

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

ON THE 21ST DAY OF JUNE 2016 SUIT NO. FCT/HC/CR/32/11

**BEFORE HIS LORDSHIP:
HONOURABLE JUSTICE FOLASADE OJO - JUDGE**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

SUNNY MARTINS INEGBEDION OMOKHAGBOR DEFENDANT

JUDGMENT

The defendant was arraigned before this Court on the 22nd of March 2011 on a 7-count charge. He pleaded not guilty to all the counts of the charge. The case was thus set down for hearing. The prosecution called two witnesses who testified as P.W.1 and P.W.2 respectively. After the close of the case of the prosecution, the defendant's counsel made a no-case submission on behalf of the defendant.

In a ruling delivered on the 14th of November 2013, the no case submission was sustained in respect of counts, 4, 5, 6 and 7 of the charge and the defendant consequently discharged on these counts.

The plea of no case submission was rejected in respect of counts 1, 2 and 3 and the defendant ordered to enter his defence in respect of

same. Counts 1, 2 and 3 of the charge to which the defendant pleaded not guilty and stood trial read as follows:

"COUNT 1:

That you, Sunny Martins Inegbedion Omokhagor (M) within the month of August 2008, or thereabout at Omegah Hotel, Wuse Zone 7, Abuja, Federal Capital Territory, did dishonestly induce Adira Akison (an investigator with the I.C.P.C) to deliver the sum of N100,000.00 to you, on the belief that the said Adira Akison is a worker for Rev. Ohida, as part payment for you to buy a car from Germany for the Rev. Ohida (Bob), whereas you do not import cars from Germany, and you thereby committed an offence contrary to Section 320(a) and punishable under section 322 of the Penal Code.

COUNT 2:

That you, Sunny Martins Inegbedion Omokhagor (M) between the months of February and March 2008 or thereabout at Omegah Hotel, Wuse Zone 7, Abuja, FCT, did fraudulently induce Mr. Joseph O. Iyatse to deliver the sum of N300,000.00 to you, for yourself as part payment for procuring a German Visa for the said Mr. J.O. Iyatse's Nephew, whereas you were not in a position to procure the said visa, and you thereby committed an offence contrary to Section 320(a) and punishable under Section 322 of the Penal Code.

COUNT 3:

That you, Sunny Martins Inegbedion Omokhagor (M) between the months of February and March 2008 or thereabout at Omegah Hotel, Wuse Zone 7, Abuja, FCT, did fraudulently induce Mr. Joseph O. Iyatse to deliver the sum of N200,000.00 to you, through your partner, one Mr. Francis Eze for yourself as balance of the first installment for procuring a German Visa for the said Mr. J.O. Iyatse's nephew, whereas you were not in a position to procure the said visa, and you thereby committed an offence contrary to Section 320(a) and punishable under Section 322 of the Penal Code."

Two witnesses testified on behalf of the prosecution. The defendant gave evidence on his own behalf and called one witness who testified as D.W.2 in support of his defence. The defendant was cross examined by the prosecuting counsel. D.W.2 was however not cross examined as the prosecuting counsel failed to show up to do so despite several opportunities.

P.W.1 is one Joseph Oba Iyatse. His evidence is as follows:

That he is the Manager of Omegah Hotel situate at Wuse Zone 6, Abuja FCT where he met the defendant who was a customer at the hotel. He said he established communication with the defendant when he had issues with the settlement of his bills at the hotel sometimes between February and July 2008. In the course of their interaction he said the defendant told him he lived in Germany and was married to a German with whom he had a son. He said the defendant who was a regular lodger at the hotel informed him he could assist him to secure a visa for his son if he was interested. P.W.1. said he told the defendant his son

was too young to travel to Germany but that he had a nephew who had completed school that could be assisted with the German visa. The defendant agreed to assist P.W.1's nephew for a fee of One Million Naira. P.W.1 said he told the defendant he could not raise the sum of One Million Naira at once and they agreed that the money be paid in two installments.

He made an initial cash payment of N300,000 to the defendant who upon receipt of the money promised to commence work on the Visa process with his partners in Lagos and Germany. He made a further payment of N200,000 into the account of one Francis Eze with a cheque upon instruction of the defendant.

It is P.W.1's further testimony that during one of the visits of the defendant to the hotel, he (the defendant) requested him to witness an agreement between him and one Solomon Agbo which he did. The agreement was to the effect that he (the defendant) received the sum of N200,000 from Solomon Agbo to deliver a car to him by the end of July 2008. After this transaction, the defendant left the hotel with a promise to get in touch within four days. He said he did not hear from the defendant for about three weeks and all efforts made to contact him on phone during this period proved abortive as his phone line was switched off. It is his further testimony that Solomon Agbo put pressure on him to refund the sum of N200,000 because he witnessed the agreement. He had to do so.

P.W.1 said he made efforts to get in touch with the contacts given him by the defendant. He eventually was able to get through to one of such contacts by name Evans. P.W.1's evidence is that the defendant gave him Evan's contact when he (the defendant) said he had a container

to sell. P.W.1 said he informed Evans when he got through to him that he was having difficulty contacting the defendant and that if he (Evans) got him he should inform him that he was interested in buying the container and also that one of his friends by name Rev. Divine Ohida wanted to buy a car. He said the defendant contacted him within four days after he spoke to Evans. He apologized for his inability to get in touch earlier. He told the defendant he was interested in the container and also that his friend a reverend father wanted to buy a car. They agreed the defendant should come down to Abuja which he did. P.W.1 said after the defendant agreed to come to Abuja he wrote a petition to the Independent Corrupt Practices and other Related Offence Commission (ICPC) on the 15th of August 2008. The defendant eventually came to Abuja and as usual lodged at the Omegah Hotel. On the day after the arrival of the defendant, P.W.1 said he informed him he was going to the bank to collect money and also to invite Rev. Divine Ohida to the hotel to meet him. He left for the ICPC office where a detective was sent to accompany him to the hotel to meet with the defendant. The detective was to pose as a representative of Rev. Divine Ohida. The detective who testified as P.W.2 was given a sum of marked N100,000 to be handed over to the defendant. On getting back to the hotel with P.W.2, he invited the defendant to his office. He introduced P.W.2 to the defendant as the representative of Rev. Divine Ohida who said he was in the office with part of the money for the vehicle. P.W.2 handed over the sum of N100,000 he brought from their office to the defendant who acknowledged receipt in writing. P.W.1 witnessed the written receipt as a witness. After the defendant had collected the money and same acknowledged in writing, P.W.2 identified himself as an officer of the ICPC and arrested him. He

testified further that with the help of the ICPC the defendant refunded to him the sum of N700,000. The money he said was the initial cash deposit of N300,000, the sum of N200,000 paid to the account of Francis Eze and the sum of N200,000 he refunded to Mr. Solomon Agbo.

The certified true copy of the petition written to the ICPC, the handwritten receipt for the sum of N100,000 collected from P.W.2 dated 18/8/08 and the acknowledgement of receipt of the sum of N700,000 from ICPC by P.W.1 were tendered in evidence and admitted as exhibits 1, 2 and 3 respectively.

P.W.2, one Adira Adikson who is an investigator with the Special Duties Department of ICPC testified as follows:

Upon receipt of the petition written by P.W.1 at the ICPC office it was referred to his team for investigation. He said he was assigned to carry out a "sting operation" which he described as a form of investigation that deals with demand and receipt of bribe for the purpose of arresting culprits and fraudsters. He said P.W.1 alleged in his petition that the defendant was in the habit of defrauding unsuspecting members of the public. He said it was agreed by his team that he should pretend to be acting on behalf of the reverend father who P.W.1 said wanted to buy a car from the defendant. He was given a sum of N100,000 in N1,000 denomination to be handed over to the defendant as part payment for the vehicle. Before he took the money the naira notes were all photocopied. He went with P.W.1 to the hotel where he met the defendant. He was introduced to the defendant as a representative of the reverend father. He told the defendant he was sent by the reverend father with the sum of N100,000 to be delivered to him. He handed over the marked N100,000 to the defendant who collected it and issued him with a written

acknowledgment. It is P.W.2's evidence that after the defendant had collected the money, written a receipt and was about to leave P.W.1's office he identified himself as an officer of the ICPC and got him arrested. He was taken to the ICPC office. At the ICPC office he said the defendant volunteered his statements after the cautionary words were administered on him. He testified further that when his room at the hotel was searched one Mrs. Aishat Aliyu who was in the room was arrested. It was discovered that herself and the defendant were trying to forge an introduction letter to the embassy of the Netherlands. He said both the defendant and the said Mrs. Aishat Aliyu made voluntary statements. P.W.2 testified further that their investigation revealed that the defendant was not a German based businessman but only had a German Sim card which he used in Nigeria to call his victims under the pretext that he was based in Germany. He testified further that their investigation revealed that the defendant defrauded P.W.1 of a total sum of N700,000, one Maria Afubere of a car worth about N1.1million and N200,000 cash and Mrs. Aisha Aliyu of the sum of N450,000. He testified further that during the course of their investigation it was discovered that the international passport of the defendant bore the name Martins Inegbedion as opposed to Sunny Martins. He testified further that the defendant refunded the sum of N700,000 allegedly defrauded P.W.1.

The following were tendered and admitted in evidence through P.W.1:

1. 100 pieces of N1,000 notes is exhibit 4.
2. Photocopies of 100 N1,000 notes is exhibit 5.
3. Defendant's statement of 18/8/2008 is exhibit 6.
4. Defendant's statement of 22/8/2008 is exhibit 7.
5. Statement of Aishat Aliyu dated 2/10/08 is exhibit 8.

6. Document headed "To whom it may concern" is exhibit 9.

7. Letter headed "collection of Car key" dated 24/8/08 is exhibit 10.

The evidence of the defendant which he gave in his defence is as follows:

That he is into automobile business and a director in a limited liability company known as Skeals Industries Ltd. He denied defrauding P.W.1. He said he knew P.W.1 prior to 2008 when this incident took place when his father was the production manager at Bendel Cement Company, Okpella in Edo State. He said he was with P.W.1 at the hotel where he normally puts up in Abuja and where P.W.1 worked when some people he did not know came into P.W.1's office. He said P.W.1 informed him that the men were sent by his younger brother who bought a Mercedes V-Booth vehicle to give him the balance of his money. He was given the sum of N100,000 and thereafter arrested. His testimony is that the men beat him up handcuffed him and took him to the ICPC office where he was detained in a cell for several days.

After several days in detention he said a statement was dictated to him with the threat that if he failed to write down what was dictated he would be taken back to the cell. He said as a result of the threat he had to write down what was dictated to him. He said he had to refund the sum of N700,000 to P.W.1 through the ICPC because he was told he would continue to be in detention if he did not do so. He said he was released after he paid the money. He testified further that P.W.1 framed him up because he refused to donate his piece of land to his church. He tendered in evidence the Deed of Assignment for the land which he said was witnessed by P.W.1. The deed of Assignment was admitted in evidence as Exhibit D1.

The summary of his evidence is a total denial of the prosecution's case.

D.W.2 is one Rotimi Ojo Obaseki. His evidence is that the defendant whom he knew a long time ago invited him to his hotel one day where he met P.W.1. P.W.1 was introduced to him. He said the defendant after a few days took him to a piece of land and asked him for advice on what to do on the land. He promised to send him some drawings. He said the defendant informed him that P.W.1 requested him to donate the land to his church. He advised him against doing so. He testified further that at some point he followed the defendant to worship in P.W.1's church and also visited him at home. He said the defendant informed him he would be traveling. He did not hear from him again until his brother called to inform him that the defendant was in trouble and needed help. He sent a sum of N100,000 to the brother and later met with the defendant who told him he was arrested by EFCC upon a complaint lodged against him by P.W.1.

At the close of evidence on both sides the defendant's counsel filed a final written address on his behalf which he adopted as his oral arguments in support of his case. The prosecution did not file any oral submission. Learned counsel to the defendant in his written address identified two issues for determination to wit:

- 1. Whether all the ingredients of the offence of cheating in Count 1, 2 and 3 of the charge have been proved beyond reasonable doubt against the defendant.*
- 2. Whether from the totality of the evidence before this Honourable Court the defendant could be safely convicted*

for the offence of cheating in Counts 1, 2 and 3 of the charge.

He submitted that the prosecution has failed to prove the essential ingredients of the offence of cheating for which the defendant is standing trial beyond reasonable doubt as required by law. He submitted further that there can be no conviction for the offence of cheating unless there is evidence that the defendant deceived someone into handing over to him his property. He craved in aid of his submission the case of HABU TUNDUN WADA & ANOR VS. KANO N. A. (1962) NCNC Pg. 41.

He submitted further that the prosecution has failed to prove the guilt of the defendant beyond reasonable doubt. He relied on the cases of OCHINEYE VS. THE STATE (20010 FWLR PT. 38 Pg. 1203 and BAKARE VS. THE STATE (1987) 1 NWLR Pt. 52 Pg. 579. He submitted that the prosecution has not proved his case against the defendant and urged me to so hold.

Arguing the second issue identified by him counsel submitted that the evidence of P.W.1 and P.W.2 does not disclose any fraudulent intent of the defendant. He submitted further that the evidence of P.W.1 is unreliable as he is consistent.

He finally urged me to discharge and acquit the defendant on all the three Counts of charge against him.

The defendant is charged with the offence of cheating contrary to Section 320(a) of the Penal Code and punishable under Section 322 of the same law.

Section 320(a) and 322 of the Penal Code provide as follows:

“320. Whoever by deceiving any person:

- (a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property, or*
- (b) is said to cheat.*

322. Whoever cheats shall be punished with imprisonment for a term which may extend to three years or with fine or with both.”

To secure a conviction for the offence of cheating contrary to Section 320(2) of the Penal Code, the prosecution must prove the following:

- 1. The act which constitutes the fraudulent or dishonest inducement.*
- 2. That the defendant caused the fraudulent or dishonest inducement.*
- 3. That the property was delivered by the victim ad that it was the fraudulent or dishonest inducement by the defendant that caused or motivated the victim to deliver the property.*

Count 1 of the charge is that the defendant dishonestly induced Adira Adikson, P.W.2 an investigator with the ICPC to deliver the sum of N100,000 to him on the belief that the said Adira Adikson works for one Rev. Ohida as part payment for the defendant to buy him a car from Germany whereas the defendant does not import cars from Germany.

The evidence of P.W.1 and P.w.2 in support of this count of the offence is that the defendant disappeared after P.W.1 paid him some

money to secure a Visa for his nephew. P.W.1 testified that after he tried to contact the defendant through his telephone lines without success he contacted one Evans who the defendant introduced to him as his business partner. He said he sent Evans to the defendant to deliver a message to the defendant that one Rev. Divine wanted to buy a car. Evans delivered the message to the defendant who immediately contacted him and agreed to come down to Abuja. P.W.1's evidence is that he reported to the ICPC who organized a "sting operation." P.W.2 an investigator with the ICPC who pretended to be a representative of Rev. Ohida made a payment of N100,000 to the defendant who collected the money and acknowledged receipt of same. It is the evidence of P.W.2 that the defendant was arrested after collecting the money.

To secure a conviction under this head i.e. Count 1 of the charge, the prosecution has a duty to prove that the defendant deceived the said Rev. Ohida to part with the sum of N100,000.00 for the purchase of a car. It is essential for the prosecution to prove by credible evidence that there was deception and that it was the deception that worked in the mind of Rev. Ohida to part with his money. The prosecution must establish that the defendant does not sell cars and did not intend to deliver the car at the time he collected the money. Granted that P.W.2 is an operative of the ICPC and could act in the manner he did to fish and flush out criminals who wear the garb of innocence, I am of the view that the proof of fraudulent or dishonest inducement is very crucial to establish the offence of cheating. It must be shown that the inducement was fraudulent or dishonest and must be intentional. The act that constituted the inducement must also be established. To my mind, the prosecution has failed to establish the essential ingredients of the offence of cheating

to secure a conviction under Count 1 of the charge and I so hold. The prosecution had failed to establish that the defendant was not in a position to procure the vehicle allegedly paid for and that he deceived Rev. Ohida to part with his money..

A summary of the offence alleged against the defendant vide Count 2 of the charge is that he fraudulently induced Mr. Joseph O. Iyatse to deliver the sum of N300,000.00 to him as part payment for procuring a German Visa for his nephew when he was not in a position to do so.

P.W.1's evidence is that the defendant told him he could assist to secure a German Visa for his nephew for a fee of One Million Naira. They agreed on installment payment and consequent upon which he gave him N300,000 cash. The evidence of P.W.1 is to the effect that he gave the defendant the sum of N300,000 because he told him he could assist to get the Visa. It is his evidence that the defendant told him he lived in Germany and was married to a German. He said it was the defendant who offered to assist him with Visa for his son but because his son was too young he agreed to help with his nephew. P.W.1 testified that the defendant disappeared after collecting the money and only showed up again when he was told there was a business for him.

It is significant to note that P.W.1 was never cross examined on his evidence that he gave the defendant the sum of N300,000 to secure a German Visa for his nephew. The main focus of defence counsel while cross examining the P.W.1 was to establish that there was a relationship between P.W.1 and the defendant before this incident. Learned counsel to the defendant in his written address submitted that the evidence of P.W.1 was unreliable and should not be relied upon because of the inconsistencies therein. He submitted that P.W.1 in one breath said the

defendant was not a member of his church only to admit later that the defendant was introduced to his wife when he came to his church.

On what would constitute contradiction in evidence, the Supreme Court in the case of DAGAYYA VS. THE STATE (2006) 7 NWLR Pt. 980 Pg. 637 at 677 - 678 Paras. E - C held thus:

“Hence, in the law of evidence, a piece of evidence is contradictory to another when it asserts or affirms the opposite of what the other asserts, and not necessarily when there are some minor discrepancies in say, details between them. In other words, contradiction between two pieces of evidence goes rather to the essentiality of something being or not being at the same time. Whereas minor discrepancies depend rather on the person’s astuteness and capacity for observing meticulous details. On really what constitutes contradiction in evidence, Nnemeka - Agu JSC in AYO GABRIEL VS. THE STATE (1989) 5 NWLR (Pt. 122) 457 had this to say at page 468:

“A piece of evidence contradicts another when it affirms the opposite of what that other evidence as stated, not when there is just a minor discrepancy between them. It is useful to bear in mind the fact that the word ‘contradict’ comes from the Latin words, contra (opposite) and dicere (to say). Two pieces of evidence contradict one another when they are by themselves inconsistent. On the other hand, a discrepancy may occur when a piece of evidence stops short of, or contains a little more than, what the other piece of evidence says or contains some minor differences in details.”

My view is that whether or not the defendant is a member of the plaintiff's church is immaterial to the issue at hand and I so hold. Anyway the mere fact that the defendant came to worship in P.W.1's church where he was introduced to P.W.1's wife does not make him a member of the church. The evidence P.W.1 on the membership of the defendant in his church and the attendance are not inconsistent and I so hold. There is nothing in the evidence of P.W.1 that makes it unreliable and I so hold. I have had the opportunity to watch him. His evidence was not discredited in any way under cross examination. I find him to be a witness of truth and I so hold.

Exhibits 6 and 7 are the statements of the defendant made at the ICPC office. P.W.2 gave evidence of how the statements were made and tendered them in evidence. The defendant who was present and represented by counsel at the time the statements were tendered did not object to their admissibility. However while testifying he alleged that the statements were not made voluntarily. He said he was tortured and threatened before he made them. P.W.2 was not cross examined on the voluntariness or otherwise of the statements. In ALARAPE VS. THE STATE (2001) 5 NWLR Pt. 705 Pg. 79, Iguh JSC held as follows:

"At all events, it ought to be noted that the said statements were tendered without any objection from the defence. None of the prosecution witness was cross-examined as to their involuntariness. It was not until the prosecution had closed its case and the appellants were testifying in their own defence in the witness box that the issue was belatedly raised. The question of the voluntariness of a statement is tested at the time the statement is sought to be tendered in evidence. See

IKEMSON VS. THE STATE (1989) 3 NWLR (Pt. 110) 455
and OKAROHVS. THE STATE (1988) 2 NWLR (Pt. 81)
226. *I think the learned trial judge was right to dismiss this aspect of the defence case as an afterthought, having regard to the qualitative evidence tendered by the prosecution and accepted by the trial Court on the subject."*

In the present circumstance I find the evidence of the defendant that Exhibits 6 and 7 were not voluntarily made to be an afterthought and I so hold. They are his voluntary statements and I so hold.

The defendant in Exhibit 6 admitted collecting a total sum of N700,000 from P.W.1 out of which N200,000 was for Visa. The defendant admitted collecting money for Visa. Is he in a position to secure German Visas? There is evidence that he is not in a position to do so. He disappeared into thin air after collecting money from P.W.1 for Visa. He told P.W.1 that he was based in Germany and married to a German. It can be safely inferred from the evidence of P.W.1 and the conduct of the defendant that he does not live in Germany and is not married to a German. He said all that to P.W.1 to make him believe he was in a position to assist him with the Visa and part with his money for that purpose and I so hold. Exhibit 6 corroborates the evidence of P.W.1.

From the evidence of P.W.1 which I believe I find that the defendant who was not in a position to procure a German Visa presented himself to P.W.1 as able to do so and P.W.1 believing that the defendant could assist him to do so gave him the sum of

N300,000 cash as part payment for a German Visa for his nephew and I so hold. I find that the defendant deceived P.W.1 to part with his money and that he had the intention to defraud him when he collected the money. The defendant knew he was not in a position to process Visas and yet presented himself to P.W.1 as being able to do so.

The defendant in his evidence dissipated so much energy to show he had a relationship with P.W.1 prior to this incident. This cannot in the circumstance be a defence to the allegation against him in Count 2 of the charge. The point is that the prosecution has established by cogent evidence that the defendant presented himself to P.W.1 as capable of securing a German Visa when he could not and which fact prompted P.W.1 to part with his money.

The defendant attempted to make a defence that it was because he failed to donate his land to the P.W.1's church as requested that caused the problem between them. The defendant in his statements Exhibits 6 and 7 did not say anything about any land transaction between him and P.W.1. I find his defence that P.W.1 framed him up because he did not donate land to his church to be an afterthought. It is not a credible defence to the charge against him and it is accordingly rejected. I find the offence of cheating alleged under Count 2 of the charge proved.

Under Count 3 of the charge the defendant is alleged to have fraudulently induced P.W.1 to deliver the sum of N200,000 to him through one Francis Eze as balance of the first installment for

procuring a German Visa for his nephew when he was not in position to do so.

P.W.1's evidence in support of the above allegation was not in any way discredited under cross examination. His evidence is that he paid the cheque of N200,000 into Francis Eze's account on the instruction of the defendant being the balance of the first installment for securing Visa for his nephew.

P.W.2 in his evidence in chief stated thus:

"After the statements we carried out further investigation. Our findings revealed that the accused person was never a German based businessman as claimed. The only time he visited Germany briefly was in 2006 and did not visit Germany thereafter. We discovered that he uses a German SIM Card here in Nigeria to deceive unsuspecting victims that he is based in Germany."

P.W.2 was not cross examined at all on the above evidence. I find the facts therein established. There is no evidence to the contrary from the defendant. The evidence of P.W.1 on the particulars of the offence under Count 3 was not also discredited in anyway. I find the particulars of the offence disclosed in Count 3 of the charge proved by credible evidence beyond reasonable doubt and I so hold.

In conclusion, I find Count 1 of the charge against the defendant not proved. He is accordingly discharged and acquitted under Count 1. I find the offence of cheating under Counts 2 and 3 of the charge against the defendant proved. I find him guilty on

Count 2 and 3 of the charge. The defendant is accordingly convicted for the offence of cheating contrary to Section 320(a) of the Penal Code and punishable under Section 322 of the Penal Code as charged under Counts 2 and 3 of the charge against him.

HON. JUSTICE F. A. OJO
JUDGE
21/6/2013

Rachael Ezuamor (Miss) for the Prosecution.

S.A. Mustapha with A.D. Abdullahi for the Defendant.