

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

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

**COURT NO: 12
SUIT NO: FCT/HC/CR/38/2014**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

VS

KEHINDE BELLO.....DEFENDANT

JUDGMENT

The Prosecution commenced this case against the Defendant and one Gabriel Adola Simon on 10th Nov. 2014 on a 10 Count Charge, however, upon discovering that the said Gabriel Adola Simon had jumped Administrative Bail, the said charge was subsequently amended on 5th March 2015 and further amended on 21st February 2017 and later further amended due to typographical errors on 25th April 2018. The Defendant – Kehinde Bello pleaded not guilty to all 10 Counts of the further amended charge.

The Defendant was charged for conspiracy, obtaining by false Pretence, fraudulently using as genuine a document and forgery contrary to Section 8(a), 1(1) (a) of the Advance Fee Fraud and Other Fraud Related

Offences Act 2006 and Sections 366 and 363 of the Penal Code Laws of the Federation of Nigeria (Abuja) 1990, and the counts of the offences; are herein stated below;

COUNT ONE

That you, Kehinde Bello, Gabriel Adole Simon (now at large) and James Ogar (still at large) sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory did conspire among yourselves to commit an unlawful act to wit: obtaining money by false pretence and thereby committed an offence contrary to Section 8(a) and punishable under Section 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

COUNT TWO

That you, Kehinde Bello, Gabriel Adole Simon sometime in 2008 within the jurisdiction of the high court of the Federal Capital Territory with intent to defraud obtained the aggregate sum of ₦28,000,000.00 (Twenty-Eight Million Naira only) from one Enatto – Nana Aisha by false pretence purportedly for the re-certification and re-issuance of two Plots of land described as file number: KT 11284 in the name of Haruna Yunusa with Plot number 4085 Cadastral Zone AO5 of Maitama dated 09/04/2002 and file number KN 13063 in the name of Abubakar Ladan, with Plot number 4084 Cadastral Zone AO6 of Maitama dated 20/03/2002 respectively for her which pretence you knew to be false and thereby committed an offence contrary to Section 1(1) (a) of the Advance Fee Fraud and other

Fraud Related Offence Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT THREE

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory made a false document captioned, **ABUJA GEOGRAPHIC INFORMATION SYSTEMS, RE-CERTIFICATION AND RE-ISSUANCE OF C-OF-O with FILE: KT 11284 dated 23/12/2008 in the name of Haruna Yunusa** with the intent to cause one Enatto – Nana Aisha to part with property and thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code Law of the Federation of Nigeria (Abuja) 1990.

COUNT FOUR

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory fraudulently used as genuine a document captioned **ABUJA GEOGRAPHIC INFORMATION SYSTEMS, RE-CERTIFICATION AND RE-ISSUANCE OF C-OF-O WITH FILE: KT 11284 dated 23/12/2008 in the name of Haruna Yunusa** which you knew or have reason to believe to be forged and thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.

COUNT FIVE

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory made a false document captioned, **FEDERAL CAPITAL TERRITORY ADMINISTRATION, OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL WITH REF: MFCT/LA/KT.1150 dated 9/04/02** in the name of **Haruna Yunusa** with the intent to cause one Enatto – Nana Aisha to part with property and thereby committed an offence contrary to Section 363 and punishable under Section 363 of the Penal Code Laws of the Federation of Nigeria (Abuja) 1990.

COUNT SIX

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory fraudulently used as genuine a document captioned, **FEDERAL CAPITAL TERRITORY ADMINISTRATION, OFFER OF TERMS GRANT/CONVEYANCE OF APPROVAL with REF: MFCT/LA/KT.1150 dated 9/04/02** in the name of **Haruna Yunusa** which is knew or have reason to believe to be forged and thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990

COUNT SEVEN

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory made a false document captioned, **ABUJA GEOGRAPHIC INFORMATION SYSTEMS, RE-CERTIFICATION AND RE-ISSUANCE OF C-OF-O with FILE: KT**

13063 dated 22/12/2008 in the name of Abubakar M. Ladan with the intent to cause one Enatto – Nana Aisha to part with property and thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.

COUNT EIGHT

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory fraudulently used as genuine a document captioned **ABUJA GEOGRAPHIC INFORMATION SYSTEMS, RE-CERTIFICATION AND RE-ISSUANCE OF C-OF-O with FILE: KT 13063 dated 22/12/2008 in the name of Abubakar M. Ladan** which you knew or had reason to believe to be forged and thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.

COUNT NINE

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory made a false document captioned, **FEDERAL CAPITAL TERRITORY ADMINISTRATION, OFFER OF TERMS GRANT/CONVEYANCE OF APPROVAL with REF: MFCT/LA/KN. 3071 dated 20/03/02 in the name of Abubakar M. Ladan** with the intent to cause one Enatto – Nana Aisha to part with property and thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.

COUNT TEN

That you, Kehinde Bello sometime in 2008 within the jurisdiction of the High Court of the Federal Capital Territory fraudulently used as genuine a document captioned, **FEDERAL CAPITAL TERRITORY ADMINISTRATION, OFFER OF TERMS GRANT/CONVEYANCE OF APPROVAL with REF: MFCT/LA/KN.3071dated 20/03/02in the name of Abubakar M. Ladan** which you knew or have reason to believe to be forged and thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.

In proof of its case, the Prosecution called four (4) witnesses and tendered Exhibits, on the other hand, the Defendant testified in his defence, called no witness and tendered an Exhibit. The Prosecutor in course of the trial, tendered in proof, Exhibits marked as Exhibits "A1" – "A10", "B1 – B10", "C1 – C4", "D1 – D3" and "E1 – E5".

The PW1- Haruna Yunusa Saheed, a Retiree testified that sometime in 2008, he was introduced to the Aisha Enatto – PW2 by his banker to assist him secure some parcel of Plots of land for him, that consequent upon that, himself and the PW2, agreed for purchase of two Plots of land at ₦12 Million each, totally ₦24 Million, that overtime he paid the sum of ₦18 Million through Bank Drafts through Bank PHB, First Inland Bank and Guaranty Trust Bank Plc for ₦10 Million and cash payment for ₦8 Million. The said monies were paid via Managers cheque in the name of Forte Investment Ltd. Thereafter was issued two (2) Offer Letter in the name of

Haruna Yunusa and Abubakar Ladan, his brother. That upon search at AGIS, found that the offers made were fake.

As a result, he petitioned to EFCC, with all the attached documents which is Exhibit "A1" – "A10".

Under Cross-examination, by the Defendant Counsel, he stated that the agreement to purchase the two (2) Plots was not between him and the Defendant, and was not present when the agreement was entered between him and the PW2. He also stated that he never made any payment to the Defendant over the purchase of the said land. That cash payment was not made to the Defendant and never dealt or negotiated directly over the land transaction with the Defendant, rather with the PW2. He stated that he did not inquire who are the Directors of Forte Investment Ltd, he made payments to.

He stated that in land deals in FCT, payment are made to a trusted seller and to him, the PW2 was a trusted seller.

PW2 – Aisha Enatto; a businesswoman, testified, that she is the CEO of two Companies, Forte Investment Ltd, and Aima Body care located at Area 11, Garki – Abuja she stated that she was introduced to the Defendant by one Mr. Gabriel Adole as a staff of FCDA, with ID Card of AGIS. She said, she requested the Defendant to assist to help perfect some Plots of titles of land. That upon agreement the Defendant brought her two (2) Rights of Occupancy, which she handed over to the PW1. She said the PW1 made an initial payment by Draft cheque of ₦10 Million to Forte Investment Ltd that

in all she made a total sum payment of ₦28 Million vide Bank cheque of Zenith Bank and Bank PHB and cash. She however, stated that the Defendant signed for the sum of ₦24.2 Million (Twenty Four Million, Two Hundred Thousand Naira Only). Copies of the original cheques were admitted as Exhibit "B1 –B10".

Under Cross – examination, she stated that the Defendant confirmed his status as a staff of FCDA, by showing him his I.D Card, but did not locate his office, because he brought the Right of Occupancy from the Defendant to her. She stated that the monies were collected by the Defendant in her office. She confirmed receiving the two (2) Right of Occupancy from the Defendant, but does not know if it was issued by the Defendant, and handed over the said documents to the PW1. She stated that when the PW1 checked the document found that it was genuine at that stage, but not the final stage to determine. She stated that at the end of the transaction the PW1 was only able to pay ₦18 Million, which she augmented. She said though she cannot remember the exact amount agreed, but about ₦12, Million per Plot. She maintained that the Defendant never denied receiving the sum of ₦24 Million signed for. She stated that she signed an agreement to refund if there was problem, but the Defendant promised to be available if there is any problem and this he did when he accompanied her to meet with the PW1 in his office. Further that he had no issues with the Defendant.

Under Re-examination, she confirmed that she was showed AGIS I.D card by the Defendant.

PW3. Tijani Usman Sanusi, a Civil Servant Legal Adviser with Lands Department in AGIS. He stated that sometime in August 2010, he received a request for investigation activities from EFCC concerning some land documents asking for confirmation of their genuineness. The documents are Exhibit "A7", "A8", "A9" and "A10" and after search conducted from their system, it was discovered that the documents are fake. He tendered some letters and admitted as Exhibit "C1" – "C4".

Under Cross-examination, he stated that he cannot confirm if the Defendants name is in any of the documents. He maintained that the documents presented are forged documents as they do not exist in the valid documents in the Lands Registry.

There was no re-examination.

PW4, Friday Ebelo, an Operative with the EFCC and Head of the Team-Advanced Fee Fraud – Team 2, to investigate the Petition Exhibit "A1" – "A10" by the PW1. He confirmed the Statements and Testimony of the PW1 and PW2 and stated that sequel to the investigation his team sent out letters of Investigation Activities to FCDA on Exhibit "A7", "A8", "A9" and "A10" and also letters to Guarantee Trust Bank, Bank PHB (NowKeystone bank) to ascertain genuineness of the documents and the Bank Drafts of PW1 and disbursed funds by PW2.

He stated in course of investigation, the Defendant's Statements was obtained by his colleague Waziri Nitte and were admitted in Evidence as

Exhibit "D¹⁻³". And the responses from the Zenith Bank, Bank PHB (now Keystone Bank) were also received in Evidence as Exhibit "E¹⁻⁵". He stated that from their investigation, it was found that the Defendant was not a staff of FCDA, but Closter around the FCDA. Also from the analysis of the account of the PW2, it was revealed that huge sums of money were found to have been advanced to the Defendant and that the Defendant admitted giving the PW2 those documents.

Under Cross-examination, he stated that it took them three (3) years to investigate the case. He admitted only that three (3) persons were arrested, but while one (1) was used as Prosecution witness the other is still at large who was charged along with the Defendant and all efforts are still in place to arrest the one at large.

There was no re-examination.

The Defendant Kehinde Bello, a Surveyor testified that some time ago, he worked with Perfect Engineering Solution Ltd and the M.D Gabriel Adole introduced him to the PW2 who needed assistance of someone to facilitate the processing to get allocation over some number of Plots. That he contracted on Aliyu Damonsan a staff of FCDA on how to get Right of Occupancy. After discussing, he called the PW2 and informed her that each Plot would cost N10 Million. That the PW2 gave him 18 Plot numbers within FCT against the names. Thereafter the PW2 gave me the go ahead with the list; he handled over same to his contract men at the FCDA – Aliyu Damonsani, with an initial N2 Million cheque released by the PW2 on this

office. He stated that each time he was issued with Right of Occupancy against those names, he hands over to the PW2, who also asked him to carry out re-certification, which he did and returned to the PW2. He stated that Bank Cheques were issued in name of AGIS for the re-certification and each he collects and handover to the PW2, he request that the PW2 confirm from AGIS. He stated that he got into this case, because the PW2, had an issue with the said Gabriel Adole and needed him to assist her locate the said Gabriel Adole. He took steps to assist to get the Gabriel Adole arrested at his Gwarimpa residence, but rather than let him go, was made to write Statement to the EFCC. He stated that it is correct that the PW2 gave him 18 number Plots for Right of Occupancy allocation and both agreed for ₦10 Million each. The Defendant sought to tender the Plot number list in evidence, but was rejected and marked tendered but rejected. The Defendant also sought to tender copies of Application for Re-certification made to AGIS, in evidence but was tendered and marked rejected.

Under Cross-examination, he denied ever working for FCDA at the relevant period alleged 1996-2006 and denied the Statement contained in Exhibit "D" that it was obtained under duress. He maintained that he handed over Re-certification documents to PW2 and not Exhibit "A7 & A10", but confirmed handing over Exhibits "A8 & A10" to PW2. He maintained that he did not hand over Exhibit "A9" to PW2. He confirmed concluding the Re-certification for the PW2.

At the close of the defence case, on 11/12/18, the Prosecution filed his Final Written Address dated the same day. He after reviewing the facts of the case formulated only one (1) issue for determination which is whether the Prosecution has proved its case beyond reasonable doubt.

Learned counsel for the Defendant filed his Final Written Address and Reply to Prosecution/Complainant Final Written Address on 23/5/18, but dated 22/5/18 and reply filed on 16/1/2019 dated same date and formulated only one (1) issue for determination;

“Whether the Prosecution has proved the offences for which the Defendant has been charged with as to warrant the conviction of the Defendant”.

Learned counsel for the Defendant, Daniel .O. Anyanwu Esq, in his Written Address, submits relying on several judicial authorities in support of his submission, in urging this court to hold that Prosecution has failed to discharge the burden of proof of the offences brought against the Defendant and urge the court to dismiss the Prosecution case and discharge and acquit the Defendant, counsel referred to ODUVA Vs F.R.N (2012) 11 NWLR (PT.1310) Pg. 76. Alake Vs State (1993) 9 NWLR (PT. 625) 260 @ 270 Para G – H, Archibong VS State (2004) 1 NWLR (PT. 853) 488; Yakubu Vs State (2012) 12 NWLR (PT.1313) Pg. 131, Osho Vs State (2012) 8 NWLR (PT. 1302) 243.

Learned counsel for the Prosecution, Chile Okoroma Esq, in his Written Address, submits that it is trite that the standard of proof in Criminal Cases, is proof beyond reasonable doubt and not proof beyond all shadow of doubt refer to case of Agbo Vs State (2006) NWLR (PT.337) 545@584 – 585 Para H – A. That in proof of the substantive charge, offence of obtaining money under false pretences under Section 1(1)(a) of the Advance Fee Fraud & other Fraud Related offences Act, 2006, relying on the evidence and cited judicial authorities, urge the court to hold that the Prosecution has proved this substantive charge beyond reasonable doubt and convict the Defendant accordingly. Referred to case of Onwudiwe Vs FRN (2006) All FWLR (PT. 319) 77 @ 81 Para E – F, Alake Vs State (1991) 7 NWLR (PT.205) Pg. 567; Arebamen Vs State (1972) 7 NSCC 194 @ 200 Lines 15-20, AGFed Vs Omomoh & Ors (2018) LPELR – 43945 (CA).

On the offence of conspiracy, submits and replying on statute and judicial authorities cited, and evidence before the court, that the Prosecution has shown the common thread of conspiracy, woven around the Defendant. Referred to Obiakor Vs State (2002) 10 NWLR (PT.776) 612 @ 628 Para D-F.

In all the Prosecution, urged the court to hold that they have proved the offences against the Defendant beyond reasonable doubt sufficient enough to convict the Defendant.

It is trite law and as encapsulated in our Constitution, that proof of criminal responsibility is pleaded solely on the Prosecution, the reason for this is

that the Prosecution should satisfied itself, that the Defendant and no other person committed the offence. It is therefore not the place of Defendant to prove his innocent or the fact that he did not commit the offence, as it clear that every person who is charged with the commission of an offence is presumed innocent until proved guilty. See case of Muazu Ali Vs State (2015) LPELR – 24711 SC; Section 36 (5) Constitution of the Federal Republic of Nigeria 1999. By Section 138(3) of the Evidence Act, where proof of crime is established beyond reasonable doubt, then the burden of proving reasonable doubt is shifted on to the Defendant. See Udo Vs State 15 NWLR (PT.1001) 179; S.N. Obidike Vs State (2014) LPELR – 22590 (SC).

Having carefully given insightful consideration to the evidence led, the Exhibits tendered and the Written Submission of Counsel, the court finds that in all the following issue calls for determination, which is;

1. Whether in this instant case, the Prosecution has successfully establish beyond reasonable doubt, the offence of obtaining by false pretences as charged under Count two (2).
2. Whether the Prosecution has sufficiently proved the offence of conspiracy as charged under Count one (1).
3. Whether the Prosecution has established the offences of forgery of documents contained in count 3,5,7,9 and using them as genuine as contained in Count 4,6,8, and 10.

On the first issue distilled by the court, whether in this instant case, the Prosecution has successfully established beyond reasonable doubt, the offence of obtaining by false pretences as charged under Count 2.

Section 1(i) (a) of the Advance Fee Fraud and other Fraud Related offences Act, 2006, states;

1. Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud.

(a) Obtains, from any other person, in Nigeria or in any other Country, for himself or any other person;

Is guilty of an offence under this Act.

Section 1(3) prescribes that a person who commits an offence under subsection (1)&(2) of this Section is liable on conviction to imprisonment for a term of not less than ten years without the option of fine.

“False Pretence” has variously defined both in judicial authorities and statute as;

“The crime of knowingly obtaining title to another personal property by misrepresenting facts with intent to defraud” - Black Law Dictionary 7th Edition. In *Alake & Or Vs State* (1991) 7 NWLR (PT. 205) 567 @ 591, as “Pretence” to mean the act of pretending, means to make a person believe in a situation which in reality is not true. It also mean an appearance or show to hide a reality; a false show, a false allegation, a sham. It also means pretention or a pretext”

And Section 17 of the Act.

To succeed - the Prosecution is required to establish the following:-

1. That there is a pretence
2. That the pretence emanated from the Defendant
3. That it was false;
4. That the Defendant know of its falsity or did not believe in its truth;
5. That there was an intention to defraud;
6. That the thing is capable of being stolen.
7. That the Defendant induced the owner to transfer his whole interest in the property;

See Alaka Vs State (Supra)

False Pretence, however, can be a representation made by words, writing or conduct or a fact, which may be past or present and which is known to the person making it to be false. In some situation, can be inferred from the conduct of the Defendant. See Ladipo & Or Vs I.G.P (1964) All NLR @ 49 – stated by the court, that

“Evidence which reasonably supports the inference that an offence has been committed can be used to support a conviction where no direct evidence is available”.

However, it must be noted that an honest belief in the truth of the Statement on the part of the Defendant which later turns out to be false, cannot found a conviction on false pretence.

In line with the essential ingredients of the offence as set out in the case of *Alake Vs State (Supra)*, Prosecution Counsel, submits that from the testimony of PW2, the said Gabriel Adole and the Defendant portrayed the Defendant as a staff of FCDA and this evidence was restated by the PW2 under Cross-examination of the PW2, affirming the fact stated by the showing of the staff I.D card by the Defendant. Further referred to Exhibit "D1" and "C¹⁻⁴" stating that the Defendant was not a staff of FCDA. That in all of these was which induced the PW2 to enter into the transaction with them. Further replying on Exhibit "B¹⁻¹⁰" which facts was corroborated by the testimony of the PW4, establishes the facts that the Defendant obtained the money as a result of the false pretence. On the evidence of inducement, Prosecution Counsel submitted, that the taken steps such as showing his status by the use of FCDA Identity Card, which evidence the DW1 did not deny, is sufficient to find that the PW2 was indeed induced to part with her money in the said transaction. Submits that the reliance of Defendant as DW1 on Exhibit "F1" and "F2" cannot stand as it falls short of evidence of the purpose for which it was issued, no nexus with the said transaction, no acknowledgement by AGIS and further that by Exhibit "D1", "D2" and "D3" no reference was made to the Exhibits "F1" and "F2", therefore never afforded the Investigating Team of EFCC opportunity to investigate this facts.

On the other hand, it is the contention of the Defendant Counsel, that there was no where did the Defendant either by his Statement Exhibit "D¹⁻³" and oral evidence before the court to have admitted to have shown to the

PW2, AGIS, FCDA Identity Card, sufficient to hold the Defendant by that act induces the PW2 into parting with her money in this transaction. On the Exhibit "F1" and "F2", submits, that by the Defendant conduct, it negative the intent to defraud the PW2.

Further submits that it is the duty of the Prosecution to investigate any Statement or person referred in the Statement in proof, of its case beyond reasonable doubt.

And urged the court to hold that the Prosecution has failed to discharge that burden of proof on this ground.

Now, to consider this ground if proved this court will have to consider and evaluate the facts leading to the charge against the Defendant from the evidence before the court and juxtaposed with the ingredient required to be proved by the Prosecution.

The genesis of this transaction, is an between the PW1 and PW2, who was introduced to the Defendant by one Gabriel Adole Simon to assist the PW1 to secure some Plots of land on an agreed amount of ₦12 Million each Plot and two (2) Plots agreed at ₦24 Million, consequent upon advance payment of ₦10 Million by Bank Draft was issue to the PW2 by the PW1 and ₦8 Million cash PW2 pursuant to that agreement got the Defendant to assist in the transaction consequent upon that introduction after the assurance given by the evidence of identity card of AGIS of the Defendant and staff of the FCDA and parted with some of money to the Defendant for

the transaction. It is alleged that the PW2 made payment to the Defendant in the sum of ₦28 Million vide Bank Draft and cash in Exhibits "B¹⁻¹⁰".

It was heavily contended by the Prosecution that it was the conduct of the Defendant amongst other presenting to the PW2, his identity card of AGIS, which was never controverted by the Defendant in evidence, that induced the PW2 to go along with the transaction. This act is sufficient proof of the requirement to find against the Defendant. Whereas, the Defendant Counsel contended by way of denial that the Defendant never at any time either by extra-judicial statement or oral evidence admitted this fact of holding out to possessing an AGIS identity card as alleged.

The point to ask here is, was there an act of intent to induce by the Defendant on the PW2, who was introduced to her in this transaction to part with his money, in line with that the Prosecution must prove to succeed, as enunciated in Pletorial of judicial authorities. See *Arije Vs FRN* (2013) LPELR – 22125 (CA) Oseji JCA Stated thus;

"For the offence of obtaining by False Pretences to be committed, the Prosecution must prove that the Accused had an intention to defraud and the thing is capable of being stolen. An inducement on the part of an Accused to make his victim deliver part a thing capable of being stolen or to make the victim deliver a thing capable of being stolen will expose the Accused to imprisonment for the offence" Page 53 Para A – D".

In the entire gamut of evidence by the Defendant as DW1, he did not deny these pieces of evidence of the PW2 of his being in possession of an identity card of AGIS, capable inducing an unsuspecting individual that he is not likely to be a staff to prevent that person into believing him as one to make him part with a thing.

From a cursory reading of these pieces of evidence of the PW2 and the DW1 and the bundle of Exhibits "B¹⁻¹⁰", "C¹⁻⁴" and "D¹⁻³", in my firm view, goes to show that the Prosecution has indeed prove this ingredients of the offence committed in Count 2 of the charge, I so hold.

Now to the second (2) issue formulated by the court, whether the Prosecution has sufficiently proved the offence of conspiracy as charged under Count 1.

In establishing proof of this Count 1, against the Defendant, contend in his submission and relying on Section 8 (a) of the Advanced Fee Fraud and other Fraud Related Offences Act 2006 and other judicial authorities, submit that the Prosecution has sufficiently shown both by direct and circumstantial evidence, facts showing that the Defendant committed the act. Prosecution relied heavily on the Exhibits "D1-3", extra-judicial Statement of the DW1 – Defendant, the evidence of PW2 in urging this court to hold that the Defendant did indeed conspired with the others now at large to defraud the PW2.

The Defence Counsel on the other hand, while setting out the essential elements of the offence of conspiracy as enunciated in the case of Yakubu Vs State (2012) 12 NWLR (PT. 1313) Pg. 131, submits that by the evidence of PW2, she clearly stated that she transacted only with the Defendant and no other, and that by it is trite that offence of conspiracy cannot be committed alone. Referred to Osho Vs State (2012) 8 NWLR (PT.1302) Pg. 243. In his reply on point of law conceded that circumstantial evidence could be employed by the court to determine the involvement or otherwise in conspiracy and cited the case of Brown Vs State (2012) 3 NWLR (PT. 1287) P – 207 @ 246 Para C – F.

In this instant, the Defendant is in Count 1, in regard to the offence of conspiracy, under Section 8(a) and punishable under Section 1 (3) of the Advance Fee Fraud and other Fraud Related offences Act, 2006, which reads;

“A person who:-

- (a) Conspires with, aids, abets, or counsels any other person to commit an offence or
- (b)
- (c)

Under the Act, is guilty of the offences and is liable on conviction to the same punishment as is prescribed for that offences under the Act. See

Amadi Vs Federal Republic of Nigeria (2008) LPELR – 441 (SC); Kayode Vs State (2016) LPELR 40028 (SC)

To establish the offence of conspiracy, in what I term the conspiracy theory, which is the meeting of the mind of two or more persons to carry on an unlawful act, which may be direct or circumstantial in achieving that objective, in effect, Prosecution must prove, thus;

- (a) That there was an agreement between the Defendants to execute an agreed act.
- (b) That the agreed act is unlawful.

See Aituma Vs State (2007)5 NWLR (PT.1028) 466 @ 482 Para A-B, 487 Para F (CA).

In proof of the offence, the actual agreement alone constitutes the offence and not necessary to prove the fact in the substantive offence, this is so, by its nature can rarely be proved by direct evidence, but by circumstantial evidence, which inference is drawn from certain proven acts. It must be consistent, cogent and reliably leading to only one conclusion to ground a conviction, the guilt of the Defendant. See Obiakor Vs State (2002) LPELR – 2168 (SC) Kalgo JSC. See also the case of Okafor Vs State (2016) LPELR – 26064 (SC), on the dictum of Kekere – Ekune JSC on the essential ingredient of the offence of conspiracy.

A trial court may infer conspiracy from the fact of doing things toward a common purpose. See Patrick Njovens Vs The State (1973) 5 SC 17, Onyenye Vs The State (2012) All FWLR (PT.643) 1810.

In this instant case, the Prosecution relied heavily on the evidence of the DW1 on his extra-judicial Statement-Exhibit "D¹⁻³", wherein the Defendant as DW1 made copious statement of his relationship with one Gabriel Adole Simon now at large, who introduced him to the PW2, and the fact that the said Mr. Gagrial Adole Simon, always warned him not to let the PW2 known that they are both working together and further the fact that he usually gives the said Mr. Gabriel Adole Simon sum of money whenever he receives from the PW2 and also the evidence of PW2 in her evidence of the fact that the Defendant and those at large are staff of the FCDA, when in fact they are not and gave her contract number and submits are sufficient facts to warrant the court to infer by way of circumstantial evidence the act of conspiracy on the party of the Defendant and those at large, referred to Erim Vs State (1994) 5 NWLR (PT.346) 522.

The Defendant Counsel posited on the other hand, that the Prosecution has failed to establish by evidence that there was an agreement between the Defendant and those at large to commit the offence of conspiracy, more so that the PW2 Stated in her evidence that she transacted with the Defendant alone and opened that conspiracy cannot be carried out alone.

On a careful perusal of the evidence of both the Prosecution witness, that is PW2 juxtaposed against that of the Defendant before the court, I find

that the facts stated in evidence are in conformity with what is required by the Prosecution to prove in establishing the offence of conspiracy. In my firm view, the Defendant as DW1 by his evidence, clearly shows that there was some form consensus between him and the others at large to commit the act, irrespective of the prove of the substantive case. I so hold.

Now to the third issue, whether the Prosecution has established the offences of forgery of documents contained in Count 3,5, 7 and 9 and using them as genuine as contained in Count 4,6,8 and 10.

In proof of this offence, Prosecution Counsel, submits that the Count 3 – 7 borders on the allegation of forgery, while count 8,9 and 10 borders against the Defendant using as genuine forged documents. The said documents in issue are Exhibit "A1 – 10" and submits that under Section 363 of the Penal Code under which the Defendant is charged, the Prosecution to succeed must establish the ingredient stated therein and referred to cases of *Osondu Vs FRN* (2000) 12 NWLR (PT. 682) @ 483; *Aliyu Vs Dikko* (2012) All FWLR (PT. 632) 1714 @ 1731 and 1732. And relied heavily on the evidence PW3, a staff of AGIS who established that the documents Exhibit "A²⁻¹⁰" were forged and contend that it trite that it does not necessarily be that it was the Defendant who personally forged the documents. Referred to case of *Agwuna Vs A.G Fed.* (1995) 5 NWLR (PT. 396) 418 @ 438 Para F.G. Further submits that the Defence failed to contradict the evidence of the PW3, in his evidence also on the documents of Exhibits "C¹⁻⁴" also alleged to be forged and neither was the PW4 contradicted in his evidence

and replying further on Section 366 of the Penal Code, urged the court to hold that the Prosecution has established their case.

On the other hand the Defence Counsel submits that from the evidence of the Prosecution Counsel witnesses, PW2, PW3, PW4 the purported forgery alleged to have been committed by the Defendant is doubtful as it cannot be committed without an insider in AGIS, moreso that he mentioned his contact person in AGIS – Mr. Aliyu Damonsani, who the Prosecution failed to Cross-examine the Defendant on it, further that the Prosecution failed to establish or call evidence on the signature on the document alleged to be forged to ascertain it. Referred to cases of Alake Vs State (1993) 9 NWLR (PT. 625) 260 @ 270 Para G – H, Archibong Vs State (2004) 1 NWLR (PT. 853) 488.

In this instant case, as regard Counts, 3 – 7 which borders on alleged forgery. Forgery according to Oxford Dictionary at Pg. 462, defined “To mean to fabricate by false imitation” See Ogodu Vs Goru & Or (2016) LPELR 40149 (CA) per Bada JCA. Also the Black Law Dictionary defines it as “To mean act of fraudulently making a false document or altering a real one to be used as it genuine.

The ingredients of forgery include;

- a. That there is a document or a writing
- b. That the document or writing is forged
- c. That the forgery is by the accused
- d. That the accused knows that the document or writing is false

- e. That he intends that the forged document to be acted upon to the prejudice of the victim in the believe that it is genuine. See case of Folorunso Vs FRN (2017) LPELR – 41972 (CA), these, the Prosecution has to prove before conviction can be made.

In this instant, it is the evidence of the Prosecution, through PW3, and PW4 and relying on Exhibits "A²⁻¹⁰" and "C¹⁻⁴" as proof or establishment of the offence.

The Exhibits "A⁷⁻¹⁰" in particular are; Exhibit "A7" – Offer of Terms of Grant/Conveyance of Approval dated 9/4/02 in Re: Haruna Yunusa, Ministry for Federal Capital Territory; A8 – Re-certification and Re-issuance of Certificate of Occupancy Acknowledgement dated 25/12/2008 issued by AGIS in Re: Haruna Yunusa. Offer of Terms of Grant/Conveyance of Approval dated 20/3/02 in Re: Abubakar Ladan, from Ministry for Federal Capital Territory. A10 – Re-certification and Re: issuance of Certificate of Occupancy Acknowledgement dated 22/12/2008 issued by AGIS – in Re: Abubakar Ladan, and Exhibits "C1-4" are Investigation Activities Report from Federal Capital Territory Administration to the EFCC.

The Defendant as DW1, stated in his oral evidence, that he dealt with one Aliyu Damonsani as contact man in FCDA to assist him to process the document, but not in his extra-judicial statement.

Granted that the Prosecution did not investigate or attempt to call the said Aliyu Damonsani, it is clear that the Prosecution can only investigate on

fact given to them in the instance, this facts was not, as contended by the Prosecution.

The Defendant on the other hand did not deny or controvert the evidence of PW3 and PW4 and it is trite that evidence not contradicted or denied is deemed to have been admitted. See *Dalberto Ltd Vs Akintilo* (2003) 9 NWLR (PT. 824) 49 @ 71.

It is law that the Defendant does not have to be the one who personally forged the documents, Exhibits "A7" – "A10". The evidence of the PW3, PW4 of EFCC and FCDA staff through Exhibits "C1-4" is sufficient proof that the documents were forged and which facts were never challenged by the Defendant under cross-examination; moreso, the PW3 through Exhibit "C4" stated from the report that the Defendant was not a staff of the FCDA.

It must be noted that the Defendant Counsel contended that the failure of the Prosecution to call the said Aliyu Damonsani to testify or cross-examined on it, is fatal. This court has found that the Prosecution response is apt, as it can only confront or investigate on facts presented to it. In any event, it is trite that that Prosecution is entitled to call witnesses of his choice that are relevant to the fact of the case. See *Adesina & Or Vs The State* (2012) LPELR – 9722 (SC).

From all of these, it is the finding of the court that in this instant case, hold that the Prosecution has been able to prove the charges against the Defendant in all the and the court finds as follows:-

COUNT ONE – Guilty as charged
COUNT TWO – Guilty as charged
COUNT THREE – Guilty as charged
COUNT FOUR – Guilty as charged
COUNT FIVE – Guilty as charged
COUNT SIX – Guilty as charged
COUNT SEVEN – Guilty as charged
COUNT EIGHT – Guilty as charged
COUNT NINE – Guilty as charged
COUNT TEN – Guilty as charged
and convicted accordingly.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

10/4/2019

Prosecution Counsel appreciates the judgment the court. Urged the court to convict based on the Provision – as the Advanced Fee Fraud not less than 10yrs and where the court exercise its discretion not less than 7yrs. For forgery the term of 14 years, subject to exercise of the court’s discretion and Order compensation – Refer Section 11 of the Advanced Fee Fraud & Other Fraud Related offences 2006. Also Section 319 of ACJA and

321 to make an order of Restitution. On Conspiracy the terms in the same as the substantive offence that is not less than 14yrs. Urge the court to in making the sentencing to ensure that justice is served.

Defendant Counsel appreciates the court industry in this judgment however, in making an Allocutus on behalf of the Defendant, submits, have recourse to the Provision ACJA Section 416(1)(2) Para K & (F). Submits that there is no previous conviction that has been made on the Defendant, that the use of the words may give the court the discretion to sentence by imprisonment or not. That by Provision K, submits and urge that the Defendant is not such that should be isolated from the society to warrant being sentenced the terms of imprisonment. Also refer to Section 312 of ACJA. Further, that the Defendant having no previous criminal conviction and did not abscond from this proceedings, while the others absconded, he remained to the end of the trial. He is breadwinner of the family and father of 4 children. Pray the court to have recourse to Section 416 Para K of ACJA and sentence the Defendant to a fine and not imprisonment.

Prosecution Counsel replying on points of law, submits that Section 416 (2) (K) of ACJA cited by Defendant Counsel and 312 are inapplicable in the circumstances of the case Vis-à-vis the law. Refer Amossima Vs State....., that where the law prescribes a certain term, the court has no discretion in it.

SENTENCE:

After conviction, what follows next is sentencing. In this instant, the Prosecution Counsel has persuaded the court in sentencing must be guided by the law, especially where the law is specific on the term of sentencing, that the court will have not discretion in it. And urge the court to do just that, unless where expressly stated that the court can exercise its discretion.

The Defendant Counsel, on the other hand, on behalf of the Defence prays the court to exercise its discretion in sentencing, and in doing so, referred the court to the Provisions of Section 416 (1)(2) (K) (f); 312 of ACJA 2015 and that the Defendant has no criminal record as a family man of 4 children.

Replying on point of law the Prosecution Counsel referred this court to the case of Amoshima Vs State (2011) PT.597 All FWLR. Pg.615, in urging the court that it has no discretion where the term is specific.

Having carefully considered the submission and persuasive submission of Defence Counsel, this court in considering sentencing of the convict will be guided by the Provisions of the law as sentencing, save where the exercise of that discretion is allowed. I have also noted the Section posited by Defendant Counsel, that notwithstanding, I shall apply the law as it is, in line with the intendment of the law makers and more importantly to preserve the reoccurring cases of this nature in our society.

Having said all of these, it is the duty of the court in sentencing the convict, to impose punishment that would act as a deterrent to convict. and to others in the larger society.

Accordingly, hereby sentence the convict as follows:-

1. For the offence of obtaining by false pretence in count 2. Punishable under Section 1(3) of Advanced Fee Fraud and Fraud Related Act 2006, the court finds thus;

Defendant is sentenced to 7 years imprisonment without option of fine

2. For the offence conspiracy punishable under Section 1(3) of Advanced Fee Fraud and Fraud Related Act 2006, in Count 1. Defendant is sentenced to 7 years Imprisonment without option of fine.

3. For the offences of forgery under Count 3,5,7 and 9 punishable under Section 364 of the Penal Code Act, the court find thus; Defendant is sentenced to 7 years imprisonment without option of fine.

4. For the offence of using as Genuine under Count 4,6,8 and 10. Punishable under Section 364 of Penal Code Act. Defendant is sentenced to 7 years without option of fine.

The Defendant is to pay to the victim Pursuant to Section 11 of Advanced Fee Fraud pursuant to Section 11 of Advanced Fee Fraud and Fraud Related Offences Act 2006, the sum equivalent to the loss sustained.

The sentence herein ordered are to run concurrently. The convict shall serve the term at Kuje Prisons.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

10/4/2019

APPEARANCE:

CHILE OKOROMA WITH C. OKONGWU ESQ;M.E. EIMONYE ESQ FOR THE PROSECUTION

DANIEL .O. ANYANWU FOR THE DEFENDANT