

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO ON THE 7TH DAY OF FEBRUARY, 2017.

BEFORE HIS LORDSHIP, HON. JUSTICE U.P KEKEMEKE

SUIT NO. FCT/HC/CV/8613/15

COURT CLERKS: JOSEPH BALAMI

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

- | | | |
|--------------------------|---|-----------------|
| 1. IBRAHIM USMAN | } |DEFENDANTS |
| 2. YINUSA SHUAIBU | | |

JUDGMENT

The Prosecution filed a Four Count Charge against the 1st and 2nd Defendants dated the 5th day of May 2015 as follows:

COUNT ONE

That you Ibrahim Usman ‘M’, 35 years, civil servant of Gwagwalada FCT Abuja, Kuje Road within the jurisdiction of this Court on or before 15th April, 2015 fraudulently collected the sum of N600,000 from one Eze Peace of Aguma Palace road, Gwagwalada Areas, Abuja with the pretence to secure and promise to give appointment letter of Nigeria Security & Civil Defence Corps and thereby committed an offence of cheating and impersonation contrary to Section 320 of the Penal Code Law and punishable under Section 322 of the Penal Code Law of Northern Nigeria.

COUNT TWO

That you Ibrahim Usman ‘M’, 35 years, civil servant of Gwagwalada FCT Abuja, within the jurisdiction of this Court did receive dishonestly money from members of the public pretending to be authorized to receive same for the procurement of employment into Nigeria Security & Civil Defence Corps and thereby committed an

offence contrary to Section 122 of the Penal Code Law and punishable under the same law.

COUNT THREE

That you Ibrahim Usman 'M', 35 years, civil servant of Gwagwalada FCT Abuja, and Shuaibu Yinusa 'M', 25 year of the same address within the jurisdiction of this Court on or about the 18th of April, 2015 do criminally conspired together and forged Nigeria Security and Civil Defence Corps appointment letters and fraudulently issued same to so many Nigerians as original and genuine appointment letters and thereby committed an offence contrary to Section 362 of the Penal Code and punishable under Section 362 of the same Code.

The Four Count Charge was separately read over to each of the Defendants; they understood same and pleaded Not guilty to each and every count.

The prosecution opened its case and called four witnesses in proof thereof

The 1st Prosecution Witness is Audu Gambo Jankada. He stated that he lives at 133 Phase 3, Gwagwalada. That he is a public servant with the NSCDC Gwagwalada Divisional Office but presently at Kwali. That he joined the Corps in 2005. He is a Superintendent. That his duties are to carry out intelligence and information gathering, investigating complaints of cases, arresting offenders and protection of critical infrastructures. That he knows the Defendants in this case.

On the 29th day of April, 2015 one Abutu James Simon came to their office with an appointment letters of NSCDC to find out if it was authentic. They scrutinized it and found it to be fake.

On interrogation he informed them that one Eze Peace helped him to procure the letter. They invited the said Peace Eze who admitted but stated that he got the letter from the Defendants at the rate of N200,000 per letter. That he paid N600,000 in four installments to him. They went together with Eze Peace to the house of the

Defendants. The 2nd Defendant was arrested while he told them the 1st Defendant's wife gave birth and the 1st Defendant was with her in the hospital.

He was eventually arrested at Alheri Hospital Gwankwo, Gwagwalada. The 2nd Defendant was filling Acceptance Forms. He was arrested. The house was searched. They found Twenty-six fake appointment letters belonging to NSCDC, 80 fake Acceptance letters part of which he was filling, 3 photocopies of appointment letters and files bearing different names. That the forms and the Defendants were taken to their office and they continued their investigation.

The 1st Defendant informed them that he got the letters from one Seidu Abdullai who is at large. He accepted the fact that he collected N600,000 from Peace Eze and monies from several other members of the public. The 2nd Defendant was interrogated and he said he came to visit 1st Defendant and that he was only helping to fill the forms. The case was thereafter forwarded to the State Command for further investigation.

Under Cross-examination, the witness answered as follows:

He participated in the arrest. That they took the statement of Abutu Simon and Eze Peace. That they have lots of features in the original. The fake one is mere carbon paper.

To another question, he answered that it is the Board that can issue letters to senior officers from Level 7 and above. They can also issue for Level 6 and below while the Commandant issues to officers from Level 6 and below in collaboration with the Board.

To another question, he answered that they mentioned Abdullai Seidu. That he is at large. That amongst the documents, the 1st Defendant brought deposit slips in favour of Abdullai Seidu. To another question, he answered that the documents are fake. The Defendants could not tell their victims where to go. That they did not investigate any of the eight persons whose names are on the letters to determine whether they gained employment with NSCDC.

The 2nd Prosecution witness is Mayaki David. He lives in Kwali, FCT. He is a public servant at the Gwagwalada Office of the nscda. He joined the corps in 2010. He is an assistant Superintendent Corp 2. He knows the Defendants. That on 29/04/15 at about 3:15 p.m, one Simon J. Abutu came to their office at Gwagwalada with a Civil Defence Appointment letter and sought to know if the Appointment letter was genuine. They collected the letter, scrutinized it and found out that the letter was fake. He said it was Peace Eze who helped him to procure the letter from the duo of 1st and 2nd Defendants. They invited Peace Eze to the office and he disclosed that he paid the duo of the Defendants the sum of N600,000 to secure the appointment letters. The Defendants were arrested, the 2nd Defendant was filling the NSCDC Forms. The house was searched and Civil Defence Acceptance letters and fake photocopies were found. They took the 2nd Defendant with Exhibits to the office. The Defendants were later transferred to the State command for further investigation.

Under Cross-examination, the witness answered that the fake appointment letters were recovered and taken to the office. That Defendants are not members of staff of NSCDC. That at the time the appointment letters were authored, there was no recruitment in the NSCDC. That such appointment letters are not issued at home but in the office. That he does not know Abdullai Seidu.

To another question, he answered that the documents were submitted to the Command Headquarters including a deposit slip. To another question, he answered that none of the names in the appointment letters got employed.

The 3rd Prosecution Witness is Babadi Anthony Nduka. He works with the NSCDC. He works in the Intelligence and Investigation Department. That he lives in new Nyanya. That he knows the Defendants. They were brought to his office on the 30/04/15. That they were arrested by men of the NSCDC Gwagwalada Division for being in possession of fake appointment letters and issuing same to the unsuspecting public as employment letters. That they were brought to PW1 and PW2. The 1st Defendant was the owner of the house where the crime was allegedly committed. The 2nd Defendant was assisting him in issuing the letters.

The Defendants were brought with the Exhibits which are 27 copies of the letter of appointment, 80 copies of Acceptance Forms and 31 copies of letters of appointment. He was directed to investigate the matter by the Commandant. The Defendants were cautioned and they volunteered statements. He discovered later that they did not state the date when they volunteered the statements. They later put the date. That the correction was made in the statements. That their arrest is sequel to a complaint by one Simon Abutu who had gone to the Gwagwalada office to verify the authenticity of a letter of appointment which the 1st Defendant gave to him. That it was at the Gwagwalada office they realized it was not an original appointment letter. The 1st Defendant told him he was collecting N200,000 per person for the letters and that he had collected about N6,000,000 but that he was not doing it alone. He mentioned Abdullai Seidu who he said was in Niger State.

That he went to Niger State NSCDC Command to trace the name. The name was not in the nominal roll of the employees of Niger State Command. That a Surveillance Team was set up to trace the said Abdullai Seidu but he is still at large. That apart

from the letters, there were still bundles of files and names of individuals whom they were documenting. Amongst the names are Ahmadu Philips, Faith oghoma, Abubakar Umar, Suleiman Ahmed Suleiman, Adullai Sani Alhaji, Ngere James. There was also a file tagged 'Movement File'. That some of the files contain documents such as Bank Account Opening Forms, Age Declaration, Photocopies of Letters of Appointment.

Exhibits A – A25 – The alleged fake appointment letters.

Exhibit B – B78 – 79- Pieces of forged acceptance letters.

Exhibit C – C10 -11 – Files recovered from the Defendant.

He said the appointment letters before this Court are fake. That he can differentiate them by their colour and features. That the appointment letter of Junior Staff is milk white in colour but Defendants issued yellowish letters. The authorization in the year in question is signed by Obiajulu Obiageli but the fake letters which are Exhibits A – A25 are signed by Engineer Bello. The inscription on the paper is 'Conqueror' but the fake Exhibits is 'Royal Security bond.' The paragraphing of their appointment letters have numbers 1 -8 omitting 7 but theirs is serial.

Exhibit D is the original letter of appointment of NSCDC. Their acceptance letter is done with normal A4 whereas that of NSCDC is longer than A4. There is a generic number on the right corner of the original acceptance letter with a specific no. 75 but the Defendants' are such that numbers are used randomly.

Exhibit E is the original acceptance letter of NSCDC. The Defendants wrote their statements themselves. They are countersigned by KIZITO AMAIKWU as a Superior Officer. Exhibits F-F1 – Statements of the Defendants.

Under Cross-examination, the witness answers as follows:

We answered that the bundles of Exhibits were recovered from the house of the 1st Defendant. That the persons whose names appeared in the said fake appointment letters did not present themselves for absorption. That the NSCDC did not act on the letter. That the copies of the acceptance letters do not have the original in their establishment. The signatory on the fake appointment letter was a Deputy Commander General. The last he signed is before 2012. He was still in office when these Exhibits were signed.

The last Prosecution Witness is Exe Peace. That he is a businessman. He lives in Gwagwalada. He sells provisions. That he knows the two Defendants through his customer. He stated that he gave Defendants money to give him Civil Defence job. He gave money to the 1st Defendant. That he paid into his account in Diamond Bank. That the money he paid was for Civil Defence job for three of his younger ones.

That 1st Defendant called his younger ones for documentation. They followed him to Minna. They gave appointment letter to only two of them instead of three. That he has proof of the money he paid. That when Civil Defence came to arrest him, he gave them the receipt of the money he paid.

Exhibits G-G2 are Diamond Bank Tellers for N300,000, N100,000 and N145,000 respectively.

Under Cross-examination, he answered that he paid the money through the account of 1st Defendant. We did not pay 2nd Defendant. That he paid the money on behalf of his brother. To a question, he answered that 1st Defendant is not a staff of Civil Defence but he told him that he has a boss that can give his brothers job. He did not mention the name of the boss. To another question, he answered that he did not follow the 1st Defendant to Minna but his younger brother did. That it was the 1st Defendant that gave him the appointment letter. The above is the case of the

Prosecution. The Defendants opened their defence and called three witnesses. The 1st Defendant's Witness is Ibrahim Usman, the 1st Defendant himself. That he is presently living in Kuje Road Gwagwalada. That he met Abubakar Seidu, a Civil Defence Officer through one of his brothers Mustafa Sule and pleaded with him to assist him, his wife and brothers. He promised to help him when they start recruitment. When he eventually called him, he said he should come because they want to fill in vacancy created by Ghost workers in their office. He told him to pay N200,000 each. That he paid for himself, wife and brothers almost 7 people. That Eze Peace came to him and said since he has been helped, he would also pay. He said he would give him the Account No of Abdullai Seidu but he insisted on paying into his account in Diamond Bank. He paid N600,000 into his account. He transferred the money to Abdullai Seidu's account which is N2 Million. He showed a Statement of account containing the transfer. It was marked 'REJECTED'. He stated that he was not able to secure the job. He was given appointment letters. That the letters are with the Civil Defence people. He identifies Exhibit A10 as his own letter of appointment. He continued that they saw bulk appointment letters in his office. That he went to Abdullai because people that paid money were disturbing him for the delay in absorbing them into the Corps. That he dragged the bag from his hand to his house. That he is not the one who produced the letters. That Abdullai was arrested and charged to Wuse Zone 2 High Court. That he did not collect N6 Million from Eze Peace. That Eze Peace paid N595,000.

Under Cross-examination, he said he works at the Sharia court of Appeal on contract. That he resigned in 2014. That he is not working now. That he is not an agent of the Civil Defence. That the 2nd Defendant is his brother. That he just came to visit him. That he did not sign anything for him. That he was posted to Niger State. That he is working there. To another question, he answered that he did documentation in the State Capital Minna. That his posting letter is at home. The 2nd Prosecution Witness is Shuaibu Yunusa the 2nd Defendant. He stated that he is not working anywhere. He knows why he is in Court. That it is because of Civil Defence. That he does not

know anything about it. That he came to visit the 1st Defendant. That he sat in his room before Civil Defence people came to meet him. That is how they picked him. They did not tell him anything. That he did not sign any letter that he is not working anywhere.

Under Cross-examination by the Prosecution, he answered that he was arrested outside the house. That he cannot remember how many people were in the house. That it was his first time in DW's house. That they are from the same village. That when he came, he did not meet him. That he was told that he went to the Hospital to meet his wife who just put to bed. That he was there when the Civil Defence came and arrested him. When they came, they asked of the owner of the house and he said he met his absence when he came. They arrested him just because he was the person they met and that the 1st Defendant was his brother.

The 3rd Prosecution witness is one Bitrus Sunday. He lives opposite Primary School, Bako, Kwali Area Council FCT. That the 1st Defendant is his friend. That he is an applicant. That 1st Defendant told him he has somebody in Civil Defence who can help. He also told him to help him. That he helped him through Abdullahi Seidu. That he pleaded with Abdullahi and he gave him the name. They said each person should pay N200,000.00. He struggled to get N100,000 which he gave to 1st Defendant. That the money was eventually paid into Abdullahi's account. That he knew Abdullahi when he went to Minna for documentation. That they are many that went to Minna. That he did not know the other people. That after the documentation, they were told to report at Mariga, Niger State. That he was given an appointment letter. That he confirmed from Abdullahi Seidu that he received the money. He does not know where Abdullahi is.

Under cross-examination, he answered that the paid money for a job and a letter was given. He said he also paid 1st Defendant in cash. He does not have the letters. That he paid into Abdulai Seidu's account otherwise, he would not have been given appointment letters. That he is employ by Civil Defence which the paid money to. That he does not know his Service Number since his employment letter is not with him. That he was old it is only when he is preparing for his ID Card that he can be given. That he was employed last year by Ibrahim. That the letter was given to him at Gwagwalada. That 1st Defendant called him to his house and gave him the letter. That he is yet to resume work. That he is Level 7 Assistant Superintendent. He does not know the ranks. That he is a new officer posted to Mariga. That he has not been going to work. To another question, he answered that it is true that he has been duped. That he knows the 1st Defendant very well. That he also knows the 2nd Defendant but not very well. He does not know whether he is a staff or not but he looks at himself as an officer. That he has been posted. The above is the case of the Defence.

The Prosecution's Final Written Address is dated 01/11/16 but filed on the 08/11/16. The Prosecution adopted the said Final Written Address as her oral argument. She posited one issue for determination:

1. Whether based on the evidence before the Court, the Prosecution has proved its case beyond reasonable doubt.

The Defendants' Counsel also filed his final Written Address dated 18/10/16 which Learned Counsel adopted as his oral argument. The Learned Counsel to the Defendants' lone issue is adopted by the Prosecution in its Written Address.

The issue for determination in my humble view therefore is whether the Prosecution has proved the guilt of Defendant beyond reasonable doubt.

I have read the evidence and considered the Addresses of Learned counsel. The 1st Count against the Defendants is an offence contrary to Section 320 of the Penal Code. Section 320 of the Penal Code states:

“Whoever by deceiving any person (a) fraudulently or dishonestly induces the person so deemed to deliver any property to any person or to consent that any person shall retain any property or

(b) Intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or question causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat.”

It is explained under the Section that a dishonest concealment of facts is a deception within meaning of this Section. The evidence of PW1 and PW2 are similar. They are Intelligence Officers of the NSCDC. One Abutu James Simon came to their office with a letter of employment. They scrutinized the letter and found it to be fake. He informed them it was one Eze Peace who helped him to get the employment letter from the 1st and 2nd Defendants. He disclosed that he paid the Defendants N600,000 to secure the employment letters. They met the 2nd Defendant sitting down and filling NSCDC Forms. That on searching the house, they found NSCDC Acceptance Forms and other photocopies. They stated Defendants are not NSCDC

Officers. That they took along with them fake appointment letters from the house of the 1st Defendant.

I have also perused Exhibits A – A25 – the fake employment letters. The PW4 gave evidence explaining the difference between the Exhibits A – A25 and the original employment letters. Exhibits B-B76 are also fake Acceptance Forms found in the house of the 1st Defendant. Exhibit C-C10 are different files containing Acceptance forms, credentials and other documents relating to the fake employment letters. The 1st Defendant's statement under caution is Exhibit F. I have gone through it. He admitted collecting up to 5 -6 Million Naira from people which he allegedly remitted to one Abdullai Seidu.

The 2nd Defendant in Exhibit F1 - his written statement to the NSCDC admitted that he was met filling acceptance form of the NSCDC. The 1st Defendant's evidence is that he transferred same and made other direct payment to Seidu Abdullai. There is no evidence of such payment or transfer. The evidence of DW2 is that he came to visit DW1. That he sat in his room before Civil Defence people came to meet him. That was how they picked him. The evidence in chief is at variance with his evidence during Cross-examination. He said when he came he did not meet the 1st Defendant. That he was outside the house. That he cannot remember how many people were in the house. In his statement Exhibit F1, he admitted filling forms. In his evidence, he denied writing a statement that he was filling forms. PW4 stated in evidence he paid money into the 1st Defendant's account. That he paid money for Civil Defence job on behalf of his younger ones. That 1st Defendant called his younger ones for documentation. They gave appointment letters to two out of three of them. The evidence is that the Defendants are not members of staff of the Civil Defence but said

he has a boss who can give his brothers job. The alleged Abdullai Seidu could not be traced.

From the totality of the evidence before me, it is my view that the Defendants fraudulently or dishonestly induced PW4 and others to part with N200,000 each for letters of appointment which are fake. I believe the evidence of the prosecution and Exhibit F2 to the effect that the 1st Defendant was caught filling a fake acceptance form, his subsequent denial is a farce.

The 2nd count is in respect of the 1st Defendant. It states that the 1st Defendant being a civil servant did not receive dishonestly money from members of the public pretending to be authorized to receive same , etc contrary to Section 122 of the Penal Code. The Section states:

“Whoever being a public servant in his capacity as such dishonestly receives from any person any money or other property which he is not authorized to receive or which is in excess of the amount which he is authorized to received, shall be punished for a term which may extend to five years.”

There is no evidence by the Prosecution that the 1st Defendant or indeed all the Defendants are civil servants. There is no evidence that the monies received by the 1st Defendant was done in his capacity as a civil servant or that as such he is not authorized to receive such monies.

In the circumstance of this case, the Prosecution has not been able to prove this Count beyond reasonable doubt.

On Count 3 which is an offence of Criminal Conspiracy, it is brought under Section 96 of the Penal Code. It states:

“where two or more persons agree to do or cause to be done

(a) an illegal act... such an agreement is called a criminal conspiracy.”

Conspiracy is an agreement of two or more persons to do an act which is an offence to do.

See *NWOSU VS. STATE (2004) 15 NWLR (PT.897) 466.*

AMACREE VS. NIGERIAN ARMY (2004) 3 NWLR (PT.807) 256.

From the evidence before me which has been reproduced and analysed, it is clear that the criminal design alleged is common to the Defendants. The fake employment letters were in the house of the 1st Defendant. Fake files were also recovered. The PW4's evidence is that he recovered the letters of employment of his younger ones in the house of the 1st Defendant. He was given the employment letters by the 1st Defendant. The 2nd Defendant was filling employment acceptance form for another person. He admitted doing so in exhibit F1. It is evident that there is the meeting of minds. They are not member of staff of the NSCDC neither were they authorized legally to issue such letters. There was an agreement to do an illegal act by the 1st and 2nd Defendants. There is evidence of the roles played by each of the Defendants. The 1st Defendant in Exhibit F admitted collecting about 5 – 6 Million Naira on behalf of one Seidu Abdullai. In my view, the drafting of the Count III is not bad in all respects. In my view, the Prosecution has been able to prove the offence of criminal conspiracy beyond reasonable doubt.

Count 4 is an offence of forgery contrary to Section 364 of the Penal Code. It states:

“Whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.”

There is no doubt from the evidence of PW4 that the Exhibit A – A25. B – B78, C – C10, D AND E are forged. The evidence is that the above documents were found in the house of the 1st Defendant. The 2nd was found filling acceptance forms as those in Exhibits B – B78. They knew they were not genuine but presented same to PW4 and other members of the public as genuine. The evidence is that none of the persons to whom the letters were given were working in the NSCDC. The younger ones of the PW4 are not working neither is DW3 who gave evidence on behalf of the Defendants.

In the circumstance of this case, it is my view and I so hold that the Prosecution has proved the Count of Forgery against the Defendants beyond reasonable doubt.

From the totality of reasons given, the Prosecution has proved Counts 1, 3 and 4 of the Charge beyond reasonable doubt and the 1st and 2nd Defendants are found guilty and are accordingly convicted.

Defendants’ Counsel: We thank the Court for a well considered Judgment..

Evelyn Iyanya for the Prosecution.

SENTENCING PROCEEDINGS:

Defendants’ Counsel: I am not calling witnesses. I wish to make an allocutus.

We are grateful for the Judgment. They have been coming to Court regularly. They are first time offenders. They were all acting under a mistaken belief.

The 1st Defendant is a family man. He has a wife and three children. At the point of arrest, the wife put to bed. The 2nd Defendant just passed out of Secondary School. He is a young man. If he is sent to prison, he would be alienated but to serve as a deterrent. While sentencing the Defendants, I urge the Court to give them an option of fine.

Prosecution: The convicts are first time offenders. I urge the court to tamper justice with mercy.

Court: I have listened to the Defence. The Prosecution says the Defendants are first time offenders. That there is no record of previous conviction. She supports the Defendants' Counsel's submission that the court be lenient with the Defendants.

The 1st and 2nd Defendants are first offenders. To err is human but to forgive is divine. The 2nd Defendant is a young man. Incarcerating him will not do him and society any good. The prisons are also congested in the midst of the economic crunch. Sending him to prison will overburden the State and deplete the already scarce resources of the prison. It would further worsen the condition of the Defendants and the society. However, sinners shall never go unpunished. I shall tamper justice with mercy. The 1st and 2nd Defendants are sentenced as follows:

1st Defendant:

1st Count – N200,000:00 fine.

3rd Count – N100,000:00 fine.

4th Count – N200,000:00 fine.

2nd Defendant:

1st Count – N200,000:00 fine.

3rd Count – N100,000:00 fine.

4th Count – N200,000:00 fine

Fines are to be paid cumulatively.

HON. JUSTICE UP.KEKEMEKE

(HON. JUDGE)

07/02/17