

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABAKALIKI JUDICIAL DIVISION**  
**HOLDEN AT ABAKALIKI**  
**ON TUESDAY THE 17<sup>TH</sup> DAY OF MAY, 2016**  
**BEFORE THE HONOURABLE JUSTICE M. A. ONYETENU**  
**JUDGE**

**CHARGE NO. FHC/AI/43C/2013**

**BETWEEN:-**

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

**AND**

AMAKA EMEH  
OKO EMMANUEL  
UGMOKE PAUL

- ACCUSED

**RULING**

The 3 accused person are facing a 2 count charge of conspiracy and obtaining money by false pretences contrary to S. 8 (a) and S. (1) respectively of the Advance Fee Fraud and other related offence Act and punishable under S. 1 (3) of the same Act.

To prove its case against the accused persons the prosecution called a sole witness and at close of case for the prosecution, the 3 counsel representing each of the accused persons made a submission each that no prima

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facie case has been established against each of the accused persons to warrant their being called upon to make a defence.

In his own address counsel to the 1<sup>st</sup> accused cited the cases of

AJIBOYE v. THE STATE

1995 8 NWLR Pt 414 at 408

IBEZIAKO b. COP

1963 1 SCNLR 99

AJIGBADE v. IGP

1958 SCNLR 60

ADEYEMI v. THE STATE

1988 4 NWLR Pt 86

on when a no case submission can be made on behalf of an accused person.

Counsel submitted that for the 2<sup>nd</sup> count to succeed an essential ingredient of false pretence must be proved which the prosecution failed to do as the prosecution itself established that the 1<sup>st</sup> accused was the coordinator of the development culture, that the existing state of affairs for the repayment of the overdraft was there and that the 1<sup>st</sup> accused did not appropriate the money to herself.

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Counsel submitted that from the prosecution case it is clear that the 1<sup>st</sup> accused intended repaying the overdraft from the accounts of the development centre but due to change of policy which is beyond her control she could not as the parent local government area took over payment of salary the following month so that there was no false representation of a material part or existing fact and the 1<sup>st</sup> accused could not have made representation of a future fact. That the prosecution has not proved that there was any iota of falsehood by the 1<sup>st</sup> accused when they applied for the loan.

Counsel also submitted that the 5<sup>th</sup> and 6<sup>th</sup> elements require that the accused must have passed title to the property to herself which is not the situation in this case as the facility was granted to the development centre where she was a servant to.

On the 1<sup>st</sup> count of conspiracy counsel to the 1<sup>st</sup> accused submitted that the overdraft obtained by the 1<sup>st</sup> accused was lawful as the state government gave a directive that the facility she obtained be repaid by a deduction from the local government allocation from source which is an act of ratification of the acts of the 1<sup>st</sup> accused.

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Counsel further submitted that the evidence of p.w.1 was badly discredited as a result of cross-examination in that the 1<sup>st</sup> p.w admitted that the statement of account Exhibit E shows that allocation to the development centre from April 2012 was not paid into the account but could not show that this was the making of the accused persons and that p.w.1 admitted under cross examination that the credit facility was used by the 1<sup>st</sup> accused for the running of the development centre hence the prosecution has not made out a prima facie case against the accused.

Counsel to the accused urged the court to dismiss this case.

In his written address the prosecuting counsel defined prima facie case as per 8<sup>th</sup> edition of Black Law Dictionary citing

ADEYEMI v. STATE

1991 6 NWLR 1 at 35

AJIBOYE v. STATE

1995 8 NWLR Pt 414 At 408

Prosecuting counsel submitted that in proving the offence of conspiracy, it is not necessary to show that the accused persons met together, but once it is shown that there was meeting of mind by alleged conspirators to carry

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out an unlawful act the offence of conspiracy is established  
citing

FRN v. ODIAWA

2010 ECLR 1 19 at 93 – 94

Prosecuting counsel submitted that the application  
letter to the bank for credit facility was executed by all the  
accused persons.

On the 2<sup>nd</sup> count of obtaining by false pretences  
prosecuting counsel gave the essential ingredients to wit:-

- (1) That there was a pretence
- (2) Pretence emanated from the accused
- (3) That it was false
- (4) That the accused know of its falsity or did not believe  
in it
- (5) That there was intention to defraud
- (6) That the things is capable of being stolen
- (7) That the accused induced the owner to part with it  
citing

FRN v. USMAN

2010 ECLR (Vol. 1) 192

ALAKE v. STATE

1991 7 NWLR Pt 205 at 562

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On the 1<sup>st</sup> element prosecuting counsel submitted that the accused ought to have obtained the approval of the Executive Governor of Ebonyi State before applying for the loan facility as per Exhibit B1 letter from Ebonyi State Ministry of Local Government, Chieftaincy Matters and Rural development but failed to do so instead she held herself out as having authority to apply for the said loan.

On the 5<sup>th</sup> element prosecuting counsel submitted that having obtained the facility the 1<sup>st</sup> accused changed the development centre account to another bank in a bid to evade repayment and on the last element, that the 1<sup>st</sup> accused induced the bank to part with the amount as a result of the interest the bank will make from it.

Prosecuting counsel then urged this court to hold that the accused has questions to answer as at this stage the credibility of witnesses and weight to be attached to their testimonies should not be taken into consideration citing the cases of

EKWUNUGO v. STATE

2008 15 NWLR Pt 1111 630

AJIBOYE v. STATE (Supra)

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In his own address counsel to the 2<sup>nd</sup> accused gave the situation when a submission of no case to answer can be made on behalf of an accused person citing the cases of

R v. COKER 1952 20 WLR 62 at 63

EKWUNUGO v. STATE (Supra)

2008 15 NWLR Pt 1111 at 630

AGBO & ORS. V. THE STATE

2013 Vol. 224 LRCN Pt 1 at 137

and referring to

S. 286 of the Criminal Procedure Law Cap 34 Laws of Ebonyi State of Nigeria 2009.

Counsel submitted that the ingredients of the 2 officers of conspiracy and obtaining by false pretences had not been established by the prosecution.

On the 1<sup>st</sup> count counsel to the 2<sup>nd</sup> accused submitted that the prosecution did not lead credible evidence to show that the 2<sup>nd</sup> accused had any meeting where they decided to obtain money by false pretence and neither can it be inferred that the 3 accused persons came together to do so hence this charge is speculative citing

PLATEAU STATE v. FED

2006 37 LRCN 400 at 1405

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On count 2 counsel to the 2<sup>nd</sup> accused submitted that the prosecution has to prove

- (a) Intent to defraud or actual fraud
- (b) That the accused persons are not public officers of Ishielu West Development Centre
- (c) That there was a pretence which it did not

Counsel submitted that p.w.1 admitted that part of the approval for an overdraft was meant for payment of staff salaries.

On the non approval of the loan counsel submitted that the proper law to be considered in S. 112 (1) of the local government law cap 106 laws of Ebonyi State 2009 and that Ishielu West Development Centre is not a local government council bound by that law and in any event the operative word written there is 'May' thus it is not mandatory for the accused persons to obtain approval from the state house of assembly.

Counsel submitted that p.w.1 admitted under cross examination non knowledge of sanction for non compliance with approval for loan and that the loan is not reflected in the statement of account Exhibit E hence this evidence has been so discredited that no reasonable can safely convict on it citing

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ABDULAH I v. STATE

2008 16 LRCN 96 at 101

Counsel to the 2<sup>nd</sup> accused further submitted that the admission of p.w.1 that part of the overdraft was used for payment of workers salary means there was no obtaining by false pretences

Counsel also submitted that the cheque attached to the petition Exhibit C is at variance with the amount of ₦6,000,000 in count 2 of the charge and that the in Exhibit E the statement of account serial no 249 and such under 250 show the debit and credit book keeping entries which show grant and repayment of the loan facility meaning there was no intent to defraud.

He urged the court to uphold his submission of no case to answer.

The prosecuting counsel made the same submissions he had earlier made in respect of the 1<sup>st</sup> accused counsel submission to that of the 2<sup>nd</sup> accused.

Counsel to the 3<sup>rd</sup> accused in his own written address referred to S. 286 of the Criminal Procedure Act as to when a submission that an accused person can properly be made and citing the cases of

EKWUNUGO v. FRN

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2008 15 NWLR Pt 1111 630

AGBO & ORS. v. THE STATE

2013 Vol 224 LRCN Pt 1 at 187

Counsel submitted that the prosecution failed to prove the essential ingredients of this offence that the crux of this matter is the alleged failure of the accused persons to obtain approval from the Executive Governor of Ebonyi State via the Ministry of Local Government and Chieftaincy Affairs thereby breaching Ebonyi State Local Government and Development Centre Regulations for public office holders 2008.

Counsel submitted that there is no law or regulation in Ebonyi State requiring the accused persons to 1<sup>st</sup> seek and obtain the approval of Executive Governor before obtaining overdraft facility in the bank and that the 3 accused persons and indeed the Shielu West Development Centre is not one of the local government areas in Ebonyi State required to obtain the approval of the state house of assembly before raising loans or overdraft facility in any bank referring to S. 112 and 113 of local government law (cap 106) of Ebonyi State 2008.

Counsel also submitted that the 1<sup>st</sup> p.w. in his evidence in chief stated that the overdraft facility was for

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payment of workers salaries for the month of March 2014 and that the loan facility was used for such.

He therefore urged this court to hold that the prosecution has not made out a prima facie case against the accused person to warrant their being called upon to make a defence.

In answer to the no case submission made by counsel to the 3<sup>rd</sup> accused prosecution counsel also made the same replies as he did in the case of the 1<sup>st</sup> accused person.

Now I have carefully considered the evidence adduced by the prosecution in this case. I have also considered the various submissions of counsel to the accused persons that all of the accused persons have no case to answer.

A submission that a defendant has no case to answer may be made

- (1) When an essential element of the offence has not been proved
- (2) When there is no evidence linking the defendant with the commission of the offence with which he is charged
- (3) When the evidence so far led is such that no reasonable court or can convict on it

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(4) Any other ground where the court may find that a prima facie case has not been made out against a defendant (See S. 303 (3) of Administration of Justice Act 2015

I will consider first that an essential ingredient of the offence of conspiracy and obtaining by false pretences has not been established by the prosecution.

For conspiracy the gist of that offence is an agreement to do an unlawful act. That agreement can be express or implied from the fact of accused persons doing things towards a common purpose see

NJOVERS & ORS. v. THE STATE

1973 NSCL 257

ONOCHIE v. THE REPUBLIC

1966 All NMLR 85

IKEMSON v. STATE

1989 3 NWLR Pt 10 455 at 477

In the present case the substance of the prosecution case is that the accused persons conspired to obtain loan facility by false pretences.

From the prosecution case it is evident that the 3 accused persons executed the application for the credit facility together and also the transfer of the centre's

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allocation account to a new bank. It can thus be inferred that the accused persons acted in consent towards a common purpose of obtaining credit facilities by false pretence so that the prosecution has established the essential ingredients of this offence against all the 3 accused persons.

The 2<sup>nd</sup> count is that of obtaining credit facility by false pretence.

I agree with the prosecuting counsel that the ingredients of this offence are

- (1) That there must be a pretence
- (2) That the pretence emanated from the accused person
- (3) That the pretence is false
- (4) That the accused knows of its falsity or did not behave in its truth
- (5) That the thing is capable of being stolen
- (6) That the accused induced the owner to part with it

See

ONWUDIWE v. FRN

2006 All FWLR Pt 319 at 774

ALAKE v. STATE (Supra)

With respect to (1 - 5) in the present case there is a pretence that the Development Centre can validly obtain

loan on its own. This emanated from the 3 accused persons and of course is false as per Ebonyi State Local Government and Development Centre regulation public office holders law 2006 and the accused persons knew of its falsity.

On the intention to defraud the 1<sup>st</sup> p.w testified that having obtained the loan facility the accused persons obtained another bank account for the centre to avoid repayment according to the terms of the facility.

On the 6<sup>th</sup> ingredients it is not in dispute that the money is capable of being stolen and on the 7<sup>th</sup> it is also clear that by representing to the bank that they will repay with their monthly allocation the accused persons induced the bank hence all the ingredients of the offence of obtaining by false pretence have been established by the prosecution.

On the 2<sup>nd</sup> leg of whether there is evidence linking the defendant with the offence with which they are charged the evidence of p.w. 1 abundantly linked all the accused persons with the 2 offences.

On the evidence led not being such that a reasonable tribunal or court can convict on as a result of contradictions. 2 submissions were made on behalf of all

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the accused persons. One is that the allocation to the development centre from April 2012 not being paid into the complainant's account was not the fault of the accused persons.

But the prosecution evidence is clear that the accused persons opened another account.

Secondly that the credit facility was used for payment of salary but it was only a part of it that was used. That of the other part.

The fact that the cheque attached to the Exhibit C is at variance with the quoted account of ₦6million in count 2 does not affect the prosecution case in that the cheque is to the amount obtained and the amount attached to the cheque is the amount raised as repayment by the accused persons. The prosecution had at no time stated that the amount in the cheque was the amount that was obtained by false pretences where which would have been contradictory.

As to the entry in Exhibit E statement of account serial no. 249 being the debit and serial no 250 showing that there was credit hence there was repayment of subject matter. The said entry serial no 249 has not shown that it has anything to do with the development centre and the

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debit came before the credit. The development centre could not have repaid the loan facility from the bank before having obtaining it from the bank.

On the issue that the law requires approval before any development centre can take a loan the 1<sup>st</sup> prosecution witness stated that it is a regulation Ebonyi State local government and Development Centre regulation for public officer amendment law 2006 not local government law cap 106 of Ebonyi State 2008. So I see no contradictions there.

From the above then, I find on the totality of the evidence before me that the prosecution has made out a prima facie case against all the accused persons to warrant their being called upon to make their defence and I so hold. Each of the accused persons is hereby called upon to make his/her defence.

*M. A. Onyetenu*  
**M. A. Onyetenu**  
Judge

17/05/2016

*M. A. Onyetenu*