

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 10TH DAY OF MARCH, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CR/130/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:.....COMPLAINANT

AND

IKECHUKWU SEBASTINE:.....DEFENDANT

Muktar Ali Ahmed for the Prosecution.

Daniel Alfa for the Defendant.

JUDGMENT.

The Defendant was on the 18th day of May, 2017 arraigned before this Court on one count charge as follows;

Statement of Offence:

Obtaining property by false pretence contrary to Section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and Punishable under Section 1(3) of the same act.

Particulars of the Offence:

That you, IkechukwuSebastineDuru, male, sometime between 2012 to 2013 in Abuja within the jurisdiction of this Honourable Court, by false pretence and with intent to defraud, obtained the sum of N86,000,000.00 (Eighty Six Million Naira) from AlhajiAliyuldrisShuaibu under the pretext of re-instatement of a Plot No. 4 Cadastral Zone C10 located at Wumba District and

allocation of a new plot of land, a fact which you knew to be false and thereby committed an offence.

Upon arraignment, the Defendant pleaded “not guilty” to the offence charged. The prosecution therefore proceeded to lead evidence in proof of its case beginning with the evidence of the nominal complainant, AlhajildrisAliyuShuaibu who testified as PW1 on 5th of June, 2017.

In his evidence in chief, the PW1 stated that he had a property which was revoked by the then Minister of the Federal Capital Territory in 2013. That one Gogobiri, an uncle of his, then brought the Defendant to his house and introduced the Defendant to him as a staff of Abuja Geographic Information System (AGIS) and that the Defendant promised to get his revoked property re-instated. They agreed to sign a memorandum of understanding which he was advised against by his counsel. That they agreed on a fee.

The PW1 further stated that the Defendant kept calling him from time to time and that since he was convinced that the Defendant was a staff of AGIS by virtue of the ID card shown to him by the Defendant, that he started paying the fee charged by the Defendant, which was the sum of N150,000,000 without the knowledge of his lawyer. That after paying about N86,000,000, he complained to the Defendant that the process was taking long. Whereupon, the Defendant invited him to AGIS, and that at AGIS gate, they were refused entrance and he wondered why the Defendant, being a staff of Abuja Geographic Information System (AGIS) refused to give his ID card to them at the gate. That he later intervened and they were then allowed access into Abuja Geographic Information System (AGIS) and the Defendant took him to the Deputy Director, lands who disclaimed the Defendant as a staff of

Abuja Geographic Information System (AGIS), and that he later found out that 90% of the information given to him by the Defendant was not real.

He stated that when the Defendant could not deliver on his promises, he informed his lawyer who petitioned the Economic and Financial Crimes Commission. The said petition was tendered and admitted in evidence as Exhibit PW1A.

Under cross examination, the PW1 stated that he was angry with the Defendant because the process of re-instatement was taking long and that he advised the Defendant to stop the process when he found out that the Defendant was not a staff of AGIS. He admitted that he knows that the process of re-instatement is done in stages and that in all the stages money is spent.

One Inspector Mohammed, a Police Officer serving with the EFCC gave evidence as PW2 on the 11th day of December, 2017. He told the Court that based on a petition written by the nominal complainant's lawyer against the Defendant, the case was assigned to his team for investigation. He stated that in the course of the investigation, they sent letters to various banks and that the responses they received showed that the nominal complainant made some payments into the Defendant's account.

The following documents were tendered in evidence by the PW2;

1. Exhibit PW2A – Letter from EFCC dated 28/1/16.
2. Exhibit PW2B – Letter from EFCC dated 5/2/16.
3. Exhibit PW2C – Letter from EFCC dated 1/3/16.
4. Exhibit PW2D – Letter dated 21/3//16.

5. Exhibit PW2E – Certificate of authentication from EcoBank PLC.
6. Exhibit PW2F – Bundle of Statement of Account of Hisni Nig. Ltd from First Bank PLC.
7. Exhibit PW2G – Certificate of authentication in respect of Exhibit PW2F.

The PW2 was duly cross examined by the defence counsel during which he told the Court that from his investigation, the nominal complainant contracted the Defendant to facilitate the re-instatement of his revoked Plot No. 4. When asked how much the parties agreed upon, he said he did not know.

On the 8th day of February, 2018, one Idemudia Kenneth, an operative of the EFCC testified as PW3. He told the Court that his team received a petition from the Department of State Service against the Defendant following which they wrote letters to banks and to the FCT Department of Land Administration and responses were received from the various institutions. He stated that from the analysis of the statement of accounts received from the banks, they discovered that the Defendant withdrew various sums of monies in Naira and Dollars from the accounts of the nominal complainant.

The following exhibits were tendered in evidence by the PW3;

1. Exhibit PW3A – Statement of Accounts from EcoBank.
2. Exhibit PW3B – Account Documents from First Bank.
3. Exhibit PW3C – List of payments made to the Defendant by the nominal complainant.
4. Exhibit PW3D-D4 – Copies of cheques issued to the Defendant.
5. Exhibit PW3E – Search Warrant.

The PW3 was cross examined by the defence counsel during which he told the Court that their investigation revealed that there was an agreement though not written, between the nominal complainant and Defendant, for the Defendant to help the nominal complainant re-instate Plot No. 4. He stated that the complaint of the nominal complainant was that his agreement with the Defendant was not achieved.

The PW3 admitted under cross examination that there is no report from AGIS that the process of re-instatement is not going on and that he does not know the extent the Defendant had performed in the job given to him by the nominal complainant. He stated that the nominal complainant wants the Defendant to either re-instate the land or refund his money.

The PW3 further confirmed that most of the cheques given to the Defendant by the nominal complainant were not presented for payment. He stated that the nominal complainant sought the assistance of relevant agencies to investigate the matter when the Defendant became evasive.

Giving evidence in his defence as DW1, the Defendant told the Court that he is a business man who deals in real estate. That on the 19th day of January, 2012, he was in his office when he got a call from one AlhajiGogobiri, requesting to see him. He stated that he directed the said AlhajiGogobiri to his office at No. C309, Garki Mall. That AlhajiGogobiri came to his office with one David and the nominal complainant (PW1) and requested him to assist them to re-instate the nominal complainant's plot at No. 10, Wumba District which was revoked by the government on the ground that the PW1 could not meet up with the development of the plot.

The DW1 told the Court that they agreed on the sum of N150m as his fees to facilitate the re-instatement of the plot. He stated

that the PW1 did not pay him the agreed sum but that he paid by various instalments, the total sum of N14.7m. That some of the payments were made in Naira currency while some were in Dollars.

He stated that following the instruction of PW1, he wrote an application to the Director of Lands, Abuja Geographic Information System (AGIS) for the re-instatements of the land. That along the line, after he had submitted the letter and Abuja Geographic Information System (AGIS) had commenced action on same, the PW1 called him and instructed him to stop work. That he enquired from the PW1 if there was any problem and the PW1 said there was none.

The DW1 stated that before the PW1 instructed him to stop work, that Abuja Geographic Information System (AGIS) had invited him to visit the site following which he mobilized the staff of Abuja Geographic Information System (AGIS) for the site inspection. Furthermore, that the file had been minuted to the Executive Secretary.

He told the Court that he paid an unreceipted sum of N3.5m as mobilization fee for the visit of the staff of Abuja Geographic Information System (AGIS) to the site. That he also mobilized the staff of Development Control to the site to confirm that there are already existing buildings on the land.

Testifying further, the DW1 told the Court that he is not privy to Exhibit PW3C. That the retainership instruction from PW1 was in writing but that PW1 declined from signing same.

On when the PW1 terminated the instruction, the DW1 stated that 7 months after the commencement of work, the PW1 terminated same. That no further monies were paid to him after PW1 instructed him to stop work.

He stated that the re-instatement process is done in stages, and that they were at the final stage when he was disengaged by the PW1, as the file was by then, already before the Executive Secretary and a committee headed by one Adamulmaila was to decide on the file.

The DW1 stated that two years after the PW1 stopped his work, he was detained by the Police for two days at the instance of the PW1 who alleged that he dupped him (PW1) of the sum of N86m. That PW1 left after the Police asked him to provide evidence to show he was dupped by DW1, and that while they waited for PW1, he continued to report to the Police Station on daily basis until after two months, the Police told him to stop coming that the PW1 had withdrawn the case.

That three months thereafter, the Economic and Financial Crimes Operatives came and arrested him in his office at Garki Mall on the basis of a petition by PW1. That he told the EFCC that he only collected N14.7m from PW1 and that he had spent the money on the work which PW1 contracted him to do, and that EFCC insisted he must refund the money, consequent upon which he paid the sum of N1.5m to the PW1 through EFCC.

He stated that two months later, he was further detained and he had to give them another N1m. The DW1 told the Court that there was no incidence where he and PW1 were prevented from entering the premise of the Abuja Geographic Information System. He stated further, that after PW1 gave evidence in Court, the PW1 told him to continue the job of re-instating the plot so that he could withdraw the case but that he declined.

An application letter to the Director of Lands, Abuja Geographic Information System (AGIS) for plot re-instatement dated

17th January, 2012 was tendered by DW1 and same admitted in evidence as Exhibit DW1A.

The DW1 was duly cross examined by the prosecution during which he maintained that the sum of N14m, out of the agreed fee of N150m, was given to him by the PW1, and not N86m. He admitted visiting the house of PW1, but stated that he did so to give PW1 updates after the PW1 and Gogobiri had visited his office.

One Franklin Ibe, a staff of the Defendant's company, Diyke Global Resources, gave evidence for the defence as DW2. He told the Court that his company is a consulting firm for property and also handles contracts.

He told the Court that he was present when sometimes in 2012, one AlhajiGogobiri came to his office at suite 309, Garki Mall, in company of the PW1. That they approached his boss, the Defendant, and requested him to help them facilitate the reinstatement of a revoked plot. That the Defendant charged them the sum of N150m and they agreed, and after some days, the PW1 issued three (3) cheques in the sums of N3m, N3m and N4m respectively.

He stated and confirmed Exhibit DW1A as the letter he was referring to written to Federal Capital Territory and stated that he personally submitted the original of the said letter to Abuja Geographic Information System (AGIS).

That an approval thereafter came from the Federal Capital Territory office, directing the Urban and Rural Planning, and Development Control to go for site inspection. The DW2 stated that the PW1 sent AlhajiGogobiri from time to time to their office to find out developments about the re-instatement, and after 3 months, the PW1 came to their office and terminated the

contract and said that the Defendant should forget about the facilitation fee.

He told the Court that Exhibit PW3C did not emanate from their office, and that to the best of his knowledge, the total sum given to the Defendant by PW1 was N14.7m, and that the PW1 later said the Defendant should refund the said sum of N14.7m.

Under cross-examination, the DW2 told the Court that the PW1 brought the letter headed paper of the company with which he got the land allocation, to their office and they used the paper to write the application letter (Exh DW1A) and same was signed by the PW1.

At the close of trial, the parties filed their respective final written addresses. In his final written address filed on the 29th day of November, 2019, learned counsel for the Defendant, A.P. Samson, Esq, raised a sole issue for determination, namely;

“Whether from the available evidence on record, whether (sic) the prosecution has proved his (sic) case beyond all reasonable doubt against the Defendant?”

Proffering arguments on the issue so raised, learned counsel contended that the prosecution has failed to prove all the essential ingredients that constitute the offence of obtaining property by false pretence as provided for in Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

He listed the following ingredients of the offence of obtaining by false pretence as enunciated in the case of **Omoredede Darlington v. FRN (2018) ELC 2451 P.1**, to wit;

1. A pretence made by way of representation;
2. From the Accused person;

3. To the person defrauded;
4. The representation is a pretence.
5. The Accused knows or has reason to know that the representation is false or does not believe in the truth of the representation.
6. The Accused made the false representation with the intent to defraud the victim to whom the false representation was made.
7. In consequence of the false representation, the accused induced the victim to deliver or transfer some property or interest in the accused or some other person.
8. The property transferred is capable of being stolen.

Learned counsel contended that the failure of the prosecution to call vital witnesses, to wit; AlhajiGogobiri, Deputy Director of Abuja Geographic Information System (AGIS) and counsel to PW1, who were said to be present when the Defendant allegedly falsely represented himself as a staff of Abuja Geographic Information System (AGIS); is fatal to the case of the prosecution. He referred to **ChukwukaOgudu v. State (2011) NSCQR Vol. 48 P.377**, where it was held that failure to call a vital witness by the prosecution is fatal to the prosecution's case.

He argued to the effect that there is no evidence before the Court establishing false representation from the Defendant to the PW1. That the evidence adduced before the Court established the fact that PW1 engaged the professional services of the Defendant as a consultant, to facilitate the re-instatement of Plot No. 4 Wumba District, Abuja, at a consideration of the sum of N150,000.000.00.

Learned counsel further argued to the effect that the prosecution was unable to prove that the Defendant received

the sum of N86,000,000.00 from PW1. He contended that Exhibit PW3C which contains the sum of N86,000,000.00 was not tendered by PW1, neither did he identify same in the course of his evidence. He further contended that the said Exhibit PW3C was not signed by the Defendant as to qualify for an acknowledgement of receipt of money and urged the Court to discountenance same. He referred to **Nwofor v. Obiefuna (2011) 1 NWLR (Pt 1227) 205.**

Learned counsel further contended that what transpired between the PW1 and the Defendant, is purely civil in nature, the PW1 having admitted engaging the professional services of the Defendant to facilitate the re-instatement of Plot No. 4, Wumba District, Abuja which was revoked by the FCT Minister. He argued that the amount of consideration involved in the transaction, to wit; the sum of N150m is immaterial as that was what was agreed to by the parties, and that the evidence before the Court is to the effect that the re-instatement was not concluded because the PW1 stopped the process as he complained that it was taking too long.

Relying on Section 8(2) of the Administration of Criminal Justice Act, 2015, he posited that the Economic and Financial Crimes Commission, do not have the powers to arrest the Defendant in the circumstances of this case, being a civil transaction.

Arguing further, learned counsel contended that the Defendant having testified that the process of re-instating the plot was on-going before the PW1 stopped same, there is nothing to the contrary before the Court to show that the process of re-instatement was not on-going before the Defendant was stopped by PW1. He referred to **Olalomi Industrial development Bank Ltd v. Nigeria Industrial Development**

Bank Ltd (2009) NSCDQR Vol. 39, pg 240 as he contended that the Court cannot speculate or hold that the process of reinstatement was not on-going before being halted by the PW1, in the absence of any evidence to that effect.

He further urged the Court to treat all the exhibits tendered by PW2 and PW3 as documentary hearsay as none of the said exhibits were identified by the PW1 in the course of giving evidence, as to support his case.

He argued that the evidence of the prosecution witnesses are inconsistent with the charge, and that the Defendant is thus entitled to the benefit of doubt arising from the contradictions in the evidence of the prosecution. He referred to **Godwin Alao v. The State (2015) ELC 1532 SC P.1; The State v. Musa Danjuma (1997) NSCQR P.780.**

He contended in conclusion, that failure of the prosecution to establish each of the ingredients of the offence charged, entitles the Defendant to an acquittal. He urged the Court to so hold.

The Defendant's counsel also filed a "reply on points of law", wherein he essentially re-argued his submissions to the effect that the prosecution has been unable to prove the essential ingredients of the offence of obtaining money by false pretence.

The learned prosecution counsel, Mukhtar Ali Ahmed, Esq, in response, raised a sole issue for determination in the prosecution's final written address, to wit;

“Whether the prosecution has proved the essential ingredients/elements of the offence alleged against the Defendant beyond reasonable doubt to warrant his being found guilty (and) consequently convicted?”

In arguing the issue so raised, learned counsel posited that the prosecution being aware of the burden placed on it to prove the guilt of the Defendant beyond reasonable doubt, diligently conducted a thorough investigation and painstakingly placed before the Court, both oral and documentary evidence in discharge of the burden of proof. He contended that the prosecution has, by the totality of evidence placed before the Court, proved its case beyond reasonable doubt.

He posited that the standard of proof in criminal cases, is proof beyond reasonable doubt and not proof beyond all shadow of doubt. He referred to Section 135 of the Evidence act, 2011; **Iortim v. State (1997) 2 NWLR (Pt 490) 711 @ 732; Udo v. State (2006) All FWLR (Pt 337) 456 @457.**

Learned counsel urged the Court to hold that the prosecution has proved all the ingredients of the offence of obtaining money by false pretence beyond reasonable doubt and to convict the Defendant accordingly.

He identified the ingredients of obtaining by false pretence, pursuant to Section 20 of the Advance Fee Fraud and Other Related Offences Act, 2006, as:

- a) That there is a pretence.
- b) That the pretence emanated from the accused.
- c) That it was false.
- d) That the accused knew of its falsity or did not believe in its truth.
- e) That there was intention to defraud.
- f) That the thing is capable of being stolen.
- g) That the accused person induced the owner to transfer his whole interest in the property.

On the 1st and 2nd ingredients, learned counsel contended to the effect that the prosecution established by the evidence of PW1, that the Defendant introduced himself as a staff of Abuja Geographic Information System (AGIS), and in a position to assist PW1 re-instate his property at Plot No. 4, Wumba District, Abuja; for which the Defendant demanded a total sum of N150m, out of which he was paid a total sum of N86m. He posited that the evidence before the Court show that the Defendant is not a staff of AGIS and not in a position to assist the PW1 re-instate the said plot.

On the 3rd, 4th and 5th ingredients, he contended that the totality of the evidence adduced by the prosecution are clear on the issue. That the Defendant knew that the purported act of re-instatement of plot No. 4, Wumba District, Abuja was not genuine but gave the PW1 the impression that he was in a position to do so.

On what constitutes false pretence and how same may be committed, he referred the Court to Section 20 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and **Onwudiwe v. FRN (2006) 10 NWLR (Pt 988) 392.**

Placing reliance on **Obembe v. Ekele (2001) 10 NWLR (Pt 722)** learned counsel posited that a document, such as Exhibit PW3C, recovered during the course of investigation, is admissible in evidence, and need not be tendered through the maker thereof. He contended that Exhibit PW3C is very crucial to the case as it linked the Defendant to alleged offence of obtaining money under false pretence.

He urged the Court to hold that the prosecution has established a case of obtaining money under false pretence against the Defendant.

On the 6th and 7th ingredients of the alleged offence, learned counsel posited that there is no doubt that the amount of N86,000,000.00 which the Defendant allegedly defrauded the PW1 with, is capable of being stolen. He argued that it is clear from the evidence before the Court that the Defendant induced PW1 to transfer total ownership of his N86m to him.

Learned counsel contended that the pieces of evidence adduced by the prosecution have not been discredited by the Defendant and that the prosecution has proved all the ingredients of the offence of obtaining money under false pretence against the Defendant. He urged the Court to find the Defendant guilty as charged.

In the determination of this charge, this Court will adopt for consideration, the sole issue raised by the prosecution in their final written address, to wit;

“Whether the prosecution has proved the essential ingredients/elements of the offence alleged against the Defendant beyond reasonable doubt to warrant his being found guilty and consequently convicted?”

The law is trite that the burden of proof in criminal cases, lies on the prosecution, and this burden never shifts. The duty of the prosecution is to discharge this burden beyond reasonable doubt and where the prosecution fails to discharge this burden, it renders the benefit of doubt in favour of the Defendant. See **Nnajofofor v. People of Lagos State (2015) LPELR-24666 (CA)**.

This burden of proof on the prosecution stems from the constitutional presumption of innocence of an accused person as guaranteed by the constitution of the Federal Republic of Nigeria, 1999 (as amended) in Section 36(5). Because

an accused person is constitutionally presumed innocent until he is proved guilty, the burden to prove his guilt remains static on the prosecution who must discharge same beyond reasonable doubt.

See **Richard v. State (2013) LPELR-22137 (CA)**. The Defendant in his case has been charged with the offence of obtaining property by false pretence contrary to Section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

The said Section of the Act provides thus;

“(1) Notwithstanding anything contained in any other enactment or law, any person who by 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; or

(b) Induces any other person, in Nigeria or in any other country, to deliver to any person, any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence, commits an offence under this Act.”

The essential ingredients of the offence of obtaining by false pretences, have variously been identified and established in a plethora of judicial authorities. These are ingredients or elements which the prosecution must prove in order to secure a conviction on a charge under Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006. In **Mukoro v. FRN (2015) LPELR-24439 (CA)**, the Court of Appeal, per Ogakwu, J.C.A, held thus:

“It is a hornbook law that the ingredients or elements that are required to be proved to establish the charge of obtaining money by false pretences are:

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

It is the duty of the prosecution to establish the existence of the above ingredients by credible evidence and not to merely allege that the said ingredients exist or have been made out.

In the instant case, the particulars of the offence has it that the Defendant, sometime between 2012 and 2013, by false pretence and with intent to defraud obtained the sum of N86,000,000.00 (Eighty-six Million Naira) from AlhajldrisShuaibu under the pretext of re-instatement of a Plot No. 4 Cadastral Zone C10, located at Wumba District and allocation of a new plot of land, a fact which the Defendant knew to be false, and that he thereby committed an offence.

In adducing evidence to prove the charge, the prosecution fielded the nominal complainant, AlhajiAliyuIldrisShuaibu, who testified as PW1. The sum of the evidence elicited from PW1 is that one Gogobiri, an uncle of his, introduced the Defendant as a staff of Abuja Geographic Information System (AGIS), and that the Defendant equally introduced himself as a staff of AGIS and promised to help him facilitate the re-instatement of his plot of land (26 hectares) which was revoked by the Minister of the

Federal Capital Territory at a fee of N150m out of which N86m was paid. It was discovered later that the Defendant was not a staff of Abuja Geographic Information System (AGIS) as alleged and the job was also not done, in consequence of which he petitioned the Defendant to the Economic and Financial Crimes Commission (EFCC).

By the evidence of PW1 that he stopped the Defendant from continuing with the process of re-instatement because it was taking too long, and particularly because he found out that the Defendant was not a staff of Abuja Geographic Information System (AGIS), it is evident that the fulcrum of the charge against the Defendant is that he falsely represented to the Defendant that he was staff of Abuja Geographic Information System (AGIS), and therefore, in a position to facilitate the re-instatement of the plot.

Curiously, the investigation of the prosecution, as evidenced by the testimonies of the operatives of the Economic and Financial Crimes Commission (EFCC), PW2 and PW3, centred solely on the monies received from the PW1 by the Defendant. It is not for the prosecution to merely show that the Defendant obtained money from the PW1; it must be established that he did so by false pretences. The first question therefore, should be whether there was a false pretence emanating from the Defendant by means of which he obtained the alleged sum from the Defendant? This is particularly so, as the Defendant, admitted the receipt of the sum of N14.7m as part payment out of the agreed N150m for professional fee to facilitate the re-instatement of the Defendant's plot. The Defendant testified that he did not introduce himself to the Defendant as a staff of Abuja Geographic Information System (AGIS), and that on the contrary it was the Defendant's uncle, Alhaji Gogobiri, who brought the Defendant to his office at No. C309, Garki Mall,

Abuja, and requested for his services to help facilitate the re-instatement of the Defendant's land.

The PW3 admitted under cross examination, that there is a report from Abuja Geographic Information System (AGIS) that the process of re-instatement of the plot is on-going, and that he does not know the extent the Defendant had performed in the job given to him by the nominal complainant. The prosecutor did not go beyond this. The offence of obtaining by false pretence, denotes obtaining another property by misrepresenting a fact with the intent to defraud. The false intent to defraud must emanate from the Defendant and that the Defendant has the knowledge of the falsehood and to conclude the act, the Defendant induced the owner of the property to transfer or give in part or whole the said property which could be liquid money or solid property. The form of the property is immaterial. The ingredient of the offence and its description has been elaborately defined in Section 20 – Advance Fee Fraud and Other Related Offences of 2006. In **Captain Ezekiel Agaba v. FRN (2018) LPELR (CA)** the Court of Appeal has defined false pretence to mean

“a representation, whether deliberate or reckless, made by word in writing or conduct...”

of which the maker of the statement knows it is false and does not believe its truth. The question then is whether the Defendant is representing the fact that he would re-instate the revoked land which is an existing fact, did he take steps to actualise the re-instatement of the said land. The answer is yes from both the prosecutor's witnesses and the defence.

The PW3 found that the re-instatement was on-going, application was written, steps were taken to visit the site warranting the exchange of monies to effect the job. It is

immaterial how much that is involved. These steps taken eliminated the issue of false pretence and intention to defraud. My finding from the evidence of PW1 and why he took the steps to institute this action was that he was angry with the Defendant because the process of re-instatement by the Defendant was taking long. The prosecution did not establish any fraudulent misrepresentation by false statement on the part of the Defendant. The prosecution did not establish any false inducement. It is my finding that the Defendant took steps he believed would yield the result the PW1 wanted.

In respect of the false identity of the Defendant, the prosecution executed a search warrant (Exh PW1E) on the premises of the Defendant and found nothing. Not even the false Abuja Geographic Information System (AGIS) Identity Card was recovered and tendered to establish the false identity of the Defendant.

The prosecution has thus left a serious doubt in the mind of this Court which the law enjoins the Court to resolve in favour of the Defendant.

It is only where it is established that there was a false pretence with intention to defraud that the property obtained by the Defendant will constitute an offence punishable under Section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006. Other than that, the remedy of the nominal complainant will lie in a civil suit under contract.

The Supreme Court, in **Ijuaka v. C.O.P. (1976) LPELLR-1466 (SC)**, per Obaseki J.S.C, cited with approval the case of **R v. John James Sullivan 30 Cr App R 132** where it was held that;

“In order that a person may be convicted of that offence (obtaining property by false pretence, with intent

to defraud), it has been said hundreds of times that it is necessary for the prosecution to prove to the satisfaction of the jury (Court) that there was some mis-statement which in law, amounts to a pretence, that is, a mis-statement as to an existing fact made by the accused person; that it acted upon the mind of the person who parted with the money; that the proceeding on the part of the accused person was fraudulent. That is the only meaning to apply to the words 'with intent to defraud'...

The pretence laid must be proved and must be proved to be the only irresistible influence operating on the minds of PW2 and PW3."

The Defendant maintained that he did not make any representation to PW1 as to being a staff of Abuja Geographic Information System (AGIS). He also tendered in evidence Exhibit DW1A to show part of the steps he took towards performing the act which the PW1 contracted him to perform. The prosecution could not by credible evidence, prove anything to the contrary.

Although the law is trite that the prosecution need not call any number of witnesses to prove its case, but failure to call a vital witness such as AlhajiGogobiri has been held to be fatal to the prosecution's case. See **Sunday v. State (2014) LPELR-24415 (CA)**.

After painstakingly going through the pieces of evidence before this Court, I cannot but agree with the learned defence counsel that the prosecution has failed woefully to prove the essential ingredients of the offence of obtaining money or property by false pretences.

The doubt left in my mind by the prosecution is resolved in favour of the Defendant. Accordingly, this Court finds the Defendant 'Not Guilty'.

The Defendant is accordingly discharged and acquitted.

HON. JUSTICE A. O. OTALUKA
10/3/2020.