

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 12TH DAY OF FEBRUARY, 2020.
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

CHARGE NO: CR/11/13.

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT

AND

WADA KAWU BASHIR.....DEFENDANT

JUDGEMENT.

The defendant, Wada Kanu Bashir was arraigned before this court via a 3 count charge for offences of criminal breach of trust contrary to section 311 and punishable under section 312 of the penal code, cheating contrary to section 320 and punishable under section 325 of the penal code and criminal intimidation, contrary to section 396 and punishable under section 397 of the Penal Code Law.

The charge was filed on the 18th of September, 2013 against the Defendant. Application for Leave to prefer a criminal charge against the defendant was granted by the court on the 28th of October, 2013 wherein the charge was deemed properly filed.

The Defendant is charged before this court as follows:

Count One:

That you Wada Kanu Bashir, "M" of Al-leem Motors, on or around 21st day of May, 2012 at Abuja, within the Judicial Division of this Honourable Court obtained the sum of N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira) from one Alhaji Aminu Maigari of Woodfield Estate, Abuja on the pretence that you will purchase a 2011 model BMW X6 Jeep for him, and the said amount paid to you through your Finbank account, but fraudulently

gave him an older BMW X6 model which you knew was not mechanically sound and converted the money to your use and hereby committed criminal breach of trust, an offence contrary to section 311 and punishable under section 312 of the Penal Code Law.

Count Two:

That you Wada Kanu Bashir, "M" of Al-leem Motors, on or around 21st day of May, 2012 at Abuja, within the Judicial Division of this Honourable Court did fraudulently or dishonestly induced Alhaji Aminu Maigari and deceived him to give you the sum of N13,500,000.00 (Thirteen Million Five Hundred Thousand Naira) from one Alhaji Aminu Maigari of Woodfield Estate, Abuja on the pretence that you will purchase a 2011 model BMW X6 Jeep for him, and the said amount paid to you through your Finbank account, but fraudulently gave him an older BMW X6 model which you knew was not mechanically sound and converted the money to your use and hereby committed an offence of cheating criminal contrary to section 320 and punishable under section 325 of the Penal Code Law.

Count Three:

That you Wada Kanu Bashir, "M" of Al-leem Motors, on or around 10th day of October, 2012 at Abuja, within the Judicial Division of this Honourable Court did threatened the life of the Complainant Alhaji Aminu Maigari, that you will kill him if he reported this matter to the police. You also threaten the life of the Investigating Police Officer (IPO) Funmi Eguaoje that you are going to deal with her if the matter is taken to court and, you hereby committed an offence of Criminal intimidation, an offence contrary to section 396 and punishable under section 397 of the Penal Code Law.

The charge was read and explained to the Defendant in English, the language of his election. He pleaded not guilty to the three count charge on the 4th of March, 2014.

The gist of the prosecution's case before the court is that he paid the defendant N13,500,000.00 to supply him a BMW X6 2012 Model Car, but upon delivery, he found that it was a 2009/2010 model. And that it had dents and bruises reflective of the fact that it wasn't a new car. He complained to the defendant who failed to refund his money nor bring the latest model as he promised. He reported the matter to the police.

The defendant on the other hand denied this allegation and posited that the car was not a 2009/2010 model but that of 2011. After the issue was reported to the police it was agreed that he should sell the car to enable PW1 get his money back. The car was taken by the police before it could be sold by him and kept there.

The prosecution in proof of its case called two (2) witnesses, AMINU MAIGARI, nominal complainant and the investigating police officer, Funmilayo Eguaje.

On the 20th of November, 2014 Aminu Maigari, the nominal complainant gave evidence as PW1.

His evidence is to the effect that he gave the defendant the sum of N13,500,000.00 to buy a BMW X6 2012 Model pursuant to which the car was brought. Upon inspection of the vehicle, he discovered that the car delivered to him by the defendant is a 2009/2010 model of BMW X6 as against 2012 model he requested for. He also noticed that the car had dents and bruises. He immediately called the defendant to inform him and returned the car. The defendant promised him at the police station that he was going to bring a newer model of the car to him which he never did. And that he also failed to return his money.

The entire evidence of PW1 is before the Court, has been carefully examined and would be referred to when found necessary in the course of this judgement. He tendered the following Exhibits:

Exhibit 'A' is the Certified True Copy of the petition to the police dated 3/9/12.

Exhibit 'B1 and B2' are the cash receipts and invoices from Al-leem Motors Ltd both dated 21/5/12.

Under Cross examination by the defence counsel, PW1(Aminu Maigari) testified that:

He met the defendant when he wanted to buy the car through AMINU IBRAHIM who is one of defendant's boys. He expressed his desire to buy the BMW to the defendant through same Aminu who later brought the BMW to his house. When he brought the said BMW to his house, he inspected it and tested it within the Estate. He said he was not shown the model of car nor the mileage (distance it had covered), although he agreed he saw the dash board in the 2 minutes process of test driving the car. He was not convinced that he liked the vehicle. He had paid for the car before delivery. He cannot remember the date in 2012 when he inspected the vehicle. The car was delivered to him two days after payment. He returned the car the next day. He did not inspect and test drive before he made payment. He stated that he is a licensed Driver and agrees that after driving a car for one or two minutes, one can read the mileage from the dash board.

He reported the matter to the police sometime in September, 2012 through his Lawyer. The parties were invited and there was a gentleman Agreement to the effect that the defendant would sell the car and refund his money. And for discreet investigation the car was taken to the police and the car is still with the police. He returned the vehicle because of the year (model) of the car. He did not return the car as soon as it was delivered but a day after. There was a time frame which he cannot remember for sale of the vehicle and refund of the money. It is true there was a transaction between the two of them. There's a Civil matter in respect of the transaction to recover his money which is subject of Appeal.

On 14th May, 2015 (Eguaje Fumilayo) testified as PW2. She tendered Exhibit C, D and E.

Exhibit C is the statement of the Defendant dated 27/02/2013.

Exhibit D is the letter from FCMB dated 16/5/13 with attached statement of account.

Exhibit E is the Certified True Copy of the letter from the Nigerian Police Force to GM of FCMB Plc dated 6/5/13.

The entire examination in chief of the PW2 as the investigating police officer is in the records before the court.

Under cross examination, PW2 further testified that:

She has been investigating cases for over 15 years and investigated this case very well. The car in issue has been under police custody since around June/July 2013. It's Alhaji Maigari that brought the car to them in company of one of his boys. She cannot remember the model of the BMW in their custody and cannot agree it's a 2011 model because she can't remember but that the receipts show it's model 2011.

In the course of the investigation, the complainant said that he requested for the newest model at that time but he was supplied one that wasn't the model requested hence he rejected it. she is not aware that Alhaji Magari inspected the vehicle before and after payment. The defendant and Ibrahim brought the car to the police station and not the complainant. When the case was reported, investigation revealed that Alhaji Magari returned the vehicle a day after receipt when he discovered that it wasn't what he requested for. She doesn't know if the complainant drove the car for just one day.

The defendant received the money and transacted on behalf of the company. The vehicle was entrusted to the defendant by the nominal complainant. The Defendant represented El-Aleem Motors, he collected money and issued receipts on company's behalf. And when the case was reported to the police he didn't deny all the transaction.

The parties in company of their Lawyers agreed for a dispute resolution by parties. They gave them time and at the end of the day they came back to inform them that the defendant has agreed to refund the money after one month. They said they will pay the money and send it to the complainant. The vehicle was not with the police at that time. When the vehicle eventually came to the police, it was 2 months after their agreement failed, they asked the defendant to bring the car to the police station. He dropped the car and ran away.

The vehicle in question is a BMW 7 series. She doesn't know if the vehicle was test run and doesn't know the mileage at the time the vehicle was brought to the police station. The whole sum paid by the nominal complainant is N13.5 million.

On the 8th of November, 2017 Ibrahim Usman gave evidence and testified as DW1. The entire evidence in chief of DW1 which has also been carefully scrutinised is before the court. The evidence would be referred to when found necessary.

Under cross examination, DW1, Ibrahim Usman, continued his testimony which is summarised hereunder:

He has known and has been carrying on business of selling cars with the Defendant for more than 20 to 25 years. He knows Alhaji Aminu Maigari, the nominal complainant, PW1. When he took the car to PW1's house, he was well aware of the transaction between PW1 and the Defendant. He's aware that the 2011 model of the car they supplied the PW1 was already used, it was a second hand. He's not aware that the defendant promised to return the PW1's money. During the investigation of this case, he went to the police station, FCT police Command and made statement there by his hand.

That the vehicle in issue was taken to the police command by him during investigation. He took it accompanied by the police and they recorded it when they got there.

On the day he took the vehicle to the police, he cannot remember writing anything down. The vehicle wasn't in any problem shape when he took it to the police command.

Upon re-examination, DW1 further testified that he was with a woman police when he took the car to the police station. The car was in good condition when he took it to the police station that day with the police woman.

On 15th March, 2018 the defendant, Alhaji Wada Kanu testified as DW2. The said evidence of DW2 is as reflected in the records before the court, it has been carefully examined and would be specifically referred to when found necessary.

Under cross examination by the prosecution, DW2's further testimony is before the court and summarised thus:

That the nominal complainant, PW1 negotiated with him for a 2011 model of BMW X6 vehicle. He supplied same model to him for a cost of N13.5million . It's not correct that he promised to return PW1's money when the issue of the vehicle now with the police became subject matter of investigation. He has been in motor business for more than 20 years and has very vast experience in vehicle sale/purchase.

At the close of evidence, both parties filed, exchanged and adopted their final written addresses before the court.

The Defendant in his final written address filed on 25th of February, 2019 formulated one issue for determination:

Whether the prosecution has proved its case beyond reasonable doubt, all the charges against the Defendant?

The prosecution in turn adopted its final written address filed on 5th November, 2019 wherein similar issue as that of the defendant was raised for resolution. And the defendant responded to the prosecution's final address via a reply on points of law filed on 13th November, 2019.

The final written and oral addresses of the parties are before the Court and would be specifically referred to when and where found necessary.

I HAVE CONSIDERED the case of the prosecution, the defence of defendant and the final written and oral addresses of both parties. And I am of the view that the sole issue for determination here is:

Whether the prosecution has successfully discharged the burden placed on her by law to prove the charge against the defendant herein, beyond reasonable doubt.

The three count charge for which the defendant is standing trial borders on criminal breach of trust, cheating and criminal intimidation.

The court would have to examine the ingredients of each of these offences and juxtapose them one after the other with the evidence adduced to determine the merit or otherwise of this charge.

The first count of the charge is criminal breach of trust, an offence contrary to Section 311 and punishable under section 312 of the Penal Code Law.

The offence of Criminal breach of trust is defined in Section 311 of the Penal Code as follows:

“Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.”

It is settled law that in order to establish and secure a conviction for the offence of criminal breach of trust, the prosecution must prove or establish the following ingredients-:

(a) That the defendant was entrusted with property or with dominion over it.

(b) that he;

(i) misappropriated the property

(ii) converted such property to his own use

(iii) disposed of it.

c. that he did so in violation of :-

(i) any direction of law prescribing the mode in which such trust was to be discharge; or

(ii) any legal contract expressed or implied which he had made concerning the trust; or

(iii) he intentionally allowed some other persons to do or commit the above stated,

d. that he acted dishonestly as in (b) above

See

IBRAHIM & ORS. V. C.O.P. (2010) LPELR-8984 (CA) PP.17-18, Paras. E-B.

ONUOHA V. THE STATE (1988) 3 NWLR (PT.83) 460 (SC) or (1988) LPELR-2706 Pp. 10-11, Paras. F-C.

See particularly:

**UZOAGBA & ANOR v. COP (2012) LPELR-15525(SC) Pg. 25-26
Paras E-D**

And

**FEDERAL REPUBLIC OF NIGERIA v. ADAMU A. NUHU & ANOR
(2015) LPELR-26013(CA) Pg. A-C**

It is also settled law that in a criminal trial the important question always is whether there is evidence on every material ingredient of an offence that ought to be believed and/or disbelieved. And the Court is obligated to examine, analyse and weigh every material evidence before the court. For support of this See:

AHMADU V. STATE (2014) LPELR-23974(CA) (P. 51, paras. B-E)

**BELLO V. STATE (2007) 10 NWLR (Pt 1043) 564 Pp. at 585
Paras. G-H.**

There's the need at this point therefore to carefully examine and weigh the totality of evidence before the court vis-a-vis the essential ingredients of the offence as seen above to arrive at a just determination of count one of the charge.

The prosecution, in proof of her case, called two witnesses, PW1 and PW2.

The PW1 in his evidence under cross examination stated that it's correct that the defendant brought the said BMW to his house, he inspected the car and test drove the car within the Estate for about 2 minutes. And that in the process of test driving the car that he saw the dash board of the car and he was not convinced that he liked the car. It is in his evidence that he paid for the said car before said delivery but cannot remember the exact date he inspected the car in 2012. He also stated that he did not test drive nor inspect the car before payment. It wasn't the PW1 but DW1 and DW2 in their testimony that stated that the PW1 tested the car before payment. Interestingly though the DW2 also said that after payment, they

quickly called the owner of the car who brought the car keys and papers of the car.

The learned defence counsel in his final written address made heavy weather about the applicability of the doctrines of estoppel and waiver as being applicable against the nominal complainant the PW1, Aminu MAIGARI, for the fact that he payed for the car after inspection and testing of the car. He cited several authorities in this regard. Specifically defence counsel submitted that:

“the concept of waiver as enunciated above is applicable in the instant case of the nominal complainant because there was consensus ad idem between the parties, there was opportunity given to the nominal complainant to either accept the car or reject before making payment which the respondent decide on accepting same. Hence his statement to that effect that; “I was not convinced after I drove the car but I paid for it”.”

With due respect to learned defence counsel, it appears he has either misrepresented, misconstrued or misconceived the facts on record before the court. Clearly the above underlined quotation of PW1’S testimony by counsel is not borne out by the records of this court. I cannot help but wonder where that came from. Unfortunately counsel didn’t state specifically where he was quoting from, whether PW1’s evidence before the court or his extrajudicial statement which was not tendered before the court. The only semblance of testimony about the PW1 not being convinced that he liked the car was on 14th May, 2015 and it goes as follows:

“It is the same Aminu that brought the said BMW to my house. It’s correct that when he brought the said BMW to my house I inspected it and tested it within the Estate. I was not shown the model of BMW. I was not shown the mileage (distant it had covered). I test drove the vehicle within the estate for about 2 minutes. In the process of test driving I saw the dash board of the vehicle. After testing it I was not convinced that I liked the vehicle. I paid in 2012 though.”

Also on the 20th November 2014 PW1 also testified that:

“Sometime in May 2012, I was introduced to the accused person by one Aminu that I wanted to buy a BMW X6 2012 model which he said he has and we negotiated at 13.5million naira and he gave me Bank Account number to pay N8.5million at Inland Bank now FCMB and to take cash of N5million naira to him which I did. He gave me receipt and cash invoice of N13.5million.

Thereafter the said Aminu brought the car to me. Upon inspection of the car I discovered it was not looking new at all, there were some dents and bruises on the car and above all we discovered it was a 2009/2010 model as against 2012 model.”

All the submissions and authorities cited by defence counsel apropos of said contention of estoppel and waiver, hold no water and therefore go to no issue for being at variance with the facts, evidence and issues before the court in this case. I would therefore dwell no further on it.

The defence counsel submitted that there’s no evidence before the court to the effect that the car was entrusted to the defendant by the PW1.

However whether or not the car was entrusted to the defendant is of no moment at this point because what the defendant is charged with is criminal breach of trust in respect of the sum of money obtained for the purchase of the car and not for the car itself.

From credible evidence before the court a total sum of N13.5m was paid by PW1 to EL-aleem. through the defendant who is the Chairman. The said sum was paid for reciprocal delivery of a BMW X6. The receipts Exhibits B & C reflects that it was paid in view of BMW X6 2011 model while the PW1 in his examination in chief testified that it was for a 2012 model. The PW2’s evidence is that the said payment was for the then latest model of the car and the defence witnesses testified that the payment was for a 2011 model. Clearly the said sum of money reflected in the Exhibits B1 and B2

as paid by PW1 was entrusted to the defendant in view of payment for supply and delivery of a BMW X6 2011 model Car. The Oxford English Dictionary defines the word ENTRUST as:

'put (something) into someone's care or protection'.

To my mind and in the circumstance, until the car was delivered to the buyer, PW1, the money remains entrusted to the seller, El-Aleem defendant for said purpose.

The existence of the first element of offence of criminal breach of trust, vis: entrusting with property, is found to exist in this transaction.

The next question that arises is whether he (i) misappropriated the money,(ii) converted the money to his own use or (iii) dispose of it in a manner contrary to what was expected of parties in the transaction.

All the witnesses are ad idem on the fact that the BMW X6 car was supplied and delivered to the PW1. Where they differ is on the state and perhaps model of the car requested as against the one supplied. While the PW1 testified he requested for a 2012 model, the payment receipts Exhibit B1 & B2 which he tendered reveals the payment thereon was for a 2011 model BMW X6. The PW1 testified that the car that was delivered to him was a 2009/2010 model used BMW X6. That it had dents and bruises and wasn't looking new. And that when he called defendant to complain, he apologised and promised to give him the right car when his next consignment arrived in two weeks time. The DW2 agreed that it was a used car but a 2011 model as requested. The DW1 also testified that it was a 2011 model as requested that was delivered to PW1. The PW2 said she doesn't know what model was supplied, but that a 2011 model was paid for as reflected in Exhibits B1 and B2. The two defence witnesses testified that it was a BMW X6 2011 model that was requested and paid for by the PW1 as shown on the receipts. The PW2 did not in her evidence state the exact year of model supplied nor requested for by the PW1 but she testified that Exhibits B1 and B2 were issued in respect of the payment of

N13.5m by the PW1. She only stated that the PW1 informed her in the course of investigation that he rejected the car delivered to him because it wasn't the newest model he requested for. There's also no credible evidence before this court that the car paid for via exhibits B1 and B2 was to be a brand new car. Even the PW2, the investigating police officer said she doesn't know the car's model, millage nor whether it was test run before it was brought to the police station. This evidence of the PW2 who is the investigating police officer, in my view is to say the least, ludicrous, when the model, mileage and state of the car forms the bedrock of the events culminating in the petition to the police by the nominal complainant.

Thus the prosecution has not succeeded in establishing by credible evidence that the defendant delivered a car other than that reflected on Exhibits B1 and B2 for which payment for the car was made. In the event therefore the elements of the offence of criminal breach of trust that the defendant misappropriated, converted, disposed off contrary to expectation nor dealt with the car dishonestly has not been successfully established by the prosecution.

Suffice to say that the offence of criminal breach of trust is not sustainable under the circumstance.

This is more so when the PW1 in his evidence stated that when he reported the case to the police, there was a gentleman agreement between parties to the effect that the defendant will sell the car and refund his money. And defendant has stated in his evidence that he did not promise to return the PW1's purchase money.

Thus and in line with the decided cases cited supra, I find without further ado that the prosecution has not successfully discharged the burden to prove beyond reasonable doubt that the defendant committed the offence of criminal breach of trust contrary to section 311 and punishable under section 312 of the Penal Code Law.

It is in the light of the foregoing that I am of the view that the charge for criminal breach of trust under section 311 of the Penal Code cannot succeed. Count one of the charge must therefore fail.

The second count is for the offence of cheating contrary to section 320 and punishable under section 325 of the Penal Code Law. For the court to determine the above second count charge it must examine the provisions of Section 320 of the Penal Code Law which defined cheating as follows:

Section 320 of the Penal Code

“ Whoever by deceiving any person:-

(a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property; or

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

It is trite law that for the prosecution to secure conviction for the offence of cheating, the following elements must be proved:-

1. That the person deceived delivered to someone or consented that some person shall retain some property and
2. That the person deceived was induced by the defendant to part with property; and
3. That the person deceived acted upon the inducement of the defendant; and
4. That the defendant act fraudulently or dishonestly while inducing that person.

In support of the above listed elements for the offence of cheating, See:

MICHAEL UZOAGBO V. C.O.P. (2014) 5 NWLR (PT. 1401) 441 at P.457, Paras. A-C Per Bdliya JCA.

OMUEDA V. FRN (2018) LPELR-46592 PG.11 Paras.B-E.

Now, from the evidence before the Court and the Exhibits, it is not in doubt that PW1 (the nominal complainant) paid for a BMW X6 on the 21st of May, 2012 based on which Exhibits B1 and B2 were issued to the nominal complainant. The issue now is whether the prosecution has been able to prove the above elements of cheating beyond reasonable doubt. The word cheating is defined in Black's Law Dictionary Seventh Edition to mean:

"The fraudulent obtaining of another's property by means of a false symbol or token, or by other illegal practices..."

While Chambers 21st Century Dictionary Revised Edition defined cheat as follows:

"1. to trick, deceive or swindle. 2. (usually cheat someone of or out of something) to deprive them of it by deceit or trickery. 3. intro to act dishonestly so as to gain an advantage ..."

The PW1 in his evidence in chief testified that he paid the sum of N13.5 million for BMW X6, 2012 model to the defendant but the car that was delivered to him was BMW X6, 2009/2010 model as against 2012 model. And under cross examination, he stated that when the car was brought to his house, he wasn't shown the model of the BMW and the mileage it has covered when he test drove the car.

DW1 on the other hand under cross examination stated that he's aware that the 2011 model of the car was supplied to the nominal Complainant but unaware that the defendant promised to return the money to PW1.

The above piece of evidence was corroborated by the DW2 who also in his evidence under cross examination testified that PW1 negotiated from him a 2011 model of BMW X6 which he supplied to the nominal complainant. And that he never promised to refund the

purchase money to PW1. That rather, the arrangement was that he would sell the car and remit the proceeds of sale to the PW1.

I have closely examined Exhibits B1 and B2 which clearly shows that what the nominal complainant paid for was one unit of BMW X6 2011 model.

Surprisingly, the particulars of the car that were handed over to the nominal complainant were never presented or tendered for the Court to scrutinize and decipher the type and model of BMW X6 that was sold to the nominal complainant. The PW1 in his examination in chief stated that he reported the matter to the police where the defendant wrote an undertaking and promised to pay the money or bring a newer model of the car. Again, the said written Undertaking is not in evidence before this Court.

This court cannot base its decision on speculation not supported by evidence before the court as same may likely occasion miscarriage of justice. It is trite that the Court's findings must be supported by concrete and real evidence and not speculations. See

ISAH V. STATE (2007) NWLR (PT.1049) 582 at 614 Paras. B-C. (CA).

UNUOHA V. STATE (2002) 1 NWLR (PT.748) 406.

From the credible evidence before the court, it appears the nominal complainant received the car after payment, test drove the car and had the opportunity of checking the model yet he kept the car to himself for a day or some days before complaining of the dents, bruises and model of the car. More so there appears to be some discrepancies arising from the evidence of prosecution witnesses which I consider to have transcended from the realm of minor discrepancies to material contradictions. The PW1 and PW2 acknowledged payment for the car via Exhibits B1 and B2, meanwhile the same PW1 says he paid for a 2012 model when it is clear from Exhibits B1 and B2 that it was a 2011 model paid for. His evidence that he requested for a 2012 model nor that the one supplied is a 2009/2010 model is not supported by any other

credible evidence before the court. No expert evidence, documentary evidence nor oral evidence was led to identify and authenticate the exact model of the car that was delivered to PW1 and currently in police custody.

It is settled that where there are fundamental and substantial contradictions in the case of the prosecution as in the instant case, the court is not expected to rely on such contradictory evidence that creates doubt in the mind of the court. It does happen here that this apparent contradiction hasn't been clarified by any evidence from the prosecution, it would therefore have to be resolved against the prosecution in favour of the defendant. For the effect of material and substantial contradiction in evidence of parties I refer to:

ONWUKIRU v. STATE (1994) LPELR-14224(CA)PG. 7-11 Para F-A

And

MUSA v. STATE (2009) LPELR-1930(SC)PG. 35 -37 Para G-A per ADEKEYE J.S.C

“Where there are contradictions in the testimonies of the prosecution witnesses on a material fact and the contradictions are not explained by the prosecution through any of the witnesses, the trial court must not be left to speculate or proffer explanation for such contradictions, so that it will only find itself in a position where it will pick and choose from the evidence of the prosecution which it will believe.

Contradictions in the testimony of witness are inevitable but what the law frowns at is material contradictions as they are fatal to the case of the prosecution.”

See also:

THE STATE v. MUSA DANJUMA (1997) LPELR-3216(SC) PG. 10 Para C-F.

It is in the light of the foregoing that I am of the view that the nominal complainant was not deceived into buying the car. This is more so when the car was retained by defendant beyond the day of delivery, test driving and inspection. The prosecution to my mind has not succeeded in discharging the onus placed on him to prove his case beyond reasonable doubt and where a prosecution has failed to discharge the onus of proof placed upon her by law in a case such as this instant one, it must necessarily fail. There is nothing from the evidence before the court showing any intent by the defendant to cheat the nominal complainant nor any evidence before the court which conclusively and irresistibly points to the guilt of the defendant for the offence of cheating.

The second count of the charge against the defendant hereby also fails.

The 3rd count is for the offence of criminal intimidation, an offence contrary to section 396 and punishable under section 397 of the Penal Code Law.

Section 396 of the penal code law under which the third count charged is framed, defined criminal intimidation as follows:

Section 396

“Whoever threatens another with any injury to his person, reputation or property or to the person reputation or property of anyone in whom that person is interested, with intent to cause alarm? to that person or to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat, commits criminal intimidation.”

The law is trite that for the prosecution to secure conviction for the offence of criminal intimidation under section 397 of the Penal Code, the prosecution has the onus to prove the following ingredients:

That the accused person threatened the complainant or some other person.

That the threat was of some injury to him;

That it was given to cause alarm to him or to cause him not to do or to omit to do any act which he is legally entitled to do or not bound to do.

See

MEDINAT V. C.O.P. (2017) LPELR-43292 (CA) PP.11-12, PARAS. F-B.

CHIDOZIE V. C.O.P (2018) LPELR-43602 (SC) Pg. 20-21 paras. E-A. Per Amiru Sanusi, J.S.C.

I have carefully gone through the entire evidence of the prosecution witnesses and there is nothing therein that remotely suggest that the nominal complainant nor any of the witnesses including the investigating police officer was threatened as alleged. There is undoubtedly no evidence before this Court to prove that the defendant made a threat by which the nominal complainant nor PW2 was thrown into fear of being harmed by the defendant. And neither is there any credible evidence that there was actual threat to the life of the PW1 and PW2 nor threat to injure any or both of them or any other person which would have probably caused a genuine fear of being killed or causing harm or bodily injury to them or such other person.

I am therefore of the humble view that from the totality of the evidence before the Court, the above three ingredients of the offence of criminal intimidation under section 397 of the Penal Code, has not been proved beyond reasonable doubt against the defendant.

Suffice to say that the prosecution has therefore failed to adduce any evidence sufficient to establish the guilt of the defendant in this respect, the Court would under the circumstance therefore have no option but to absolve him of guilt. The third count would also have to fail.

In the final analysis and pursuant to the above findings, it is my humble view that the defendant is hereby found not guilty in Counts 1, 2 and 3 as Charged.

Consequently and in line with Section 309 of the Administration of Criminal Justice Act 2015, the defendant WADA KANU BASHIR is hereby discharged and acquitted of all the three counts of the charge against him.

Signed

Honourable Judge.

Appearances:

John Ijagbemi Esq. for prosecution.

W.Y. Mamman Esq with H.U. Attah mrs for the Defendant.