money to help him buy goods for Market. Yes I went to EFCC to ask them to help me get my money back. Yes, when he could not pay I told them to charge him to court.

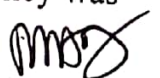
No, I did not report him to the soldiers. I'm not aware that one of us that the Defendant is owi reported him to a soldier. The cheques the Defendant issued to us are Fidelity Bank cheques. Yes, I showed the cheque to EFCC. This is the only cheque he gave me. If he pays me now, I won't have interest in this case again.

Under re-examination; he stated thus, "The Defendant never delivered anything to me at all"

PW4 was Franca Obinwa, an Operative of the EFCC. Her evidence is thus:

I am attached to the Investigative unit of EFCC. My Team members are myself as Team leade Abdulahi Abubakar and Tompre Oseagwina.

Yes, I know the Defendant. On 07/08/2017, the Commission received a Petition dated same 07/08/17 signed by one Usman Shehu Bala alleging conspiracy, obtaining by false pretence an Fraud against one Adamu Mohammed Doguwa and his company, Amdo Doguwa Nig. Ltd. It was assigned to my Team B under Bank and Fraud Unit for discreet investigation. We commenced investigation immediately. The complainant was contacted; he came and made further statements. Letters of investigation were dispatched to the Corporate Affairs Commission, GTB, First Bank and Ecobank for Information. They furnished us with Statement of Accounts of the Parties. The Defendants' Statement of Account was analysed and those of the complainants. Also CAC responded with respect to the owner of the 2nd Defendant. The Defendants' GTB Account revealed that on 10/11/2016, N3.4M was transferred from the complainant's Ecobank Account in 2 tranches of N2M and N1.4M. On 11/11/16, a total of N3.5M was also transferred in 2 tranches to the Defendant's GTB Account. On 18/11/16, another N1.4M was also transferred totalling N8.3M was paid into the Account of the 1st Defendant domiciled with GTBank by Shehu Usman, PW1. The Defendant was invited for interview but he failed to turn up. So on 5/10/16, a Team of Operatives was detailed to arrest the Defendant and he was brought to EFCC's office. He was confronted with the Petition. He volunteered his statement. He was cautioned and he signed that he wished to make his statement. In response to the Petition, the Defendant admitted collecting the money from the complainant for the purpose of supplying Trucks of wheat flour. He however said the money was given to Abdulateef whom he claimed he didn't know his other name and address and that he didn't transfer the money to him or paid through Bank. One Mr Bako came claiming that he is a partner to PW1, the complainant and that he made a further payment of about N2M plus into the Defendant's First Bank Account in 2 Tranches. One payment was made by one Jafar, a boy under Bako. On further investigation, it was discovered that the money paid by Usman Shehu Bala, PW1 into the Defendants' account was mostly withdrawn by the Defendant in cash and others transferred to different people among who was Abdulateef. While this was on-going, another person, Ibrahim Kabir came up also making allegation that the Defendant fraudulently collected N2,770,000 from him under the pretext of supplying him wheat flour which he never did. He gave the Account number into which he paid which happened to be the Defendant's GT Bank. On the analysis of the Account, on 11/10/16, Kabir Ibrahim, the 2nd Complainant paid in N700,000. On 18/10/16 he paid in N170,000 followed by on 10/11/16 when he paid in N1M and then N900,000 on 4/11/16. We went through the Account and discovered that as money was



coming in, the Defendant was withdrawing it in cash. Upon pressing for their money, the Defendant issued a cheque on behalf of Kabir Ibrahim to one Mr Isa Rabi, but when it was so presented, there was no money in the Account and so it was returned unpaid.

The Petition, Letters of Investigation referred to by the witness, an Access Bank cheque in favour of Rabi Isah and the 1st Defendant's Statements were all admitted as Exhibits 1-10 respectively).

In Exhibit 4, there was on 10/11/16, a payment of N1.4M by Shehu Usman. On same date, N2M was paid by same PW1. On same date, N1.5M was transferred to the 2nd Defendant's Account and another N2M on same date totalling N3.5M. On 17/11/16, N1.4M was transferred to the Defendants.

In Exhibit 3, the Defendants' Account, on 10/11/16, N2M was transferred by PW1 and on same date N1.4M also by Shehu. On 16/11/16, N1.5M was transferred by PW2, Shehu. On 17/1/16, N1.4M was transferred by the same Shehu Bala. The 2nd complainant, Kabir Ibrahim also paid N700,000 on 10/11/16. On 18/10/16, N170,000 by the same Kabir Ibrahim. On 3/11/16, he transferred another N1M to the Defendants and another N900,000 was transferred on 4/11/16.

Our Investigation revealed that the money paid to the Defendants was never used for the purpose for which it was paid.

Under cross-examination, she testified thus:

We sent our Investigation File to Legal as is our usual practice. I can't remember if we wrote to Access Bank. We wrote to GT Bank and Eco Bank because these are where our subject of investigation is the Account into which the Complainants said they paid money into. It is straightforward. The dud cheque wasn't my personal opinion. The date a cheque is issued is written on it. Exhibit 5 bears 4/8/17 date. There is nothing on it showing when it was presented. The Defendant issued the cheque on behalf of the 2nd Complainant, Ibrahim Kabir as part-payment. Yes, I'm aware of the initial investigation by the Police but I did my own independent investigation because the complainant was not satisfied about the way the Police was investigating it. The Defendants defrauded the Complainants.

There was no re-examination.

PW5 was Abubakar Abdullahi, an Operative of the EFCC. His evidence is thus:

We investigate and work in a Team of 3 members including myself, Mrs Franca Obinwa and Tompre Oseagwina. Yes, I know the Defendants. On 7/8/16, the EFCC received a Petition by one Shehu Usman Bala against Adamu Mohammed who presented himself as an Animal Feed Supplier of Dangote. They said N10,740,000 (Ten Million, Seven Hundred and Forty Thousand Naira) was involved but we investigated and found that N8,300,000 (Eight Million Three Hundred Thousand Naira) was involved. Our Team invited the Complainant on his Petition and obtained his Statement. We sent Letters of investigation to the Corporate Affairs Commission, GT Bank and Eco Bank for the Accounts details and Statements of Accounts. We analysed them

and called the Defendant by phone and when he did not pick up our calls we had to arrest him. We obtained his Statement under caution and later served him Bail conditions which he never perfected until he was arraigned in court. Later another Complainant joined with them who complained that he issued him a dud cheque. The Defendant made additional Statement and we analysed the Ecobank Account of the Complainant and saw that N8.3M was transferred into the Defendant's GT Bank. We also saw another N2,770,000 (Two Million, Seven Hundred and Seventy Thousand Naira) was transferred also into the Defendant's same GTB Account.

From all investigations, the Defendants obtained money by false pretence.

(Witness identified Exhibits 1-10)

Under cross-examination, he stated thus:

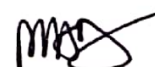
Before we received the Petition, I did not know that the case was investigated by Zone 2. Yes we heard that some money was recovered by Zone 2 thus reducing it from N10M to N8M. The Petition said it was N10,740,000 but in the Bank Statement, it is N8,300,000 that was shown.

Yes, we recommended that the Defendants be charged to court when he could not pay.

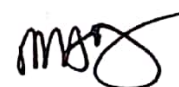
There was no re-examination and this closed the Prosecution's case.

After an unsuccessful No Case Submission, the defence opened with the 1st Defendant as DW1. He testified thus:

My name is Adamu Mohammed Doguwa. I live at 22 Mobil Road Apapa, Lagos. I am a Transporter and into sale of animal feed. The 2nd Defendant is my office. It is my company. I have been in business for 22 years. I know Shehu Usman Bala. On 10/11/16 and 17/11/16, Shehu Usman Bala, PW2 met me in my office and said he wants to buy animal feed. I told him the price. He ordered 8 Trucks. He gave me N8.3M. We agreed for 2 months and 3 weeks. Before the time, I entered problem. I did not deliver any Truck to him. I told him that I gave money to somebody and he disappeared. I told him to be patient that I will look for the man I gave money to. I told him to give me one week. After one week, I told him he was not the only one that I took money from but over 10 people were involved. The other people were buying 1 or 2 Trucks and he returned their own money. Shehu Usman Bala then brought Navy to arrest me and I explained to the officer. I showed them the Port where I used to buy and there Dangote people said he was not their direct customer. The soldier threatened me and so I now went to report at Area B Police Station his threats. I explained the business with PW2 and they collected his phone number from me. They called him, PW2 to come to Area B that I reported the soldier to them. PW2 called the soldier to tell him that I reported to the Police that I want to chop his money. PW2 now came to Area B and was shouting with them with that soldier with him. Then they detained me for 4 days in that Area B. They collected the 2 Trucks of Dangote Flours valued at over N12M. After 4 days the Police released me. I have not paid the money because I don't have money. After 2 days that I was released, somebody in my office told me that the Police from Zone 2 had come to check on me. PW2 brought them and when I heard that they invited me I went there. They carried me to see the AIG Ibrahim Adamu who called the DIG to



settle it. The DIG carried us to their office and asked me where the money was. I told them I don't have money. That time Dangote paid me for the wheat I supplied before and I told the DIG that they transferred N1.8M into my Account. He told me to write a cheque for it. The cheque Book was in my office, so the next day they wrote N1.8M to give to the Police to give to PW2 to go and cash. After that they asked me how much I would be able to pay weekly. I used to carry salt, wheat, oil, so they said I should pay N3M every month but I told them my 2 Trucks were with the Police at Area B. I said they are Dangote Trucks, I am just a Transporter. The AIG wrote a paper directing them to release the Trucks at Area B and they released them. One of the Trucks was loaded with a customer's flour and when the customer who owned them saw them, he refused to collect them saying the flour was spoilt. I returned the flour to Dangote and explained what happened. Dangote gave me query and reduced my load to 5 trucks weekly instead of 30 trucks to deliver to customers. Yes, Shehu Usman Bala, PW2 was going round spoiling my name that I chopped his money. That month, I saw N1.2M and I took it to Zone 2 to explain to them. I carried the cash inside sack and begged them for next month. The DIG said I should try more and I gave them the N1.2M to add to N1.8M to make N3M. I did not see anything except N542,000 and the Police called me that month and I told them how much I was only able to make. They said I should bring it. I borrowed N500,000 from my friend to make N1M for me to carry to Zone 2. They were calling me every day and after 2 days I took N500,000 to them making N3.5M. Then they detained me at Zone 2 for 4 days. The DIG called us together again and pleaded with PW2 to let me do more business to be able to pay him every month. They released me but before one week PW2 reported me to EFCC and they called me in my office. I came to EFCC at Abubakar's office and he asked me where PW2's money was. I told him the matter is at Zone 2. Abubakar is working with EFCC. I told him I didn't have anything that time. I told him I could only pay N500,000 every month. I told EFCC that I had paid N3.5M to Zone 2 and EFCC said yes since I said I don't have money, they said they will check my Account and my businesses while they detained me for 3 weeks and went to my office but they said they did not see any money. They called me and PW2 and pleaded with him to let me go and do more business to enable me pay him up. I said I would pay him N500,000 every month but he said it's too small. They kept at EFCC for 4 months from October –January 31. I was begging PW2 to let me go and do more business from where I would be able to pay him. He said the matter was already with EFCC and anything they decide to do is not his wahala. I was begging EFCC to allow me to go and do business to pay the money. I don't know about any N7, 320,000M PW2 complained about. Yes, I know Kabiru Ibrahim. He is a staff of Dangote with whom I do business. He is a Transporter for Dangote salt. He is my friend. He knows that Animal Feed is my business. He told me to help him to do business. He bought over 15 Trucks of Animal Feed from me before and I delivered. This time he requested 3 (three) Trucks from me at N960,000 per Truck. He paid N2,880,000 for the 3 Trucks. I supplied 1(one) Truck to Kabiru and I returned money for 1 (one) Truck because Dangote was giving me 80% advance for the Transport. Sometime we owe each other, so they returned 1 (one) Truck money N960,000. Kabiru asked for the balance of N960,000 for 1 (one) Truck and I explained what was happening to him. He said he knew but I should try to return the money and I agreed. I couldn't return the money for the 1 (one) Truck because Dangote stopped my supplies saying I should go and return Kabiru's money. He asked how much I could pay him in a month, I said



N500,000. He said I should write the cheque. I wrote the cheque. I was looking for money up and down and the cheque is still with Kabiru. I did not see any evidence that he presented the cheque anywhere. Then he also went to report me to EFCC. EFCC said my Truck would be working with Kabiru and we agreed. Kabiru carried one Truck from Apapa, Oregun to Ibadan Road where they sell Animal Feed at Isorun. Kabiru went once and he made N120,000 out of N150,000. The balance of Kabiru's money is N840,000. The Trucks are on hire purchase and when they heard what Kabiru was brandishing about me, the people came to retrieve the Truck: when they heard that I was in prison. I had paid N1M out of the N2.5M of the price of each Truck.

Under Cross-examination, he stated thus:-

I know Shehu Bala Usman. We are both Transporters of over 23 years. He is from Zamfara State. I don't know his Local Government. I lived at Marine Breach. He transferred a total of N8.3M to my Account. Yes, I do business with other people who paid me cash. I did business also with Kabiru. I did with no other person. It was Bala who called me from my office that EFCC came looking for me that I should go to them. I went there and they carried me to my office. The money Bala gave me was for me to supply Animal Feeds. I was to buy it from Dangote Flour Mills. I am a Transporter to Dangote. Yes, I have bought Animal Feeds from Dangote Flour Mills before then. Yes, I gave money to Abdul Lateef. He is my customer. I can't remember how much I gave to Abdul Lateef. I gave him cash because he has a car. That is our business for over 23 years. He did not sign any paper that I gave him money. Yes, I know Mr Bako who also paid money into my Account. He is with Shehu Usman Bala. Ahmed Bako is with Usman Bala. I can't remember how much Bako paid into my First Bank Account. Yes, he paid money into my Account. It is not up to N2.5M. It was about N2,080,000M. It is in my Statement of Account. It was also meant for Animal Feeds. No I did not supply. They are together. I withdrew cash to give to my customer, Abdul Lateef, to buy market. I collected N2,880,000 from Kabiru Ibrahim for 3 Trucks of Animal Feeds. I supplied only 1 Truck of 3 Trucks of N960,000 each. Sometimes the prices fluctuate down or up, like N1,030,000 or N1,080,000. No it had never reached N1.5M.

Yes I know Rabiru Isah. I gave him a cheque of N530,000. Kabiru said part of the money he gave me belonged to Rabiru Isah. The money in my Account did not reach that amount, so I went to tell him to wait for 2 weeks. After 2 weeks, he came, I begged him to wait more and still keep the cheque. After then Bala carry me go for EFCC. He did not present the cheque to the Bank till now. I collected money from Kabiru Isah, Shehu Usman Bala and Kabiru Ibrahim. I don't buy animal feeds directly from Dangote. We buy through people who have papers. You collect the paper and show it to the customer. No, I don't have any such paper before this court. Yes I reported Abdul Lateef to Area B Police Station, but they did not see him. I don't know his house. Yes, the Police collected 2 Trucks from me with flour. The Trucks are with ten tyres. They were coming from the Port. Shehu Usman Bala and Kabiru know that the Trucks are under me. The 2 Trucks of flour were for different customers. The flour belongs to Dangote. I am just a Transporter. The 2 Trucks are with the owner of the Trucks. Yes Dangote gave me a query because the flour in one of the Trucks spoilt. The query Dangote gave me is not a paper one, but

in the work. They used to give me 30 Trucks but they now started giving me 5 Trucks. That is a query. The Trucks were on Hire Purchase. I don't have my own Truck.

This ended the Trial.

The Defendants' Final Address by their counsel, Nwugha ThankGod esq. is dated 5th March, 2019, while the Prosecution's by Nkereuwem Mark Anana is dated 25th March, 2019.

Learned Counsel for the defence submitted a sole issue for determination, whether the Prosecution has proved the offences contained in the charge against the Defendants beyond reasonable doubt as to justify conviction by this court.

He submitted that where evidence offered by the Prosecution is susceptible to doubt, it cannot be said to have obtained the standard of proof that can be said to be beyond reasonable doubt. This concept he conceded is founded on reason and rational examination of a state of facts and law rather than a fanciful, whimsical or capricious and speculative doubt. He argued that neither suspicion, nor speculation or intuition can be a substitute for a proof beyond reasonable doubt. He relied on;

1. **Section 135 (1) of the Evidence Act, 2011.**
2. **IGBABELE Vs. STATE 2004 15 NWLR PT. 896 314 @ 334.**
3. **SEBASTINE TAR. HON (SAN) on LAW OF Evidence In NIGERIA (Based on the Evidence Act, 2011) Vol. 1 (2nd Edition) pp 3455-350.**
4. **ALAKE Vs. STATE 1992 9 NWLR PT.265, 260 S.C.**
5. **BOLAKOLE Vs. STATE 2006, 1 NWLR PT. 962, 507 CA.**

On the failure of the former defence counsel to cross-examine PW1, he submitted this does not relieve the Prosecution of the duty to prove the guilt beyond reasonable doubt as it is not the duty of the Defendant to prove his innocence. He relied on **ALABI Vs. THE STATE 1993 9 SCNJ PT.1, 109.**

It is his submission that a dispassionate evaluation of the evidence both documentary and viva voce presented by the Prosecution on the 5 Counts will reveal a pathetic case of absolute failure of proof on the part of the Prosecution resulting from inability to establish even the minutest essential ingredients of the offences contained in this case.

On Count 1, he submitted that the phrase "False Pretence and with intent to defraud" has been judicially defined to mean; "A representation, whether deliberate or reckless, made by word, in writing or by conduct, of a fact or law, either past or present which representation is false in fact or law, which the person making it knows to be false or does not believe to be true"

He relied on **Section 20 of the Advance Fee Fraud and other Fraud Related Offences Act, No. 14 of 2006** and **KINGSLEY ADIJEH Vs. COP 2018 LPELR-44563 CA.** He submitted that the ingredients Prosecution must establish are that:

1. There was some mis-statement made by the defendants which in law amounts to a pretence;

2. The mis-statement as to an existing fact was made by the defendants;
3. It was false;
4. The defendants knew it was false; and
5. The mis-statement acted upon the mind of the person who parted with the money.

He referred to **IBRAHIM BUBA GAYUS Vs. FRN 2017 LPELR-43023 CA** and reviewed the evidence of the Prosecution Witnesses upon which he submitted that the 1st Defendant was known by the PW1 and indeed the general public as a supplier of brown wheat popularly known as animal feeds on the basis of which he enlisted the defendants' services. That for that purpose the following inferences are naturally consequential;

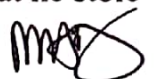
- (i) The 1st defendant could not have made any misstatements amounting to false pretence with intent to defraud as to his ability to supply the said commodities since the supply constitutes the object of his daily vocational pursuit.
- (ii) The fact that the 1st defendant supplies brown wheat and had the capacity to supply same to PW1 was not in doubt.
- (iii) PW1 being fully aware that the 1st defendant's business is that of supply of animal feeds could not have been induced by any representation of the 1st defendant to part with his money but was actuated solely by facts within his own personal knowledge as to existing state of affairs.
- (iv) The gravamen of the dispute between the defendants and PW2 is the inability of the defendant to discharge contractual obligation timeously.
- (v) The facts as revealed by the evidence adduced on both sides show that the transaction between the defendants and PW1 was purely contractual without any scintilla or modicum of criminality. The facts as revealed do not constitute the offence under **Section 1 (1) (b) and 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, No. 14 of 2006.**

He relied on several authorities which time will fail me to re-capture.

On Count 2 of stealing, he submitted that to establish a prima facie case, the Prosecution must prove that the defendant acted dishonestly in receiving the alleged sum of money as the mental element of the offence. And that there was in existence the exact sum of Seven million, Three Hundred and Twenty Thousand Naira (N7,320,000.00) only which was actually stolen or converted by the Defendants.

Learned counsel submitted that the Prosecution must establish at the close of its case, with credible and legally admissible evidence that the defendant received the said money with an intention to cause a wrongful gain to himself or another or to cause a wrongful loss to any other person including PW2.

He argued that PW1 in his evidence before the court stated that the 1st Defendant collected N8,460,000.00 from him and paid back N2,150,000.00 leaving a balance of N6,310,000.00. But PW2 in his Petition in Exhibit 1 in paragraph 3 stated that the sum received by the 1st defendant was N10,740,000.00, whereas the allegation against the defendants in Count 2 is that he stole



N7,320,000.00. He thus argued that the prosecution has failed to by the apparent contradiction as to the amount the defendants are alleged to have stolen between 10th November and 17th November, 2016 whereas, that the 1st defendant on his part testified that out of the sum of N8.3M he received from PW2, he paid N3.5M through Zone 2 headquarters of the Nigeria Police. That following his inability to continue to pay the agreed instalments as a result of the seizure of two of his Trucks, he was charged to court and he denied knowledge of N7,320,000.00 in Count 2. He submitted that where specific sums were allegedly stolen on specific dates, as alleged, the Prosecution must prove that the sum for which the accused was charged actually got into his hands. That it is trite that where in a charge of stealing, the evidence lad by the prosecution as to nature, number and identity of the article stolen is contradictory, it ought to result in the rejection of such evidence.

He submitted that stealing has not been established by the Prosecution and urged the court to discharge the defendants on this count.

On Count 3, he repeated his submission on Count 1 and on Count 4, his submission on Count 2.

On Count 5, stating that the defendants issued an Access Bank Cheque via Account No. 0058903157 in the sum of N530,000 in favour of Rabilu Isah on 4th August 2017 which cheque upon presentation was dishonoured, learned counsel submitted that the prosecution must establish;

1. The person obtained credit for himself or any other person;
2. The cheque was presented for payment within three months from the date of issue of the cheque; and
3. Upon presentation of the cheque it was dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn.

He submitted that it is instructive that in all the evidence presented, the prosecution failed to establish that **Exhibit 5** was presented for payment within three months of issuance. There was no endorsement on the said **Exhibit 5** bearing the stamp of the bank and the date of dishonour, there were no customary endorsements such as "DAR" by the Bank. Counsel wondered why the defendants' Statement of Account that touches on **Exhibit 5** was not tendered or withheld. Furthermore, that the prosecution failed to call Mr Isah Rabilu in whose favour **Exhibit 5** was issued and who purportedly presented **Exhibit 5** for payment.

He finally urged the court to hold that the prosecution has failed to prove the offence charged in Count 5 beyond reasonable doubt and to discharge and acquit the defendants on the entire charge.

He relied on 21 Authorities in support of his submissions which are listed and set out at the end of the Final Address.

Mr. N. M. Anana for the Prosecution also raised a sole issue for determination; whether having regards to the evidence adduced by the Prosecution in this case, it cannot be said that the



Prosecution has proved its case against the Defendant beyond reasonable doubt to enable this court convict him as charged.

He submitted that the Prosecution has successfully discharged the burden placed on it by proving the essential elements of the offences preferred against the Accused persons herein. On the ingredients of; Obtaining money by false pretence, he submitted as follows;

1. That there was a false pretence made by the Accused proved to be the act of the defendant pretending that he will supply the complainant with wheat offals but refused to supply.
2. The pretence emanated from the Accused who was the one who agreed to supply the complainant with the trucks of wheat.
3. It is false by the fact that the money was paid by the petitioner to the defendant who stated that he paid to someone called Abdullateef who was nowhere to be found and there was no evidence of payment to him.
4. The accused knew of its falsity as the defendant knew that he was not going to be able to supply any wheat offals to the complainants because he himself withdrew the money in cash for something else.
5. There was intention to defraud as the act of presenting by the defendant that one Abdullateef was given money and he ran away when there was no evidence of such occasion is also an intention to do away with the complainants' money.
6. The money is capable of being stolen.
7. The accused induced the owner/complainant to transfer his whole interest in the property after he met with the complainant.

On Stealing, he submitted that the Prosecution has proved the dishonest diversion of the money belonging to the complainants by withdrawing the money in cash and refunding a token from the entire amount.

He urged the court to hold that the prosecution has proved its case beyond reasonable doubt and to convict the defendants and order a restitution of the victims' money and or tracing the properties of the defendants so that same could be attached and complainants could get their money.

There is no Reply on Point of Law.

The only issue is whether the Prosecution has proved any or all of the 5 Counts in this Information against the Defendants or not.

It is not in dispute that the Defendants received monies from PW1, PW2 and PW3 at various times to supply brown wheat known as animal feeds but did not supply in line with the agreements. The 1st Defendant admitted that he has no papers with Dangote Flour Mills where the brown wheat is procured for supplies; therefore he doesn't buy directly from Dangote but through other people who have papers. When asked how he convinced his customers to release money for supplies, he answered that he would collect papers from those who have them which

he will show to his customers who would on the strength of such papers release money to him for the supplies. This supports the oral evidence of PW3 in chief that the 1st Defendant brought allocation (papers) "that we should pay N1,140,000 for one Trailer. Me and my colleague paid him N2,280,000 for 2 Trailers. I sent that money on 9/11/17. The Defendant promised to give me goods in 2 weeks. One month, 2 months, 3 months, 4 months, he never brought any goods. Instead he reported us to Area B..."

Thus, it is clear by this evidence and even by the 1st Defendant's admission alone that he did not have papers for the supply of what he received money for notwithstanding how long he had been doing it. This alone is pretence in itself. The 1st Defendant also under further cross-examination admitted that the goods found in his Trucks were for customers while he is only a Transporter yet he gave himself out as a supplier.

The 1st Defendant further admitted that he collected money for 3 Trucks of animal feed from Kabiru Ibrahim, PW1, at N960,000 per Truck but that he was only able to supply one Truck but failed to supply the remaining two Trucks. The Defendant has refunded N1,005,000 leaving a balance of N931,000 due to PW1, although the Defendant stated that what is outstanding for PW1 is N840,000, he did not tell the court how he arrived at this.

PW2 on his part testified that out of N10,440,000 given to the Defendants for the supply of animal feeds, N3.5M has been refunded leaving a balance of N6,940,000.

It would however appear that what the 1st Defendant had been doing is to rob Peter to pay Paul as can be seen in the following highlights;

- 1) The 1st Defendant in his extra-judicial Statement in Exhibit 9 stated that on 11/10/2016 when PW2 paid N3.4M into the 2nd Defendant's Account for the supply of the animal feeds, he, the 1st Defendant, on same date withdrew N720,000 out of which he released N700,000 to one Abdulateef for the purchase of the animal feed from Dangote. Why give cash to someone who ostensibly is a direct supplier with Dangote and not pay into his Account? This therefore falls flat in the face of reason and logic. It is unthinkable that someone who has papers for the supply of animal feeds with Dangote would not have an Account into which money would be transferred directly as against the 1st Defendant's withdrawal of cash to hand over to him. What this portends is that the story of giving money to any Abdulateef is a fabrication of the fertile imagination of the 1st Defendant.
- 2) On same 11/11/16, the 1st Defendant transferred N2.4M to one Mr Idrish Isah as a refund of the money the latter had earlier given for a failed supply of animal feeds. From this, it will appear that the Defendants immediately PW2 paid N3.5M for the supply of animal feeds, he started to disburse same for other purposes including refunding an outstanding debt. It is obvious that the 1st Defendant merely robbed Peter to pay Paul and never actually intended supplying PW1 and PW2 with the animal feed for which he received huge sums of money. He was only waiting for another victim to pay money into his Account from where he would be settling his long list of indebtedness ad infinitum.
- 3) On the same 11/11/16, he transferred N300,000 to one Mrs Fatimah Ajoke as an appreciation for supplying him with Chisko Trucks. This also is obviously from the

money paid by PW2 who was all the while hoping for the supply of animal feed for which he transferred money whereas as soon as he did the transfer, the 1st Defendant on the same date sent the total money save N80,000 to different people according to his statement.

- 4) Unknown to PW2 that the earlier N3.5M he paid the Defendants for the supply of animal feeds had been dissipated on 16/11/16 he paid the Defendants sums of N1.5M and N2M for the same purpose.
- 5) On same 16/11/16, the 1st Defendant withdrew according to him, N440,000 to give to the said Abdulateef for the supply of the animal feeds.
- 6) On 17/11/16, the 1st Defendant transferred N300,000 to one Rash Rash Global Services for the hire of Trucks.
- 7) On same 17/11/16, PW2 again transferred N1.4M to the Defendants for the same purpose.
- 8) On same 17/11/16, the 1st Defendant stated again that he withdrew N1.2M to the same illusory Abdulateef.

He stated further in the said Exhibit thus, "From the money paid to me by Shehu Usman Bala, I paid Chisco Nigeria Ltd. the sum of N2,400,000 because I have Chisco money with me". Under cross-examination, the 1st Defendant stated thus, "the money Usman Bala gave me was for me to supply Animal feeds to him. I never supplied him the Animal feeds. I was to buy it from Dangote Flour Mills. I am a Transporter to Dangote. Yes, I have bought Animal feeds from Dangote Flour Mills before then. Yes, I gave money to Abdualateef. He is my customer. I can't remember how much I gave to Abdulateef. I gave him cash because he has a car..."

If indeed the 1st Defendant had bought Animal Feeds from Dangote Flour Mills before, why contract another person to buy for you? And even if he needed to so do, why pay him in cash? He did not tell the court the illusory Abdulateef who he said has a car, did not have a Bank Account into which these various payments in cash could have been paid into. It's nothing but a concocted story that flies in the face of logic and rational thinking.

The foregoing has clearly outlined the modus operandi of the Defendants by which innocent businessmen are conned out of their money under the pretence that he had business of the supply of animal feeds while diverting the said monies for other purposes. This is despicable and in the course of trial, the Defendant gave the impression of an unrepentant fraudster who feels that he could dupe people and get away with it with the perverted mind-set that after all, many people are living such live styles. He seems to believe that the life of a Fraudster is an acceptable way of life and the court would understand this.

The foregoing highlights have established the acts of obtaining money under false pretences on Counts 1 and 3 and clearly stealing on Counts 2 and 4 of the 1st Amended Information against the Defendants beyond any reasonable doubt. The Defendants converted the monies of PW1 and PW2 and after efforts of the Police, reduced same to N931,000 for PW1 and N6,310,000 for PW2. These sums having been fraudulently converted and un-refunded by the Defendants amount to stealing. However since the Prosecution is alleging N900,000 as the outstanding of

PW1's money with the Defendants, this is therefore adjudged as what the Defendants have stolen from PW1.

PW4 stated that investigation revealed via the statements of Accounts that N8.3M was traced into the Defendants Account from PW2 a fact admitted by the 1st Defendant in his evidence in chief stated that Shehu Usman Bala ordered for 8 Trucks of Animal feed and paid N8.3M. Since what PW2 stated that what the Defendants are owing as outstanding is N6,310,000. Yet he admitted that his own money of the alleged N10,440,000 paid to the Defendants was N8,460,00 out of which he had been refunded N2,150,000, as corroborated by DW1. The outstanding would therefore be N4,610,00 due to him. This sum is hereby adjudged as what the Defendants have stolen from him.

PW3, Alhaji Ahmed Bako's outstanding with the Defendants is N2,145,000 which apparently is captured under Count 3 as N2,770,000 but wrongly stated to belong to PW1 again. This is a mistake that cannot be said to have misled anyone particularly the Defendants. The 1st Defendant himself admitted PW3 paid "about N2,080,000" into his First Bank Account and that PW3 is linked with PW1. Therefore, N2,145,000 is hereby adjudged as what the Defendants have obtained from PW3 under false pretence.

Prosecution deliberately avoided making any submission on Count 5 and it therefore deemed abandoned same indeed having not been proved during trial as rightly argued by the defence.

The Defendants therefore and convicted under Counts 1, 2, 3 and 4 while they are discharged under Count 5.

The punishment for obtaining under false pretence under **Section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act** is a minimum of Seven Years and a maximum of 20 years.

The 1st Defendant is hereby sentenced to 10 years imprisonment on Counts 1 and 3 and 3 years on Counts 2 and 4 which Counts are however to run concurrently from the dated of his first remand in prison custody by this Court.

The Defendants shall also in full restitution refund all the sums adjudged to have been stolen and or obtained under false pretence from PW1, PW2 and PW3 in the foregoing by whatever means as may be available to be employed by the Prosecution.

This is the Judgment of the Court.



HON. JUSTICE M.A. DADA (MRS)
JUDGE
(31/05/19)

Defendants Present.

N. M. Anana for the Prosecution.

Salamat S. Lewi for the Defendant.