IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
THIS MONDAY, THE 2ND DAY OF JULY, 2018
BEFORE THE HONOURABLE JUSTICE A. B. MOHAMMED

SUIT NO. FCT/HC/CR/86/17

BETWEEN

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

BALA TANGALU - DEFENDANT

JUDGMENT
DELIVERED BY HON. JUSTICE A. B. MOHAMMED

The Defendant herein was arraigned before this Court on the 22nd of February, 2017 on a two count charge of conspiracy to obtain money by false pretence and obtaining money by false pretence. The Statements and Particulars of the Offences for the two count charge were as follows:

STATEMENT OF OFFENCE - COUNT 1

Conspiracy to obtain money by false pretence contrary to Section 8(a) and punishable under Section 8(c) and 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14, 2006.

PARTICULARS OF OFFENCE

BALA TANGALU, ATAYE (STILL AT LARGE) NNAMDI (STILL AT LARGE), PEACE (STILL AT LARGE) AND LINDA (STILL AT LARGE), in the year 2016 at Abuja within the jurisdiction of this Honourable Court with intent to defraud conspired to obtain money by false pretence from Dozie Ugonna.

STATEMENT OF OFFENCE - COUNT 2

Obtaining money by false pretence contrary to Section 1(1)(a) and punishable under Section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14, 2006.

PARTICULARS OF OFFENCE

BALA TANGALU, ATAYE (STILL AT LARGE) NNAMDI (STILL AT LARGE), PEACE (STILL AT LARGE) AND LINDA (STILL AT LARGE), in the year 2016 at Abuja within the jurisdiction of this Honourable Court with intent to defraud obtained the total sum of N2,540,000.00 (Two Million, Five Hundred and Forty Thousand Naira Only) from one Dozie Ugonna under the pretence that you are a native doctor a.k.a. Babalawo and the monies were for the purchase of materials to neutralize some harmful charms contained in a carton filled with United States Dollars, which pretence you knew to be false.

The Defendant, who was also represented by a Counsel, Yusuf Abdullahi Esq, pleaded not guilty to the charge. He was thereafter released on bail in the sum of N2 Million Naira with two sureties in the like sum, one of whom must be a public

servant or Community leader. The matter was then adjourned to the 20th of March, 2017 for hearing based on mutual agreement of the parties.

On the return date the Defendant and the Prosecuting Counsel were present in Court. But the Court was forced to adjourn the case to 6th April, 2017 and award cost against the learned Counsel for the Defendant who failed to attend Court without any excuse. On the return date of 6th April, 2017, neither the Defendant nor his Counsel were in Court. The learned Counsel for the Prosecution applied to the Court for the revocation of the Defendant's bail and for the trial to proceed in the absence of the Defendant. The Court granted the first prayer, revoked the bail of the Defendant and issued a bench warrant for his arrest and production before the Court to face trial. The Court declined the prayer for trial in absentia at that stage since by 352(4) of the Administration of Criminal Justice Act, 2015 provides for trial of a Defendant in absentia only after a minimum of two adjournments. The matter was then adjourned to the 3rd of May, 2017 for hearing.

The matter was adjourned several times and on all these occasions neither the Defendant nor his Counsel on record appeared in Court. Even the Counsel for the Defendant on record abandoned his appearance in the suit and processes served in his office were refused and had to be dropped on the law office reporesenting the Defendant i.e. Audu Karimu & Co. of Suite 207, Chati Plaza, Plot 1235 Sapele Street, Off Ladoke Akintola Boulevard, Garki 2, Abuja.

After the several adjournments and unsuccessful efforts by the Prosecution to execute the warrant of arrest on the Defendant, the Court granted the application of the Prosecution, invoked Section 352(4) of the Administration of Criminal Justice Act, 2015 and ordered the trial of the Defendant in absentia. The case was then adjourned to the 21st of June, 2017 for hearing.

At trial, the Prosecution called three witnesses and tendered five documentary exhibits, which were admitted in evidence as Exhibits PW2A, PW3A, PW3B, PW3C, and PW3D. At the conclusion of the evidence in chief of each of the Prosecution witnesses the matter was adjourned to afford the Defendant the opportunity to appear and cross examine the witnesses on their evidence, even though a trial in absentia had been ordered by the Court. Despite those opportunities, the Defendant never resurfaced to cross examine the witnesses. Consequently, Defendant's right to cross examine the witnesses was foreclosed and the witnesses were discharged, after which the Prosecution closed its case.

When the matter came up on 15th March, 2018 for defence, the Defendant and his Counsel on record were as usual absent, despite hearing notice served on the law office of the Defence Counsel on record. The Defendant's right to defend the suit was therefore foreclosed and the matter was adjourned to the 8th of May, 2018 for adoption of final addresses.

On the 8th of May, 2018 when the Prosecution's final address was adopted, the Defendant and his Counsel on record were absent, despite hearing notice served at the law office of the Defence Counsel on record.

In the Prosecution's final written address adopted by Elizabeth Alabi Esq, the following three issues for determination were formulated:

1. Whether the Prosecution has proved its case beyond reasonable doubt.

2. Whether the Prosecution has proved the offence of conspiracy against the Defendant beyond reasonable doubt.

3. Whether the Prosecution has proved the offence of obtaining under false pretence against the Defendant beyond reasonable doubt.

The three issues raised by the Prosecution in this case presents classical case of proliferation of issues. Issue 1 as raised by the Prosecution is simply adequate to determine this case, since the Prosecution's case is formed up of the two count charge for the offences of conspiracy and obtaining by false pretence. The issue of whether the Prosecution has proved its case beyond reasonable doubt therefore, invariably entails whether they have proved beyond reasonable dount the two offences contained in the charge which the Prosecution had made to be the second and third issues, respectively. I shall therefore proceed to determine this case on issue 1 raise by the Prosecution, namely –

> Whether the Prosecution has proved its case beyond reasonable doubt against the Defendant.

Learned Counsel for the Prosecution, Elizabeth Alabi Esq, had cited the case of **EMEKA v THE STATE (2001) 32 WRN 37 at 49,** where it was held that there are three ways or methods of proving the guilt of a Defendant, which were, by reliance on confessional statement of the Defendant; by circumstantial evidence and by the evidence of eye witnesses. On reliance on confessional statement, Counsel referred to Section 29 of the Evidence Act, 2011 and **AKPAN v THE STATE (1992) 6 NWLR (PT. 248) 439,** and submitted that it is the duty of the Defendant to raise an objection when confessional statement is sought to be tendered.

Citing **BLESSING v THE STATE (2015) LPELR-24689(SC),** Counsel submitted that where a confession is free and direct, it can be used to convict a Defendant. He pointed out that Exhibit PW2A, PW3A and PW3B which are the confessional statements of the Defendant made at the Department of State Services (DSS) and at the Economic and Financial Crimes Commission (EFCC), are direct, positive and unequivocal. He urged the Court to rely on same in convicting the Defendant in this case. Learned Counsel added that PW2 and PW3 had clearly stated that the words of caution were administered to the Defendant before taking the statements. He also pointed out that the statements were not challenged by the Defence when tendered by the Prosecution. Counsel pointed out that in both statements made at DSS and at EFCC, the Defendant had admitted being a member of 419 Group and that he obtained the sum of over N2 Million from PW1. Counsel referred to Exhibits PW2A, PW3A and PW3B and drew the attention of the Court to the fact that the difference in the amount the Defendnt admitted he collected from PW1 in his statement to the DSS and that he made to

the EFCC can only amount to an afterthought. He urged the Court to rely on the confessional statements of the Defendant and convict the Defendnt.

On proof by circumstantial evidence, learned Counsel contended that where circumstantial evidence is overwhelming and leads to no other conclusion that the guilt of the Defendant, the Defendant can be found guilty and be convicted. He cited the case of **OKORO v THE STATE (1993) 3 NWLR (Pt. 282) 425 at 431; ILIYASU v THE STATE (2015) LPELR-24403(SC); and OMOTOLA & ORS v STATE (2009) LPELR-2663(SC), per Nweze, JSC at page 39,paras. B – G.** Counsel submitted that in the two confessional statements, the Defendant had admitted that he is a member of 419 gang; and that PW1 was bringing money to the tune of over N2 Million to him under the false pretence that he (the Defendant) is capable of removing the charm in the bag full of dollars; and that PW1 who was the victim had stated how he boarded a taxi and he was asked to bring money to remove charms from a bag full of dollars and how he went to his GTB and ECO Bank Accounts to withdraw money via ATM because the Defendant asked him to bring only cash. Counsel also referred to the evidence of PW2 who stated that he arrested the Defendant who made confessional statement in his presence admitting collecting the sum of over N2 Million from PW1; as well as the evidence of PW3 who also interviewed PW1 and obtained the bank statements of PW1 which show clearly how PW1 was withdrawing the monies from his bank accounts via ATM and the inflow of cash PW1 alleged to have borrowed in order to give same to the Defendant. Learned Counsel submitted that from the chain of evidence adduced, one can only come to the conclusion that the Defendant actually committed the offences and the monies being withdrawn by PW1 was

given to the Defendant who already admitted obtaining the total of over N2 Million from PW1.

Citing **LATEEF ADENIJI v STATE (2001) 13 NWLR (Pt. 730) 375; ADEREMI OMOTAYO v THE STATE (2012) LPELR-9358(CA); ABDULRAUF v THE STATE (2007) 35 WRN 52 at 82, lines 35 – 45; 86, lines 20 -25; and EME ORJI v STATE (2008) 10 NWLR (1094) 31 (SC);** Counsel argued that a careful look at the withdrawals and deposits in Exhibits PW3C and PW3D, the two statements of accounts of PW1 from 4th July, 2016 to the date the Defendant admitted he started collecting over N2 Million under false pretence from PW1, only point to one single fact, that the withdrawals made by PW1 during that period was the money the Defendant obtained from PW1. He urged the Court to hold that the circumstantial evidence adduced in this case is overwhelming enough to convict the Defendant.

On proof by evidence of eye witnesses, learned Counsel submitted that the evidence of PW1, the sole eye witness is enough to convict the Defendant. He referred to the case of **ILODIGWE v THE STATE (2012) LPELR-9342(SC),** to the effect that where a trial court finds the evidence of an eye witness unequivocal and true, it is bound to accept same and act on it irrespective that it is the evidence of a lone witness. Counsel referred to the vivid explanation of PW1 as to what transpired between him and the Defendant. He pointed out that the evidence of PW1 was unchallenged and uncontroverted and urged the Court to accept the evidence of PW1, who was the victim and an eye witness in this case, as duly established, citing in support the Supreme Court decision in **BROADLINE**

ENTERPRISES LTD v MONTEREY MARITIME CORPORATION & ANOR (1995) 9 NWLR (Pt. 417) 1, per Iguh, JSC at page 27; ISAAC OMOREGBE v DANIEL LAWANI (1980) 3 – 4 SC 108 at 177; ODULAJA v HADDAD (1973) 11 SC 357; NIGERIAN MARITIME SERVICES LTD. v AFOLABI (1978) 2 SC 79 at 81; and ADEL BOSHALI v ALLIED COMMERCIAL EXPORTERS LTD. (1961) 2 SC 322. He argued that the evidence of PW1, the eye witness in this matter is enough to convict the Defendant, relying on the case of **DR. SEGUN ODUNEYE v STATE (2001) 2 NWLR (Pt. 697) 311.**

On whether the Prosecution has proved the two counts beyond reasonable doubt, learned Counsel cited the case of **SILAS SULE v THE STATE (2009) 17 NWLR (Pt. 1169) 33,** where the essential elements for the proof of conspiracy were stated. He argued that the evidence led in this case shows that the Defendant with others now at large had their meeting point where they plan their criminal activities before they divide themselves into groups to carry out their operations. He referred the Court to the statement of the Defendant made to EFCC in Exhibits PW3A and PW3B and submitted that the Defendant in this case acted as the Herbalist who remains at the Shrine to collect money from the victims while other members would bring the victims to the shrine.

Learned Counsel argued that conspiracy does not exist merely in the intention of two or more persons, but in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means, and the actual agreement alone constitutes the offence as it is not necessary to prove that the act had in fact been carried out. He cited **OBIAKOR v THE STATE (2002) 36 WRN 1 at 10;**

EGUNJOBI v FRN (2001) 53 WRN 20 at 54; and THE STATE v OSOBA (2004) 21 WRN 113. Learned Counsel submitted that since the offence of conspiracy consists of the meeting of the minds for a criminal purpose and same can be proved only through inference from surrounding circumstances, the circumstantial evidence needed to prove same can be predicated on evidence not of the fact in issue, but of other facts from which the fact in issue can be inferred, which irresistibly points to the guilt of the Defendant(s). He placed reliance on **ODUNEYE v THE STATE (supra).** He argued that it was in evidence that the Defendant was working along with others at large to achieve a common purpose which was to obtain money from the Defendant under the pretence that they were able to remove the charm in the bag full of money. He cited **GAJI v PAYE (2003) 8 NWLR (Pt. 823) 553 at 605, paras. A – C; OBIAKOR v STATE (2002) 10 NWLR (Pt. 776) 612 at 628-629, paras. G – A; DEVIN v STATE (1994) 5 NWLR (Pt. 346) 522 at 534; and EDE v FRN (2001) 1 NWLR (Pt. 695) 502 at 512-513, para. C.** Counsel urged the Court to draw the necessary inference from the evidence adduced and hold that the Prosecution has proved the offence of conspiracy against the Defendant beyond reasonable doubt.

As for the offence of obtaining under false pretence, learned Counsel cited Section 20 of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 which defines false pretence and pointed out that to prove the offence of obtaining under false pretence, the Prosecution must establish that: (a) there was a pretence; (b) that the pretence emanated from the Defendant; (c) that it was false; (d) that the Defendant knew of its falsity or did not believe in its truth. Counsel argued that the evidence of PW1, PW2 and PW3, and the confessional

statements of the Defendant made at DSS and EFCC, as well as Exhibits PW3C and PW3D, the statements of account of PW1 at GTB and Ecobank respectively, have clearly established the ingredients of obtaining under false pretence against the Defendant. Counsel explained that the facts adduced go to show that the Defendant and others at large knew that there was no charm money in the car; that they knew that they do not have the ability to remove the charm in the supposed bag full of dollars; and the Defendant collected a total sum of N2,514,000.00 (Two Million, Five Hundred and Fourteen Thousand Naira) from PW1 when he knew there was no money anywhere that was charmed and he does not have the ability to break charm on any money.

Learned Counsel drew the attention of the Court to the facts that the Defendant had admitted in his confessional statements that he was a member of a 419 group and their sole aim was to obtain money from their victims. Citing ONWUDIWE v FRN (supra) at page 811, para. A – C, Counsel submitted that there is no doubt that the amount of N2,514,000.00 (Two Million, Five Hundred and Fourteen Thousand Naira) which the Defendant and others at large obtained from PW1 is capable of being stolen and it is clear from the evidence that the Defendant and others now at large induced PW1 under false pretence to pay to them the said amount of money. Relying on ABEKE v STATE (supra) at page 659, paras. E – F, Counsel urged the Court to hold that the Prosecution had proved the Charge against the Defendant beyond reasonable doubt.

Counsel pointed out that the Defendant jumped bail and as a result he neither cross examined any of the Prosecution witnesses nor called any witness in his

defence. He urged the Court to rely on all the evidence adduced by the Prosecution in this case and on its strength convict and sentence the Defendant accordingly.

I have considered the evidence led and submission of the learned Counsel for the Prosecution. It is trite law that in criminal proceedings such as this, the burden of proof lies squarely on the Prosecution, and it must establish the guilt of the Defendant beyond reasonable doubt. It is only after such proof that the burden will shift to the Defendant to establish reasonable doubt. See: Sections 131 and 135 of the Evidence Act, 2011 and **AGU v STATE (2017) LPELR-41664(SC), per Sanusi, JSC at pages 51 – 52, paras. E – A; OSUAGWU v STATE (2016) LPELR-40836(SC), per Nweze, JSC at pages 36 – 37, paras. A – E; LAWAL v STATE (2016) LPELR-40633(SC), per Kekere-Ekun, JSC at pages 32 – 33, paras. F – C; and ABDU v STATE (2016) LPELR-41461(SC), per Sanusi, JSC at page 9, paras. C – F.**

In the instant case, the Defendant was arraigned before this Court on the 22nd of February, 2017 on a two count charge of conspiracy contrary to Section 8(a) and punishable under Section 8(c) and 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006; and obtaining money by false pretence contrary to Section 1(1) and punishable under Section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

It is also settled that the guilt of a Defendant is established through any one or more of the following methods:

(i) By direct evidence of eye witness(es);

(ii) By circumstantial evidence leading to an irresistible inference of guilt; and

(iii) By reliance on the voluntary confessional statement of the Defendant.

See: **AKPAN v STATE (2016) LPELR-40113(SC), per Peter-Odili, JSC at page 7, paras. A – C; AL-MUSTAPHA v STATE (2013) LPELR-20995(CA), per Pemu, JCA at page 80, paras. A – B; and BLESSING v F.R.N (2012) LPELR-9835(CA), per Ogbuinya, JCA at pages 50 – 51, paras. F – D.**

In the instant case, the Prosecution had in proof of its case, called three witnesses (PW1, PW2 and PW3), tendered three confessional statements of the Defendant (Exhibits PW2A, PW3A and PW3B); as well as two statements of account of PW1 (Exhibits PW3C and PW3D).

In his evidence as **PW1**, Dozie Ogbonna had told the Court that he was doing his National Youth Service (NYSC) at Keffi. He said he knew the Defendant and explained that on the 4th of July, 2016 he was on his way back to Abuja from Kano and at that time he was doing his internship of Pharmacy at the National Hospital, Abuja. He stated that after arriving at Abuja, he wanted to take a cab from Kubwa Expressway to Berger Junction and subsequently to National Hospital. He said the cab he boarded contained 2 men and 2 women inside. He stated that on their wa to Berger Junction, the driver who was one of the two men in the cab, said the lady whom he was carrying behind was carrying a carton filled with money and he did not know where she got the money from. They now

started discussing in the cab regarding the lady with the money. PW1 said that when he did not join them, the driver took it upon himself to ask him what he thought and he also suggested that the woman be asked where she got the money from. He stated that upon further interrogation by him and the other persons in the cab, the lady opened up and stated that she stole the money from a man in Kano State. She stated that the man had kept her in his house for some months and she was able to escape with the man's money. So on discussion, she pleaded that they should help her as she did not know anybody in Abuja. The lady also said that when she found the money she also saw something that looked like a charm inside the money. She said she tried to steal some of the money inside the carton but the charm affected her, so she took the whole carton. So the other lady sitting close to her proposed to help her and stated that she knew a man that healed her Dad from a charm related illness. She said they should all go there and see if the lady was telling the truth so that the man would help her.

According to PW1, on getting to the man's place, the person he saw was the Defendant in this case, Mr. Bala Tangalu. He said the Defendant said since they all came to him together, they should all take part in what was going to happen. Pw1 said that when what he saw there was not what he expected, he wanted to leave, but the Defendant insisted that he should stay back so that they could all help the woman. PW1 stated that the Defendant then said they should all get materials which he will use to destroy the charm. PW1 sadi that very day he gave the Defendant the sum of N240,000 (Two Hundred and Forty Thousand Naira) which according to the Defendant was the cost of the materials he will use to

destroy the charm. PW1 said he withdrew the money from his Bank account at the ATM that very day. He said he withdrew N120,000 each from his GT Bank and Eco Bank accounts. PW1 said the Defendant asked them to return the next day.

PW1 told the Court that on their return the following day, the Defendant told them that the money in the carton brought by the lady was hot and they needed to cool it down, which needed external money to add to the one in the carton which the lady stole. PW1 stated that at that point he was uncomfortable and was complaining, but the Defendant urged them to stay back with the lady and help her as they will all benefit from whatever comes out of it and because of that he (PW1) continued. According to PW1, between the 7th and 8th of July, 2016, he gave the Defendant another N500,000; N300,000 from his EcoBank Account and N200,000 from his GT Bank Account. He stated that as the other people were also bringing money, he thought it was a genuine thing.

PW1 stated that the Defendant then said that the money they brought was not enough to col the money in the carton and at that point he gave the Defendant another N400,000.00. He said he subsequently gave the Defendant anotherN200,000.00 on 31st July, 2016 and yet another N200,000.00 on 5th August, 2016, totalling N400,000.00. PW1 stated that the Defendant said that was ok but he needed to buy one oil which would cost N136,000.00. He said this was on 15th August, 2016. After buying the oil, the Defendant said the lady who brought the money did not get her own oil and pleaded with PW1 to help her get it, as a result of which PW1 gave the Defendant another N120,000.00 on 16th August, 2016 which was the money he had at that time.

According to PW1, the Defendant demanded for another N400,000.00 each from them, which he gave him N200,000 each on two different dated of 18th August, 2016 and 31st August, 2016. He said that the Defendant then urged him to help the lady who took them to him to complete her own money, as a result of which he gave the lady N160,000.00. PW1 stated that after those payments, the Defendant called them together and said that they have done all they were supposed to do, but what remained was for them to thank his oracle and requested them to buy a camel for sacrifice, which would cost N550,000.00. PW1 said he gave the Defendant the said sum of N550,000.00 on the 16th of September, 2016, and since that day all efforts he tried to reach the Defendant proved abortive. He said the Defendant's telephone number was not going through and even when it connects he refused to answer the call. He stated that this continued for about two weeks. He stated that he had to open up to his friend who told him that the people were 419 people and they just played on him. He said he thereafter told his cousin who invited some people from the National Intelligence Agency, NIA. He stated that he also reported the matter at the Lifecamp Police Station who also joined in the search for the Defendant.

PW1 said that after he could no longer get the Defendant on the phone he lost hope. But according to him, he was on the way back from work one particular day and while in traffic going to National Hospital, he saw the Defendant in a car in the same traffic. He said he rushed to the car and stopped the driver. He said that immediately the Defendant saw him he opened the car door and ran away. PW1 said he pursued him. He said he never knew that the man driving the car

was also an officer of the Department of State Services (DSS), whi also joined him in pursuing the Defendant. He said they arrested the Defendant and he was taken to the DSS Office in Asokoro, from where they transferred the matter to the EFCC.

PW2, James Francis, who satted that he was an officer of the DSS, FCT command, told the Court that he knew the Defendant in this case. He stated that about the 17th of November, 2016 it was his usual practice that any time he closed early from work he usually stopped at the Junction fo National Hospital along Airport Road to lift frail-looking and sick people. He stated that on that day he parked and about three men entered the car, including the Defendant, Bala Tangalu. He said shortly before he drove off, one young man was begging him to stop whom he later discovered was Dozie Ugonna, a Pharmacist (PW1). PW2 stated that when he stopped, Dozie Ugonna (PW1) asked him to park and lock the car so that he could go and call the police to arrest somebody in the car. PW2 said that immediately he parked, Bala Tangalu opened the door of the car and started running. PW2 stated that being a law enforcement officer, he cleared all the road and gave him a chase. He said within 15 minutes he was able to pin the Defendant down and arrest him and handcuff him. He said he brought the Defendant back and asked what the problem was between the two of them. He stated that when the crown was smelling, he had to handcuff the two of them and he took them back to the FCT Command of the DSS in Asokoro, Abuja.

PW2 stated that at the office, Pharmacist Ugonna, accused Bala Tangalu and three others of collecting over N2.5 million from him in series that lasted

between 2 – 3 months. He said when confronted, Bala Tangalu owned up immediately and he was given the statement form to write what he confessed to them. PW2 stated that effort made to get the other gang members proved abortive. He said they when they asked the Defendant if he could refund the Complainant (PW1) he phoned his elder sister, Sierra Tangalu, who was a staff of the World Bank very close to the DSS FCT Office in Asokoro. He stated that when the sister came they brought the Defendant and asked him to tell the sister what he had done. PW2 said that the Defendant told his sister that himself and his gang members collected over N2.5 Million from the Complainant and pleaded with his sister to help refund the victim, but the sister said it was too much a burden for her to bear at that time. PW2 said that the sister went on to explain how her brother Bala Tangalu had been a "thorn in the flesh" to the family and stated that he had been in this "one-chance" business for too long and each time he was arrested the family had kept paying what he had collected from his victims. He stated that the sister told them that the family made several efforts to make him quit the illicit business and had at different times bought him three cars which he ended up not accounting for. PW2 stated that the Defendant's Sister then asked to be given time to return the following day 19th November, 2016, but she never came back.

PW2 told the Court that when he placed a call to the Defendant's Sister shae came and communicated the family decision that the Defendant should face up to his crime. PW2 stated that at that time the management of the DSS packaged the case and handed over same to the EFCC since the matter fell under their

purview. PW2 stated that he later went and countersigned his Statement at EFCC as the arresting officer.

PW2 informed the Court that when he interviewed the Defendant ha gave a brief background of himself and stated that he had a OND from a Polytechnic and that he had tried all possible means to live legally but it was impossible. He said the Defendant stated that at the time he was arrested, he had been in the "one-chance" business for year and that they operate around the area of Jabi down to Karimu. He said the Defendant stated that they have their base in a bush around Dpe Village where they have a make-believe Shrine, where they take their victims and make them to swear to oaths of secrecy.

PW2 stated that immediately the Defendant confessed, he was asked if he could reduce what he stated into writing and when he said he could, a word of caution was read to him which he fully understood before he wrote his statement. PW2 then tendered Exhibit PW2A.

PW3, Isah Mohammed, an investigation officer with the EFCC stated that he knew the Defendant. He told the Court that on the 18th of November, 2016, they received a forwarding letter at the EFCC alongside the Defendant, Bala Tangalu from the Department of State Services (DSS). He said they interviewed the Defendant alongside the earlier statement the Defendant made at DSS. He explained that the complaint was that the Defendant defrauded one Dozie Ugonna (PW1) of the sum of N2,514,000.00 via obtaining by false pretence. PW3 stated that when they asked the Defendant he accepted that he defrauded Dozie

Ugonna, but stated that it was only to the tune of N254,000.00. PW3 said that in his statement, the Defendant said that some of his syndicate members, about four of them, were driving along Dapo – Kubwa road when they stopped and picked Dozie Ugonna (PW1). That while driving, one of the syndicate members raised an alarm that he has some money i. e. dollars in the booth and they deliberated whether to report the incident to the Police. PW3 stated that unknown to Dozie Ugonna every other person in the car was in the same syndicate. He said that they now drove to an unidentified location where one Bala Tangalu, the Defendant came out from a closed place at the location and stated that there is a curse on the money and there is the need for them to break the curse, but before he could break the spell every person in the vehicle should take oath not to tell any other person. PW3 stated that Bala Tangalu, who is the head of the syndicate, asked each of them to go and bring money in order to break the spell. With that, he was able to put fear into PW1 who kept bringing money in order to do a charm and break the spell. PW3 stated that in his statement to the EFCC, the Defendant only accepted that he collected the sum of N254,000.00 and not N2,514,000.00.

PW3 informed the Court that his team, wrote a letter of investigation activities to GTBank and Ecobank PLC as to the accounts belonging to Mr. Dozie, and when they received the statements of accounts from the two banks, they analysed same and the source from which Mr. Dozie withdrew monies from the accounts at various times were ascertained. PW3 added that the N300,000.00 which Mr Dozie said he borrowed from a friend was also ascertained. PW3 said the period of the review was between July, 2016 to November, 2016. He stated that they

saw that a total debit of over N2 Million from both accounts, showing that the amount Mr Dozie alleged to have given to Bala Tangalu was around that amount. He said that they also ascertained that all the monies paid by Mr Dozie to Bala Tangalu were via cash and not transfers. PW3 told the Court that all efforts they made to get the other syndicate members proved abortive, as they never knew each other's location but only had a meeting point around Karimu side.

PW3 also testified that when he interviewed the Defendant, he cautioned him after which he wrote his statement voluntarily. He added that the Defendant made two statements and that he was the one who cautioned the Defendant in an open office in the presence of his team members. He stated that he cautioned the Defendant for the first statement , while for his second statement, he was cautioned by Aminu Jabi, who had been on transfer to Akwa Ibom State. He added that the Defendant was cautioned by Aminu Jabi in his presence, after which the Defendant volunteered his statement.

PW3 stated that he wrote to GTBank and Eco Bank to authenticate the Statements made by the Complainant that he withdrew monies from his accounts and also borrowed from a friend to pay same to Bala Tangalu. PW3 then identified the two statements obtained from the Defendant at EFCC which were admitted in evidence as Exhibits PW3A and PW3B. PW3 then went on to analyse the two statements of account (Exhibits PW3C and PW3D) and the various withdrawals made therefrom by Mr. Dozie (PW1). PW3 added that during investigations the Defendant confessed that they were into 419 business and that he was a dismissed staff of PHCN and he got into this after he lost his job.

In addition to the above oral testimonies of the three witnesses of the Prosecution, Exhibits PW2A, PW3A, PW3B, PW3C and PW3D were tendered as documentary evidence in proof of the Prosecution's case. It is trite law that where there are oral and documentary evidence, the documentary evidence should be used as a hangar to test the veracity of the oral evidence. See: **EGHAREVBA v OSAGIE (2009) LPELR-1044(SC), per Ogbuagu, JSC at pages 34 – 35, paras. E – A; KIMDEY & ORS. v MILITARY GOV. OF GONGOLA STATE & ORS. (1988) LPELR-1692(SC), per Nnaemeka Agu, JSC at page 54, paras. A – B; and CAMEROON AIRLINES v OTUTUIZU (2011) LPELR-827(SC), per Rhodes-Vivour, JSC at page 23, paras. A – D**.

Exhibits PW2A, PW3A and PW3B are confessional statements made by the Defendant at DSS and at EFCC. It is trite that the burden of establishing the voluntariness of a confessional statement In exhibit PW2A, the Defendant's statement made at the DSS, FCT Command on the 2nd of December, 2016, the Defendant stated as follows:

> I Bala Tangalu I am a member of 419 group known as one (1) chance operating within Abuja metropolis with our base at Dape Village. On the 4th of July, 2016 I and other members of the said group went out in a car picking unsuspecting passengers. On that fateful day inside the vehicle one of us claimed that he stole his master's money but that the money was charmed, that if they are interested in the money that they could all go to a native doctor to remove the charm, so they can share the money within themselves. They drove to our shrine located at Dape along Karimu –

Gwagwa road. I told them to go and get some money in order to remove the charm. They all left and DOzie later returned with about One Hundred and Fifty Thousand Naira (N150,000), but I further told him that after removing the charm that the money was still hot, that more money was required to make the said stolen money cold. Dozie went back and subsequently was bringing the remaining money instalmentally as was directed. In all over Two Million Naira was collected from him.

Further, in Exhibit PW3A, the confessional statement made by the Defendant at EFCC dated 6th December, 2016, he stated, inter alia, as follows:

Sometimes in early 2016, I met one James at Life Camp Area and when I lost my job wit NEPA he introduced me to 419. I started working with them at Dape. In July, 2016 some of the gang members went out for normal taxi business they were 4 gang members in the vehicle and they picked one passenger named Ugo and suddenly along the way one of the gang members said he wanted to drop and they started arguing with the driver when he told his that no one is dropping as they have seen the money he stole from his Oga that they later agreed to share the money but the owner of the money said the money is guided by charm and they have to remove the charm before they can share the money. From there all the occupants of the vehicle drove to Dape to see a native doctor aka Babalawo. I told them that the charm is harmful and I needed to buy some materials to be able to destroy the charm. They left and Ugo came back with N150,000 and the next day I told him that the money is not ok and he kept bringing money in instalments until the total money reached

N254,000 only before he realised it was 419 and stopped communicating with him, until last month precisely 17/11/2016 when I met him at national Hospital, Abuja when my wife put to bed and he started shouting thief saying he wanted to arrest me. There and then an SSS officer who happened to be at the scene arrested me and took me to their office. I was detained there until 6th December, 2016 when I was trasferred to EFCC, Abuja, and our leader's name is Smally and we are large in number. I benefitted the sum of N27,000 only (out) as my own share.

On the 14th of December, 2016, the Defendant then wrote this additional statement to the EFCC:

In addition to my earlier statement dated 6-12-2016, I wish to add that my Syndicate members are Ataye, Nnamdi, Peace and Linda. I don't know where they leave, but there is a particular place we met. We usually met at Dape along Karemo road. The first day Dozie Ugonna brought N150,000.00 because it is only money he had in his account and I told him to go and come back the next day. The next day I told them that the money is spiritually hot, they need to bring some money to make the (spiritually) spiritual money cold. The said Dozie Ugonna had been brigining money instrumentally until the money reach N254,000.00. I benefitted N27,000.00 from the money collected from Mr Dozie. The rest goes to the members of my syndicate and the owner of the place called Smally from the bencustat he takes 20% of the money before they share the money and the rest of money will be shared among seven of us including the person that owned the place.

In addition to the above three confessional statements of the Defendant (Exhibits PW2A, PW3A and PW3B), the Prosecution also tendered Exhibits PW3C and PW3D, which are the Statements of Accounts of PW1, Dozie Ogbonna at Guaranty Trust Bank PLC and Ecobank, all showing the various withdrawals made by Dozie Ogbonna Defendant.

With regard to the first count of the charge of criminal conspiracy, it is trite law that to establish the offence of criminal conspiracy, the Prosecution must establish beyond reasonable doubt the following:

(i) an agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means;

(ii) that each of the Defendants charged with the offence of conspiracy participated in the agreement.

See: **YAKUBU v STATE (2014) LPELR-22401(SC), per Kekere-Ekun, JSC at page 12, paras. E – G; and OKOH v STATE (2014) LPELR-22589(SC), per Kekere-Ekun, JSC at pages 24 – 25, paras. E – B.**

From the above evidence led by the Prosecution, the Defendant had in the confessional statements he made at the DSS and EFCC in Exhibits PW2A, PW3A and PW3B clearly stated that he was a member of a 419 gang. In Exhibit PW2A,

the confessional statement he made at DSS on 2nd December, 2016, the Defendant stated that:

> I Bala Tangalu, I am a member of 419 group known as one (1) chance operating within Abuja metropolis with our base at Dape village.

Further, in Exhibit PW3A which the Defendant made at EFCC on 6th December, 2016, the Defendant also stated as follows:

> Sometimes in early 2016 I met one James at Life Camp area and when I lost my job with NEPA he introduced me to 419. I started working with them at Dape.

Again in the additional statement made by the Defendant at EFCC on 14th December, 2016, the Defendant stated that:

> In addition to my earlier statement dated 6-12-16 I wish to add that my syndicate members are Ataye, Nnamdi, Peace and Linda. I don't know where they leave but there is a particular place we met, we usually met at Dape along Karemo road.

Although it is trite that the burden of proving the voluntariness of the confessional statement lies on the Prosecution, it is the duty of the Defence to raise objection as to voluntariness of a confessional statement sought to be tendered. The burden of the Prosecution to establish the voluntariness of a

confession therefore only arises where the voluntariness of the confessional statement is challenged by the Defence. See: **NOAH v STATE (2014) LPELR-23810(CA), per Onyemenam, JCA at pages 25 – 26, paras. F – G.**

In **NWACHUKWU v STATE (2004) 17 NWLR (Pt. 902) 262 at 273 – 290,** it was held by the Supreme Court that:

> A trial within trial is necessary only where a confessional statement is effectively challenged and not where all the opportunities at trial for such denial were never utilized. Thus, only where an issue arises as to whether a confession was made voluntarily should the exceptional procedure of holding a trial within trial be adopted by the court....."

See also: **ALO v. STATE (2015) LPELR-24404(SC)** Per OGUNBIYI, J.S.C (Pp. 24-25, paras. G-D)

In the instant case, I have earlier pointed out that the Defendant herein jumped bail after he was arraigned before the Court, and the Court had to invoke Section 352(4) to order a trial of the Defendant in absentia. Hence, the confessional statements of the Defendant in Exhibits PW2A, PW3A and PW3B were admitted without any challenge as to their voluntariness by the Defendant. Having been so admitted, the Court is entitled to rely on same as evidence of the Prosecution in this case.

It is trite that the proof of the offence of conspiracy which is the first count of the charge against the Defendant herein, lies in the agreement between two or more

persons to do an unlawful act or to do a lawful act by unlawful means. Whilst considering the nature of and proof of the offence conspiracy however, the Supreme Court in the classical case of **NJOVENS & ORS. v THE STATE (1973) LPELR-2042(SC),** held that:

> The overt act or omission which evidences conspiracy is the actus reus and the actus reus of each and every conspirator must be referrable and very often is the only proof of the criminal agreement which is called conspiracy. It is not necessary to prove that the conspirators, like those who murdered Julius Ceasar, were seen together coming out of the same place at the same time and indeed conspirators need not know each other. See R. v. Meyrick and Ribuffi (1929) 21 C. App. R. 94. They need not all have started the conspiracy at the same time for a conspiracy started by some persons may be joined at a later stage or later stages by others. The gist of the offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them and in proof of conspiracy the acts or omissions of any of the conspirators in furtherance of the common design may be and very often are given in evidence against any other or others of the conspirators. Per COKER J.S.C. (P. 57, paras. A-F)

Further, in **Daboh & Anor v. The State (1977) LPELR-904(SC), the Supreme Court, per Udo Udoma, JSC held that:**

> It may be stated that where persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved; and that the persons charged be also proved to have been engaged in it. On the other hand, as it is not always easy to prove the actual agreement, courts usually consider it sufficient if it be established by evidence the circumstances from which the court would consider it safe and reasonable to infer or presume the conspiracy. (Pp. 25-26, paras. F-A).

See also: **ODUNEYE V. THE STATE (2001) LPELR-2245(SC)** Per EJIWUNMI,J.S.C.(P.36, paras.C-E); **THE STATE V. SALAWU (2011) LPELR-8252(SC)** Per MUHAMMAD, J.S.C.(Pp. 41-42, paras. C-G); **OKASHETU v. STATE (2016) LPELR-40611(SC)** Per OGUNBIYI, J.S.C. (Pp. 14-15, Paras. E-E); and **BUSARI v. STATE (2015) LPELR-24279(SC)** Per MUNTAKA-COOMASSIE, J.S.C. (Pp. 24-25, paras. F-A)

In addition to the above confessional statements of the Defendant in Exhibits PW2A, PW3A and PW3B, the direct evidence of PW1, Dozie Ogbonna, the victim, which I had earlier reproduced above, had given a vivid account of what transpired between himself and the Defendant with the others now at large.

From the foregoing therefore, I find that the Prosecution had established an agreement between the Defendant with the others now at large, whose names

the Defendant himself gave in Exhibit PW3B as Ataye, Nnamdi, Peace and Linda to do an unlawful act, namely obtain money by false pretence from Dozie Ogbonna, PW1. I therefore, hold that the Prosecution had proved the first count of criminal conspiracy against the Defendant in this case beyond reasonable doubt.

As regards the second count of obtaining by false pretence, Section 20 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 defines false pretence as:

> a representation, whether deliberate or reckless, made in word, writing or conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, at which the person making it knows to be false or does not believe to be true.

It is settled that to succeed in a charge of obtaining by false pretence, the Prosecution must establish beyond reasonable doubt that:

(i) that there was a pretence;

(ii) that the pretence emanated from the Defendant;

(iii) that it was false;

(iv) that the Defendant knew of its falsity or did not believe in its truth.

(v) that there was an intention to defraud;

(vi) that the thing is capable of being stolen;

(vii) that the accused person induced the owner to transfer his whole interest in the property.

See: **ONWUDIWE v FRN (2006) 10 NWLR (Pt. 988) 382, per Niki Tobi,** JSC **at page 432; OFONEME ENUKORA v FEDERAL REPUBLIC OF NIGERIA, Suit No: CA/E/13C/2016, delivered by Court of Appeal, Enugu Division on Wednesday, the 30th day of November, 2016, per Ogunwumiju, JCA at (Pp. 18-19, Paras. C-A); and STATE v AJULUCHUKWU & ANOR (2010) LPELR-5028(CA), per Akeju, JCA (Pp.16-18,Paras F-A);**

In the instant case, PW1, Dozie Ogbonna, who was the victim, had in his evidence reproduced above not only given a succinct account of what transpired between him and the Defendant with the others now at large, the Defendant himself had in his three confessional statements to the DSS and EFCC (Exhibits PW2A, PW3A and PW3B) clearly stated how himself and his fellow gang members had by false pretence defrauded PW1, Dozie Ogonna, of the total sum of over N2 Million.

In Exhibits PW2A, PW3A and PW3B, the Defendant not only confessed that he is a member of a 419 group operating in Abuja Metropolis with their base in Dape where they meet, he had given a vivid account in his three statements as to how himself and his other syndicate members lured Dozie Ogbonna pretending to be able to remove charms some money stolen and available to be shared and then defrauded Mr. Dozie Ogbonna of a total sum of N2,514,000.00 (Two Million, Five Hundred and Fourteen Thousand Naira) which he paid to the Defendant in instalments. Exhibits PW3C and PW3D, the statements of account of Dozie Ogbonna with GTBank and Ecobank substantiate the fact that Mr. Ogbonna acted on the false pretence and deceit of the Defendant and his gang members to withdraw monies from his account and handover same to the Defendant.

From the oral and documentary evidence adduced by the Prosecution therefore (the oral evidence of PW1 – PW3 and Exhibits PW2A, PW3A, PW3B, PW3C and PW3D), it is clearly established beyond any reasonable doubt that the Defendant and his other syndicate members whose names he stated in Exhibit PW3B to be Ataye, Nnamdi, Peace and Linda, had by false pretence defrauded PW1, Dozie Ogbonna of a total sum of N2,514,000.00 (Two Million, Five Hundred and Fourteen Thousand Naira). I therefore hold that the Prosecution has also established the offence of obtaining by false pretence against the Defendant contained in the second count of the charge beyond reasonable doubt.

It is trite law that where the Prosecution has established its case beyond reasonable doubt, the burden shifts to the Defendant to establish reasonable doubt. See: Section 135(3) of the Evidence Act, 2011 and the cases of **MUSA v STATE (2014) LPELR-24026(CA), per Abba Aji, JCA at page 51, paras. E – G; and ETUMIONU v AG DELTA STATE (1995) 6 NWLR (Pt. 404) 719, per Ige, JCA at page 730 paras. B – C.** In the instant case, the Defendant herein had jumped bail after entering his plea and the Court was forced to order his trial in absentia after all efforts to locate him and to compel him to attend trial were fruitless.

It is trite law that fair hearing is a question of the opportunity of being heard. Once a party has been given the due opportunity to be heard, the requirement of fair hearing would have been duly observed. See: **DARMA v ECO BANK (2017) LPELR-41663(SC), per Ogunbiyi, JSC at pages 33 – 34, paras. F – C; S & D CONSTRUCTION COMPANY LTD v AYOKU & ANOR. (2011) LPELR-2965(SC), per**

Fabiyi, JSC at page 21, paras. F – G; and ILORIN SOUTH LOCAL GOVERNMENT v SAMAD PAPER CONVERTING CO. LTD (2007) LPELR-8366(CA), per Ogunwumiju, JCA at pages 16 – 17, paras. G – A.

Since the Defendant who was arraigned before this Court had all the opportunity to be heard at this trial but opted to jump bail and run away from trial, forcing the Court to invoke Section 352(4) and order his trial in absentia, the Defendant cannot claim not to have been given fair hearing in the circumstance. Having held that the Prosecution had established the two count charge of criminal conspiracy and obtaining under false pretence against him beyond reasonable doubt, there being no defence from the Defendant, I hereby resolve the sole issue in this case in the affirmative and hold that the Prosecution has established its case against the Defendant beyond reasonable doubt.

Accordingly the Defendant is hereby convicted of the first count of criminal conspiracy contrary to Section 8(a) and punishable under Section 8(c) and 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and of the second count of obtaining money by false pretence contrary to Section 1(1)(a) and punishable under Section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

SENTENCE:

By Section 352(5) of the Administration of Criminal Justice Act, 2015, where a Defendant is tried in absentia pursuant to subsection (4) of the same Section, the Court shall impose sentence only when the Defendant is arrested or surrenders

to the custody of the Court. In view of this, the sentence in this case shall be imposed whenever the Defendant is arrested or he surrenders to the custody of this Court.

HON. JUSTICE A. B. MOHAMMED
JUDGE
2ND JULY, 2018

Appearances:

Elizabeth Alabi Esq, for the Prosecution.