

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 8, NYANYA ABUJA ON THE 9TH DAY OF
JUNE 2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/162/14

COURT CLERKS: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN

INSP. GENERAL OF POLICE.....COMPLAINANT

AND

YUSUF YAKUBU ZOAKADEFENDANT

JUDGMENT

The case against the Defendant is a four Count Charge dated and filed on the 6th day of August 2014.

It states:

COUNT 1.

“That you Yusuf Yakubu Zoaka ‘M’ Adult of Area A, Nyanya FCT Abuja and Others now at large, on or about the 5th November 2013 in Utako within the Abuja Judicial Division, obtains the sum of N15 Million from Mrs. Ijeoma Ugwah under false pretence of being an influential personality, a special Adviser to the vice President, Federal Republic of Nigeria having the capacity to retrieve Overtime Containers in the custody of Committee on Overtime Cargoes in Apapa Port Authority Lagos State and thereby committed an offence contrary and punishable under Section 1 of the Advance Fee

fraud and Other Fraud Related Offences Act Cap A6 Laws of the Federation of Nigeria 2004.”

COUNT 2.

“That you Yusuf Yakubu Zoaka ‘M’ Adult of Area A Nyanya FCT, and Others now at large on or about the 5th November 2013 in Utako within the Abuja Judicial Division, presented yourselves to Mrs. Ijeoma Ugwah as a staff of FCDA but seconded to the Office of the Vice President, Federal Republic of Nigeria as a Special Adviser and made her to believe you can facilitate the retrieval of Overtime Containers in the custody of Customs Officers and duped her of the sum of ₦15 Million and thereby committed an offence punishable under Section 179 of the Penal code Law Cap 89 Laws of Northern Nigeria.”

COUNT 3:

“That you Yusuf Yakubu Zoaka ‘M’ Adult of Area A Nyanya Abuja FCT and Others now at large on or about the 5th November 2013 in Utako within the jurisdiction of this Court converted to your own use the sum of N15 Million owned by Mrs. Ijeoma Ugwah given to you for the purpose of clearing her Overtime goods in Apapa Port Authority and to obtain

duty Certificate ... and thereby committed an offence punishable under Section 309 of the penal Code Cap 89 Laws of Northern Nigeria.”

COUNT 4:

“That you Yusuf Yakubu Zoaka ‘M’ Adult of Area A Nyanya Abuja FCT and Others now at large on or about the 5th November 2013 in Abuja within the jurisdiction of this Court were entrusted with the sum of ₦15 Million by Mrs. Ijeoma Ugwah for the purpose of clearing her Overtime Containers and obtain duty Certificate over her goods in the custody of Committee on Overtime Cargoes in Apapa Port Authority, Lagos, committed breach of trust in respect of the whole sum of money and thereby committed an offence punishable under Section 315 of the Penal Code.”

The Defendant pleaded Not Guilty to the four Count Charge.

The Prosecution called three witnesses in proof of its case.

The 1st Prosecution witness is Chief (Mrs.) Ijeoma Ugwah. She lives at Oladele Oke Crescent, Okota, Lagos. She knows the Defendant.

She knew him through Felix Nwosu a family friend who works at the Fire Service.

That Felix came to her Hotel Suite at Utako. While he was with her, she was making a call to ACD Tahil who was in Charge

of auction and Overtime Containers. She is an auctioneer. She had 21 Containers to buy which was for N21 Million. She was begging that it should be given to her for N18 Million. That Felix was listening. When she finished, Felix said the Defendant is a big man in the Villa and that he is Special Assistant to Former Vice President Namadi Sambo. That they worship in the same Church. That he helped his brother inlaw to sort out a problem of Container with the Customs. That he could use his position to help her. In her presence Felix called him and asked him to come and see her in her Suite the next day by 11 O'Clock.

The following day, he came with Felix. He introduced himself to her as Yusuf Yakubu. He told her he is Special Assistant to the former Vice President, Namadi Sambo. He brought out his ID Card to prove to her that he is Special Assistant to the V.P.

She collected and looked at the ID Card. She gave it to Felix who also looked at it.

He asked her what the problem was and she narrated the story of the 21 Containers and how much the Customs is charging. He told her he would cut it to ~~N~~10 Million.

She gave him the papers of the Containers and the contents. She further told him they were in Lagos.

He told her she will release them with ~~N~~10 Million.

He promised to take the papers to the Chief of Staff. That they would use Villa letter headed paper to write a letter to the Minister of Finance.

That he needed ₦100,000 to be given to the Chief of Staff.

She gave him the ₦100,000 in the presence of Felix.

She told him she was travelling to Owerri. He said the allocation paper would be ready before she comes back.

While in Owerri, the Defendant and Felix called her to say the Chief of Staff refused to take ₦100,000 and that he demanded ₦1 Million.

She asked Felix if he knew him well and he said yes. She then transferred ₦900,000 to Felix Account to make the sum of ₦1 Million.

About 30 Minutes after the Defendant called to inform her that he had collected ₦900,000 from Felix.

The next day, the Defendant called her that they had finished typing the letter with the V.P's letter headed paper to be forwarded to Minister of State for finance.

After two days while she was still in Owerri, the Defendant called again that he needed ₦2 Million to sort out the Perm Sec. and other people so that they can send the document to Customs.

She made another transfer of ₦2 Million to the account of Felix so he could give same to the Defendant. The Defendant confirmed the receipt of the ₦2 Million from Felix.

She thereafter came into Abuja. She called the Defendant and Felix to ask why the document has not yet reached the Customs.

The Defendant said he was not dealing with Musa Tahil who is in Charge of Operations at the Customs.

That he is dealing with Comptroller General of Customs Dikko. That the paper is in the said office.

After about a week, he told her that the P.A. to Dikko said they can only release the document if she pays N3 Million. That the document has been written.

Felix complained that they are charging him a lot because his account is Savings.

She therefore asked the Defendant to give her his account details. She transferred N3 Million directly into his account.

She did not see the allocation paper. She therefore called to ask Defendant why the paper has not been received. He said he would make a call to the wife of the Vice President if she was doubting him.

He made a call and one Hausa woman spoke as if she was the wife of the V.P. in the presence of Felix.

The person on the other side said she should exercise patience.

He thereafter said the wife of the V.P. spoke to the Comptroller-General of Customs and the Customs is demanding another ~~N~~4 Million to release the Containers.

She paid another N4 Million into the Defendant's account.
She waited for the Containers. The Defendant put off his phone for 2 months.
She could not get him. They traced the address he gave at Asokoro but they said there was nobody like that. They traced his Church at 7th Day Adventist Nyanya and reported to the Pastor. They were shocked.
They said he had told them he was S.A. to V.P. and had collected a lot of money from the Church.
When he discovered they were looking for him, he stopped going to Church. She wrote a Petition to I.G. who minuted same to SARS.
She gave them his number and they started tracking him. They tracked him to one Hotel in Nyanya.
They did not see him.
Felix and wife reported to all members of the Church.
He was invited to the Church.
Felix's wife invited Police from Nyanya Division.
SARS eventually arrested him in the Church.
The SARS later discovered he was a dupe.
The two persons he mentioned in the Customs are not in the Headquarters. One of the names is fake while the other was at the airport.
He confessed and undertook to pay.
The Police printed the account and saw the amount she paid him.

Under Cross-examination, she answered that there was a specific date for the delivery of the Containers.

That she is not a staff of Customs.

That she is a staff Nurse and Midwife.

She is a Federal Government auctioneer. It was not a business transaction. That she knew Defendant through Felix.

That they both worship in the same Church.

That he introduced himself in the Church as Special Assistant to the V.P. (Vice President).

That he gave her a fake ID Card promising to help her bring out Containers from Customs.

To a further question, she answered that she gave him money to bring out Containers for her. He did not make any attempt.

She did not know he was a fraudster. He failed to do the work she gave to him.

The Defendant confirmed the money she gave to him through Felix.

She said she is a Constant buyer of Containers.

She answered that she went to the Villa to confirm that he was not working with the V.P.

That the Comptroller of Customs said he does not know the Defendant and that he did not pay any money.

That he even duped some people in the Church.

To another question, she answered that Containers do not take long.

He told her the Containers will be released in a week.

She relies on phone calls. They know her and her company.

The Church also gave him a letter to the V.P.

When the Police searched his Hotel room, they recovered the letter.

The 2nd Prosecution Witness is Nwosu Godswill Felix. He works at the Federal Fire Service. He is also a member of the 7th Day Adventist Church. He knew the Defendant at 7th Day Adventist Church Nyanya, Old Karu Road, through Elder Ephraim Ajayi in the year 2013.

That the Nominal Complainant told him her Container was seized or entered demurrage and that she was looking for somebody who could help. He said he does not know anything about clearance but that the former Comptroller General of Customs was their member. That he would ask his boys in the Church if they could be of help.

He met Elder Ephraim who introduced him to Mr. Yakubu (the Defendant). He never met him before. The Elder gave him his phone number and he called him.

He said he was not in town but travelled with Vice President to Kaduna promising to come back on Sunday.

One morning he called him and he came to his office. He had earlier hinted him why he was looking for him. He took him to the PW1's office. When he asked him where he was working, he confirmed what he told him.

He showed him his ID Card before he took him to PW1's office.

He introduced him to PW1 and she started asking him questions.

He confirmed that he is S.A. to the Vice President.

That before then he was a Director at the FCDA. He was seconded to the Villa. The PW1 brought the Twenty two Containers paper which is 40ft, twenty and 20ft (2 No.) making twenty-two.

At the end of the day, he promised to go and verify if the Containers are still intact.

The PW1 wanted to entertain them but he refused. She gave him ₦100,000 and he dropped him off at A.Y.A round about.

He told him he was living at Asokoro. He later confirmed that the Containers were intact. He called PW1 to inform her that the Containers were intact. He requested for ₦5 Million and she paid ₦1.5 Million at the first instance, ₦500,000 and another ₦1 Million making ₦3 Million.

He withdrew the money at Area 3 G.T. Bank where he came to collect the money. He then put a call to PW1 that he had given the money to the Defendant. The Defendant also spoke to PW1 through his phone.

He told PW1 they were charging him so much money, that was when she stopped paying the Defendant through his account.

The rest of the money was paid directly to the Defendant's account. He started calling to ask of the situation of the Containers. He said he should be patient.

There was no day he joined him to the place where he was discussing with the people on the Container issue

He was dealing with him on trust. He told the Church he was working as Special Assistant to Namadi Sambo.

When the Church was doing 100 years anniversary, the Church gave him the position of Protocol Officer to deliver a letter to the Office of Mr. President because the World Wide President of the Church was coming.

It was because of his position that he was introduced to him. When PW1 called him he also told her to be patient.

At a time, he was no more forthcoming.

The PW1 reported the matter to the Church.

The Church called them and he explained how he met him. He did not know what to tell the PW1. He was invited to SARS office. He told them how everything happened. He then promised to get him. That their 1st elder put a call to him requesting to see him when he came that evening, he put a call to SARS and they came to the Church to arrest him. It

was then that the whole secret leaked. How he spent the money and the people he gave the money to

They told him to pay the money back.

He promised to do that when he sells his land.

He took them to the land. At the end of the day nothing came out of it. There was a time he called the number of a person at the Villa. The person said she should be patient.

That he denied ₦1.210 Million out of the ₦3 Million.

He went to his bank to collect a loan to pay same to SARS.

Under Cross-examination by the Defendant's Counsel, he answered that he approached him for his service.

That he never heard that he defrauded someone.

That he never joined him to see anybody relating to the job.

He believes that since the Container has not been seen since 2013, he must have defrauded the PW1.

The PW1 is an auctioneer. He does not know why the Containers were seized.

The Defendant was always telling him he should have patience. He does not know if the PW1 was in breach of Customs' regulations.

To another question, he does not know if the Defendant used the money for himself or not.

She gave him N100,000 for entertainment. The Defendant showed her ID Card as S.A. to Namadi Sambo. The Defendant also showed him the said ID in his office.

He does not know the number of P.A's the Vice President had. He said he is not working there.

The Defendant asked for three weeks to release the Containers. He does not know how he spent the money.

He did not convert the ₦1,210,000.00.

The 3rd Prosecution Witness is Inspector Adakole Samuel. He is attached to the IGP Special Tactical Squad.

That on 3/04/15, a Petition was received from the PW1 against the Defendant and the PW2 which was referred to IGP Special Task Force on heinous crime.

On 5/04/15, the Defendant was arrested and brought to their office along with Felix Nwosu and was given a copy of the Petition to go through. He was told to explain his own side of the story. The cautionary words were read to him. He said he understood same and signed. He wrote his statement himself. The Defendant's statements are admitted as Exhibits A-A4. The statements of PW2 are admitted and marked Exhibits B-B7.

After the statements, they took the suspects before a superior Police Officer and both confessed to have collected various sums of money from the complainant.

That some of the monies were paid into Felix Nwosu's account which were remitted to the Defendant's account while some were paid directly to the Defendant's account.

A letter was written to the bankers of the suspects.

The banks replied.

They conducted a search in the various houses. The Defendant was living in the hotel.

Nothing incriminating was found. He was later transferred out and the Defendant was charged to Court. The Defendant had no question for the PW3.

The above is the case of the Prosecution. The Defendant gave evidence for himself. He is Yusuf Yakubu Zoaka. He stays in Area B Nyanya. He is a civil servant. He knows the Nominal Complainant.

Around August/September 2013, a member of his Church by name Felix Godswill Nwosu who works with the Federal Fire Service met him after Church service and told him he wanted to discuss a problem with him. He told him to see him the following day.

When they met, he said the PW1 who is like a mother to him imported 22 Containers of products from Spain.

That 20 of the Containers are 20ft while the remaining 2 are forty ft.

That Customs seized the Containers and asked her to pay N24 Million before they could be cleared.

She said she could not pay such money

She was looking for assistance to reduce the said sum.

She said she had ₦10 Million to pay but in case Customs refuses, she could increase it to ₦15 Million.

They met her in the Hotel. It was PW2 who took him to the hotel. While they were leaving the hotel, she gave them ₦100,000 for Kola. She gave him a photocopy of the list of Containers.

He called the Customs to find out the status of the Containers and their location in Lagos.

They told him it would take about two to three weeks before he can get the result.

They later told him the Containers are in five different locations in Lagos.

She promised to send ₦2 Million to start the work. She sent the said amount through PW2 to him. He transferred same to Customs at Area 3. The cash was delivered by hand.

The Containers came in through CONSKEMY ASSOCIATES LTD. That he was using the name of this Company all through. The Customs later discovered that the Containers were not imported by this Company.

That the Containers were imported by three different Companies.

That they were overtime. He could not remember the three different Companies.

He called PW1 and informed her of this information.

She insisted she did and that may-be the Customs needed more money. She remitted another ~~N4~~ Million and ~~N3~~ Million respectively through Felix totalling N9 Million.

The Customs subsequently wanted him to come to their office with the PW1.

She said she would not follow him to the Customs. He told her she needed to sign some documents but she refused to go.

He mentioned her name to the Customs. The ACG Bukar Mohammed Madu who was processing the release of the Containers said PW1 was a criminal.

That she has five different cases involving her in the Headquarters.

When he confronted her, she flared up and started threatening him with text messages.

The PW2 said he did not know this woman would behave this way.

The PW1 suggested they meet Bishop Simon. He sent them to A.C. I. S. Obafeye. They complained of threat by text messages.

He implored them to assist her. He directed them to a Lawyer. The Lawyer wrote a Petition titled ***“Threat to life.”***

That PW1 was arrested based on the Petition.

She also wrote another Petition, Felix was arrested for duping her. He was in the Church when the Police arrested him.

They took them to their office where he made several statements.

The PW2 also made several statements.

In his statement, he mentioned the Officers he gave money to. The Police refused to arrest the said Officers but merely wrote a letter to the Customs.

The Customs did not honour the letter.

The PW1 paid ~~N~~9 Million. She later demanded N1 Million from him which he transferred to her.

The Police recovered N400,000 from his First Bank Account. He later discovered that PW1 bribed the Police. He was detained severally. The matter was eventually charged to Court.

He used part of his money to complete the money requested by Customs.

That he could not complete the assignment after the arrest.

The list of Containers and the ~~N~~1 Million receipt are all with the IPO.

The receipt he was given by the Customs is also with him.

The case was adjourned for cross-examination by the Prosecution but the Prosecution failed to do so despite the service of hearing notices.

The Counsel for parties also failed to file their Final Written Addresses despite the Order of Court to do so.

They were subsequently foreclosed. The issue for determination is whether the Prosecution has proved its Four Count Charge against the Defendant beyond reasonable doubt.

In Count 1, the Defendant is Charged under Section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act. Section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act 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 or

(b) Induces any other person in Nigeria or in any other Country to deliver to any person or

(c) Obtains any property whether or not the property is obtained or its delivery is induced through the medium of a Contract induced by the false pretence commits an offence under this Act.

The elements of the above offence are;

- 1. False pretence.***
- 2. The intention to defraud.***
- 3. The Defendant must obtain from any person for himself or another money or property whether it is induced through the medium of a contract.”***

Court 2 is contrary to Section 179 of the Penal Code.

The ingredients are that:

1. The Defendant must have presented himself to the (PW1) the Nominal Complainant as a staff of FCDA but seconded to the Office of the Vice President Federal Republic of Nigeria as a Special Adviser.
2. That he can facilitate the retrieval of Overtime Container in the custody of Custom Officers.

Count 3 is criminal misappropriation. That the Defendant misappropriated the said sum of ₦15 Million owned by the Nominal Complainant paid for the purpose of clearing her Overtime goods and to obtain duty certificate to his own use while the 4th Count is Criminal breach of trust.

The burden of proof in a criminal trial such as in this case is on the Prosecution to prove the guilt of Defendant beyond reasonable doubt. It lies throughout upon the prosecution. It never shifts.

I have read the evidence and Exhibits A-A4 and B – B7.

In the evidence of PW1, (the Nominal Complainant) she said the total money given to the Defendant is ₦10 Million.

In the evidence of PW2 (the person who introduced the PW1 to the Defendant), he stated that the sum of ₦3 Million was paid to the Defendant through him.

That the rest was paid to the Defendant directly.

In Exhibit B, the PW2 said the total amount paid by the PW1 to the Defendant is ₦9 Million.

That out of the said sum, the Defendant paid back to the PW1 (the Nominal Complainant) the sum of ₦1 Million

The amount stated in Count 1 as having been obtained is ₦15 Million. There is therefore a contradiction. The Charge says ₦15 Million, PW1 evidence is ₦10 Million while PW2's evidence corroborated by DW1 is ₦9 Million.

The evidence of PW1 is that the Defendant was introduced to her by PW2.

The PW1 was looking for an influential person who could help her release her imported Containers without paying the requisite duty.

The PW2 who was her family friend introduced a member of his Church (the Defendant) to assist.

The Defendant was known in the Church as either close to the former Comptroller General of Customs or a Special Adviser to the Former Vice President of the Federal Republic of Nigeria.

The PW1 said the Defendant showed her his ID card.

The PW2 also said the Defendant also showed him his ID Card.

The said Identity Card is not tendered in evidence.

The Defendant denied the said allegation. In any case, neither a staff of FCDA or Special Adviser to the Vice President has the capacity to clear a Container from the Port Authority without paying the requisite Bills. He also confirmed

that the PW1 paid a total of N9 Million for processing the release of the 22 detained Overtime Containers.

The PW1 is not a Customs Officer or a licensed clearing agent and did not present himself as such to the Defendant.

Even if the Defendant represented himself as a special Assistant to the Former Vice President, what the Nominal Complainant did was to use him to corrupt the system, defraud the Federal Government of revenue to her advantage.

In my humble view, the Prosecution did not prove the false pretence or the intention to defraud.

The total amount obtained by the Defendant was also not proved.

The PW1 engaged the Defendant to perform an illegal transaction which eventually boomeranged.

Similarly, there is no evidence that the Defendant presented himself as a staff of FCDA seconded to the Office of the Vice President as a Special Adviser.

There is also no evidence that he converted the alleged ₦15 Million to his own use.

In totality, the Prosecution failed to prove the four Count Charge against the Defendant.

Both the Nominal Complainant and the Defendant ought to be Charged for conspiring to short-change the Federal Government of its legitimate revenue. The transaction was an illegal transaction which hit the rocks.

The PW2 paid ₦1,210,000.00 out of the ₦9 Million as money given to him by the Defendant.

The Defendant also gave ₦1 Million back to the PW1.

By Exhibit A3 the Defendant is owing the PW1 ₦6,250,000.

The Defendant is hereby found Not Guilty in all the Counts. He is hereby discharged and acquitted.

The Defendant shall pay back to the Nominal Complainant the sum of ₦6,250,000.00 paid for the illegal transaction.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

09/06/20