

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 11TH DAY OF DECEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CR/06/16

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT

AND

ASEKHAMEN FRANKLIN ----- DEFENDANT

JUDGMENT

On the 27/1/16 the Federal Government Nigeria based on the complaint of Emmanuel Nkwor filed a 2 count charge against Mr Ashekhamen Franklin. The charge is on fraud and obtaining property/goods by false pretence and intend to defraud. In the main, he was accused of obtaining the sum of N3 Million from one Emmanuel Nkwor the director of Messr Embridge Global Concept Ltd, Under the pretence of securing contract from FERMA with Lot No.MDR/AD/10/08. The contract was

for the reinstatement of eroded shoulder between CH-0+100-CH.1+470 along Mayo Lofe Road in Adamawa State, a fact which he knew to be false.

Mr. Asekhamen Franklin who is herein after to be referred to as the defendant (Def) is also accused of obtaining by false pretence and with intention to defraud the same Mr. Emmanuel Nkwor the sum of N9 Million under the pretence of executing a contract for FERMA with contract No: MDR/AD/10/8. The Contract is for the reinstatement of eroded shoulder between CH-0+100-CH.1+470 Along Mayo Lofe Road in Adamawa State he knowing that that is false.

This offence is contrary to S.1(1) (a) of the Advanced Fee Fraud and other Fraud Related Offences Act 2006. Its punishment is as provided for in the S.3 (1) of the same Act.

On the 31/1/17 when he was arraigned before this Court he pleaded not guilty to the 2 Counts. Bail was granted to the later. The Prosecutor opened its case called 3 witnesses who are Emmanuel Nkwor, PW1, Abdulkadir Umar PW2, ENGR. Taiwo Koya PW3. They tendered Exhibits. The Defendant testified in person as DW1. He did not tender Exhibit. At the close of Trial the Court adjourned and ordered the parties to file and exchange their final Address. Stating from the Defence Counsel then to the Prosecutor Counsel. So that at the next adjourned date the parties will adopt same.

In his testimony in chief the DW1 narrated his own story the Defendant Counsel had asked this Court to discharge and acquit the Defendant as, according to him the

prosecution has not been able to establish and prove its case beyond reasonable doubt against the Defendant.

An indebt look at the testimony in chief and under the fiery of cross-examination of the Defendants revealed that the submitted both in his thus: That he had done more than one business contract with the PW1 in the past, in Jigawa, Benin and Edo States. That he introduced the PW1 who is a member of his Church. He normally buys the Contract, sell to the Defendant to execute same and profit is shared. That was before this ill-fated contract which is the issue before this court. That the present contract was awarded to TUKS Nig. Ltd for N3 Million and that he was given Power of Attorney and other documents to open an Account on behalf of the Company as a sole signatory to the Account.

That one Nazareth.O. Nazareth agreed to do the job for N6 Million. That he used his money to settle the people in the Accounts Department of his office at FERMA so that PW1 will be paid at the end of the day. That he had informed his Church members that the PW1 does not appreciate his effort in the previous businesses. That the first business where PW1 made a gain/profit of N300, 000.00, he only gave him N20, 000.00 at the end of the day. That the PW1 gave him only N50,000.00 in the 2nd business. But that in order to secure the job for the PW1 he spent far more money to settle some people. Based on his experience he decided to inflate the price of his particular contract by adding N1,000,000.00 Million extra to the contract sum he will use to effect all the expense he will incur in the business. So instead of

N6,000,000.00 Million, he told the PW1 that the price is N7,000,000.00 Million.

That PW1 gave him the money on 3 instalments for the execution of the job. N3,000,000.00 in cash given to the contractor, N2,500,000.00 cash he also gave the contractor. He paid the last amount into the contractors Account in the Bank. That was after he alleged he received report that the contractor was doing a good job at the site in Adamawa and that the job will soon finish. He did not go to Adamawa but was informed that the contractor he brought to do the job had left the site for Xmas and will come back after New Year celebration. But that the contractor called him later and stated that he will not go back unless the Defendant pays him another money. So he paid N600,000.00 into the Account of Nazareth O. Nazareth at First Bank. That the contractor went back, stock piled chipping at the site and disappeared. All effort to get him was abortive because of Boko Haram insurgent. When the PW1 asked him for certificate of job completion, he told him that he had not been in touch with the contractor for some time. When the PW1 ask that they visit the site, the Defendant declined raising security concerns. Meanwhile at that time according to the Defendant the job duration for completion has expired.

Again he stated that all there was done based on mutual trust between him and the PW1. When the PW1 reported that to their Pastor, the Defendant promised to get in touch with the contractor to see if he eventually finished the contract. That it was at this point that the PW1 brought a Contract Agreement which he gave the

Defendant to sign and he PW1 signed all in the presence of the Pastor of their Church. In the agreement, there was the amount that will be paid to the Defendant in the contract as his gain.

Subsequently he was summoned by the Legal adviser of FERMA that there is a serious Petition from the PW1 against him. He told the Legal Adviser that he will settle the matter with the PW1 as he does not want any embarrassment. He suggested that PW1 should take his house at Mararaba so that he can sell it to recoup his money and the issue laid to rest.

So in the company of the office Legal Adviser, the PW1 and his lawyer, another Lawyer from his office, all went to the said house at Mararaba. But the PW1 upon getting their, rejected the offer to take and to sell the house.

On the evening of that same day 2 men from the Code of Conduct Bureau came to his office ushered in by the S.A to the M.D of FERMA, informed him and showed him the Defendant the Petition and the Agreement attached as Exhibit. He wrote a statement on his own handwriting. He signed the statement. He told the PW1 that he signed the agreement. Later ICPC also summoned him and showed him a copy of the Petition by PW1. They also took his statement and they informed him that there is no evidence to show that the contract was executed. He told them that there was evidence that the job was done. He brought a letter signed by the Ag Executive Director North East operations- Engr. Idudomi while he was showing the ICPC the said document, the Legal Advicer came in and ICPC people confirmed from the Legal Adviser that the document is authentic and it is also

from the contract file. It was a photocopy not the Original. That in the letter it was stated according to the Defendant that the job was 87% completion as at the time the contractor left the site. He stated he had not reached the contract even up to the time ICPC came. He alleged he gave ICPC the contractors telephone number but it was not going when they tried to put a call across to him.

Subsequently a few weeks after the EFCC invited him in writing. He was arrested and administrative bail eventually granted after he had volunteered statement where he narrated his story, gave them evidence of the money the contractor received from him which is 1&2 instalments. He could not show the evidence of the last instalment. When EFCC called him and informed him that the contractor was in their office, he went and saw the contractor seated there at the EFCC office in Abuja.

That the EFCC tendered the said receipt in support of the case for the Prosecution. That EFCC did not deny having the original of the receipt. Meanwhile attempt to tender the photocopy by the Defendant was challenged so the 1 Defendant Counsel withdrew the application to tender the document.

That at the EFCC the contractor confirmed that he issued the receipts and showed them evidence that he received the money the Defendant paid into his account at First Bank. That he brought out his statement of account evidence of payment. That the contractor also confirmed the last money, N600,000.00 the Defendant paid into the contractors account as it reflected in the said account. He said that EFCC refused him and his

Lawyer to inspect the said statement to see if the N2,000,000.00 he paid into the Account reflected. That he paid a total of N6,600,000.00 Million to the contractors. That N600,000.00 he used his name to pay in but used company name to pay in the others. That EFCC advise them to go and settle the issue. After they left EFCC he then asked the contractor how much was needed to complete the job. He said it will cost an additional N6,000,000. Since the Defendant could not raise the N6,000,000 the job was terminated.

That in the cause of investigation EFCC wrote to FERMA to know about the existence of the contract and the extent of the job completion. But that on the 2 letters one stated that the job was 87% completion and the other was 67% completion.

That the EFCC relied on the 2nd letter where it was stated that the job was 67% completion. One letter is from PW1 to FERMA. The 2nd letter is from the Legal Adviser to EFCC. After that that he continued to report to EFCC until the matter was brought to this Court.

On the 13/6/18 the Prosecution Counsel cross-examined the DW1 who is the Defendant standing trial in this Suit; He grilled him on the issues before the Court the allegation raised against him and on his own testimony in chief. He identified and confirmed his statement made to EFCC-Exhibit 8, 5 documents in all.

He said under cross-examination that he got a contract for the PW1 and not a contract for PW1. He confirmed he showed Letter of Award of Contract to the PW1 worth about N17,300,000.00 Million He confirmed that the

PW1 gave him the aggregate sum of N11,000,000 Million Confirmed that the contract was at Adamawa. He said he know the contract exist but did not put any document to show it exists. He also confirmed he introduced the PW1 to the contract. He also confirmed a cheque leaf presented by the Prosecution as his Cheque leaf. He confirmed he issued the cheque to PW1 and it is a cheque of N11,000,000.00. The cheque of N11,000,000.00 was tendered and admitted as Exhibit 9. When the Prosecution Counsel put it to him that he issued the cheque of N11 Million because he knew that the contract does not exist and never existed he said it is not true.

He read Exhibit 7, a letter of 31/7/15 and still claimed that the contract was executed. He stated that he does not insist that the 67% unprotected as in the said letter of 31/7/15 is not same as 100% completion.

He read exhibit 8- His statement to EFCC, he still insisted that the contract was executed. He told the Court that **“the Pastor of his Church intervened in the problem he had with the PW1 and suggested that he issue the PW1 the cheque pending when the contract will be executed”**.

He confirmed that there was a dispute between him and PW1 which PW1 took to their Pastor to settle in respect of the contract. Under Re-examination he said there is a contract in existence. The Defendant filed his Final Written Address several months after the Court had foreclosed him and reserved the matter for Judgment. Meanwhile the Defendant was in Court on the day the Court reserved the matter for Final Address. Since then

the matter had come up for judgment but the Defendant for reason best known only to him decided to absent himself from Court without reason. His Counsel was also absent without any reason.

The Court had in the interest of justice decided to vacate the foreclosure placed on the Defendant from filing his Final Address. In the interest of fair hearing and justice.

Hence the Court hereby summarize and analyses the said Final Address below:

In the said Written Address the Defendant raised 3 issues for Determination which are:

1. Whether the contract awarded to Tuks Allied Services Ltd validly exists.
2. Whether the contract could not be said to have suffered frustration.
3. Whether from the facts of this case as presented before the Court the Defendant is guilty of the offence of obtaining property by false pretence.

ON ISSUE NO.1 The Counsel submitted that there was a valid contract. That was awarded to Tuks services Ltd going by the testimony of PW1- Emmanuel Nkwo and as attested to by Engr. Taiwo koya. That the contract existed and work commenced. He referred to the case of:

OKEREKE Vs STATE (2016) ALL FWLR (PT.827) 797 @794

GEORGEWILL Vs OKWARA (2016)ALL FWLR (PT.837) 733 @ 748 Para D

That the contract existed and was completed up to 67%.

On ISSUE NO.2

He submitted that the contract was terminated because of the issue of insurgency in the North East and that rain washed away the surface and consequently the contract was terminated. He urged the Court to so hold. He cited:

A-G CROSSRIVER Vs A-G FEDERATION (2012) ALL FWLR (PT646) 408-448

WEMA BANK Vs OLOKO (2015) ALL FWLR (PT778) 981@ 992

ON ISSUE NO.3

He submitted that the Defendant did not misrepresent facts in this case which is that there was a valid contract given to Tuks which the Norminal Complainant bought and which Nazareth Uba partly executed. He referred to the cases of:

GEORGE Vs FRN (2011) ALL FWLR (PT.587) 664@743E-F

UWAKWE Vs THE STATE (2015) ALL FWLR (PT.802) 1618 @1640

That there was no pretence on the side of the Defendant to obtain money by false pretence as alleged by Prosecution. Again, that there was no intent on the part of the Defendant to defraud and obtain money from the norminal complainant by false pretence since

the contract existed and was partly done. He referred to the cases of:

UBN Vs IRONBAR (2011) ALL FWLR (PT.573) 2021 @2041

OGUNDELE Vs AGIRI (2010) ALL FWLR (PT.507) 1@25

BASSOY LTD Vs HONEY LEGION (NIG) LTD (2010) ALL FWLR (PT.503) 1380 @1402

That the Prosecution has not discharged the onus placed on it to establish the offence of obtaining property capable of being stolen by false pretence against the defendant. He urged the Court to discharge and acquit the Defendant with a cost against the Prosecution in the interest of justice as the Defendant is not guilty as charged.

The Prosecution filed their Final Address and submitted as follows:

In the Final Address the Prosecution raised an Issue for determination which is:

“Whether the Prosecution has proved the essential Ingredients/Element of the offence alleged against the Defendant beyond reasonable doubt to warrant his being found guilty and consequently convicted”.

In their submission the Prosecution Counsel opined and contended that the Prosecution called 3 witnesses and tendered documents-9 in all marked as Exhibit 1-9. The Defendant did not tender any document in support of his defence.

He submitted that the Prosecution proved its case beyond reasonable doubt, diligently conducted the investigation and the painstaking oral and documentary evidence placed before the Court by the witnesses. He urged the Court to hold that Prosecution has proved its case beyond reasonable doubt and accordingly convict the Defendant, DW1. That the Prosecution has done so through the testimonies and document placed before the Court not by proving beyond all shadow of doubt but proving beyond reasonable doubt. He referred to the following S.135 Evidence Act.

LORTIM Vs ST 1997 NWLR (PT.490) 711@732

KALU Vs STATE (1998) 13NWLR (PT.583)531

UDO Vs STATE (2006) ALL FWLR (PT.337) 456@457

The Counsel for the Prosecution A.U.Ringim contended that from the circumstance of this case and evidence before the Court, the Court can hold that the Prosecution has established Count 1 and 2 of the charges against the Defendant. He urged the Court to hold that the Prosecution has proved all the counts of obtaining money under false pretence beyond reasonable doubt and therefore convict the Defendant accordingly. He referred to the cases of:

IKPA Vs STATE (2017) LPELR-42590

ONWUDIWE Vs FRN (2006) 10 NWLR (PT.988) 382

ALAKE Vs STATE (1991) 7 NWLR (PT.205) 567

EDE Vs FRN (2001) 1 NWLR (PT.695) @512-513.

On the Ingredients which must be proved in order to succeed on allegation of false pretence the Counsel submitted the evidence of PW1, the norminal complainant in this case, gave vivid account of how he knew the Defendant and their relationship. How the Defendant introduced the purported contract for the reinstatement of the eroded shoulders between CH-O+100-CH470 along Mayo road in Adamawa State.

On whether the pretence was false and the Defendant knew about the falsity and whether the Defendant had intension to defraud the victim, he submitted that the evidence of PW1 –PW3, Exhibit 1-9 are all clear on those issues and all the facts shows that the Defendant knew about the falsity and had every intention to defraud the Norminal Complainant, PW1.

That he knew that the purported contract was not genuine but gave it to the PW1 the impression that he had and was in the position to look for a Contractor that can execute the purported contract. Again the Defendant personally brought and showed a purported Letter of award of Contract claiming to be handed over to PW1 when it is signed by the General Manager FERMA which up to the time of the filing this Final address and may be till date was never handed over to PW1. This is as captured in the Evidence of PW1 & PW2 as well as in the documents tendered. That the Defendant in order to perfect his falsity and perform his fraud, told the PW1 that he had collected the purported letter of contract.

That the Defendant also knew that the so called letter for award of contract was not genuine and was never handed over to the PW1 as it never existed. He told a lie

that he had collected same. The PW1 had testified to these facts. To crown his falsity he showed the PW1 an unsigned Letter for an award of contract.

Also of note is Form CO7, and Power of Attorney which the Defendant wrote in the Name of the Company of PW1 (Embridge Global Concept Ltd), with a promise that he the Defendant will finish the job in the contract within 6 weeks. Based on all these lies, the PW1 stated in his testimony, that he gave the Defendant in the form of mobilization, he raise a cheque of N4,000,000 Million.

He submitted that the fraudulent conduct of the Defendant conveys the element of Deceit to obtain some advantage from the PW1 based on the fraudulent action/conduct and also caused loss. That there was deceit and intention to deceive the PW1 flowing from the fraudulent action of the Defendant as in this case. He referred the Court to the case of:

ONWDIWE Vs FRN Supra. P.81 Para A-C

On whether the item involved is capable of being stolen and whether there is inducement on the part of the Defendant, the learned Counsel submitted that there is no doubt that N11 Million which the defendant defrauded is capable of being stolen. Again in the light of the PW1-PW3 testimonies and the various Exhibits they tendered, it is clear that the defendant induced the PW1 to transfer total ownership of the said N11 Million to the Defendant –Asekhamen Franklin. He urged the Court to so hold.

He urged Court to discountenance the submission of the Learned Counsel for the defendant urging the Court to

discharge and acquit the Defendant on all the Counts. He urged Court to hold that the evidence adduced by the Prosecution witnesses and the Exhibit tendered and duly admitted have not been discredited under cross-examination since they are manifestly reliable and this Court can convict the Defendant based on these evidence and testimony. He also submitted that the Prosecution has proved its case and all the ingredient of the offence against the Defendant. He urged the Court to find the Defendant GUILTY of the offences charged as Prosecution has proved its case beyond reasonable doubt. He also urged the Court to answer the question raised on the issue for determination in the affirmative as they have proved the case beyond reasonable doubt going by the decision in the case of ABEKE Vs STATE Supra. That the submission of the Defendant that because the job was declared 65% unprotected, that made FERMA not to pay PW1, should be discountenanced as untrue and an afterthought.

He urged the Court to convict the Defendant and sentenced him on the strength of the unimpeachable evidence and the Exhibits 1-9 in all, which the Prosecution has presented in this case.

He further submitted referring to S.11 (1) Advance Fee Fraud and other Fraud Related offences on issue of restitution of stolen or defrauded property especially where the property is money and urged the Court to comply with the said provision especially .11 (1) A (On payment of the victim the amount equivalent to the loss sustained). He referred to the following cases in support:

NIG. AIRFORCE Vs OBOSA (2003) 4 NWLR (PT.810)
233@275

LORI Vs STATE (1980) 8-11 SC 81

He urged the Court to so hold and convict the Defendant Asekhamen Franklin accordingly.

COURT:

Over the years the Court had over several occasion in diverse cases held that it is the duty of the Prosecution to prove that the Defendant is guilty of an offence. It is not the Defendant that will do so. Again the weakness of case of the Defendant cannot stop the Prosecution to prove its case against the defendant. After all who ever alleges the existence of an offence is bound to prove so with credible and very cogent and watertight evidence and exhibits through the testimonies of their witness. Such proof must be beyond reasonable doubt.

See the case of:

WOOLMINGTON Vs D.P.P (1935) A.C 462 @ 481

Proving that a crime have been committed the Prosecution must do so by either through direct evidence, confessional statement or circumstantial evidence whichever one the Prosecution finds most appropriate to use in proving its case against the Defendant beyond reasonable doubt.

EMEKA Vs STATE (2011) 14 NWLR (PT.734)666

MHIGAN Vs STATE (2010) 16 NWLR (PT.1220) 439@467
CA

ADEYEMO Vs STATE (2015) 15 NWLR (PT.1485) 311@329 S.C

It is not until the Prosecution proves the case against the Defendant beyond all reasonable doubt or beyond all shadow of doubt it be said that it has established its case against the Defendant. It is beyond any probable doubt see. S.135 Evidence Act 2011.

Once the Court can, based on the evidence before it, have no doubt that the Defendant had actually committed the offence, the Court will hold that the Prosecution has proved its case against the defendant. The Court will also hold that Prosecution has discharged that burden placed on it by law and hold that the Defendant had committed the offences as alleged/proved. and the Defendant will be convicted. That is so even if the Court bases its findings on the testimony of a single witness for the Prosecution. That is the decision of the Court in the case of:

AKPAN Vs STATE (2007) 2 NWLR (PT.1019) 500@519-520

See also the case of:

OBIAKOR Vs STATE (2002) 10 NWLR (PT.776) 612@629

DEVIN Vs STATE (1994) 5 NWLR (PT.346) 522@533

The prosecution can prove a case against the Defendant beyond reasonable doubt by a combination of all the ways listed above.

Section 20 Advance Fee Fraud and other fraud related offences Act 2006 listed all the element that must be

present and proved by the Prosecution before the Court can hold that there is obtaining of property by false pretence. There must be pretence by the Defendant. Such pretence must be based on falsity which the Defendant knows about. There must also be intention of the Defendant to defraud the victim who is usually the Norminal Complainant, by who ordinarily is meant to believe that the falsity is the truth but it is not. There must also be a property object on which the falsity is based. Such object must capable of being stolen. Finally the Prosecution must also establish and prove that the Defendant had induced the norminal complainant, who usually is the owner of the property or may be somewhat connected with the property, to part either fully or substantially partly; to transfer the interest or part thereof in the same property to the Defendant. That is what the Court decided and came up with its decision in the case of:

IKPA Vs STATE Supra

ONWUDIWE Vs STATE Supra

ALAKE Vs STATE Supra

EDE Vs STATE Supra

All in all the Defendant must have intention to defraud the Norminal Complainant from inception. He must know of the falsity or the deceit and that whatever the deal is that it is not genuine. He must also have intention to and actually take advantage of the victim Norminal Complainant, believing that the deal is real and truth only to cash on his ignorance to the truth and defraud the Victim. At the end of the day after which he may

disappear or start dribbling the victim. Hence causing the victim the big loss. In all, there must be clear intention to deceive by the Defendant. There must be actual deceit by the Defendant. There must equally be a fraudulent action of the Defendant from which the deceit is hatched and perfected.

So once the Court can see that evidence raised by Prosecution in prove of the case against the Defendant is so and there is but only a flimsy and remote probability in his favor, the Court will have every reason to hold that the Prosecution has been able to prove the case against the Defendant beyond a reasonable doubt. On that basis the Court can and often will convict the Defendant after he must have been allowed to put up his own defence if any.

The Court must, as in every case, give its reason for convicting the Defendant. After the Court had convicted the Defendant as the case may be it will give the Defendant the chance for allocutus before sentencing.

It is imperative to state that where the issue or the offence is predicated on fraud and obtaining property or anything capable of being stolen by fraud, the Court, based on the extant provision of the law which the Defendant had been convicted order for restitution to the victim. This is especially so where money was obtained or moveable or immovable property involved.

This the Court does, by directing that the person-the Defendant pay to the victim –Norminal Complainant or the state as the case may be the amount equivalent to the loss sustained by the victim. But where it is movable

or especially immovable property is involved the Court normally order that such property be returned to the victim or any person whom the victim had designated to collect such property on his behalf. The Court can equally and often does, order the Defendant to pay an amount equal in value of the property. This is common where it is practically impossible to return the property as it were before the fraud was committed. This order once made by Court can be enforced by the victim personally or on behalf of the victim; by the Prosecution in the same way and manner a judgment of the Court is enforced in any civil matter where judgment has been delivered.

Once there is an application in that regard the Court is bound to oblige the Judgment Creditor his heart desire within the confines of the law and in accordance with the pronouncement in the Judgment. See Section 11 (1) Advance Fee Fraud and Other Fraud elated Act 2006.

In this case going by the testimony of the Norminal Complainant PW1 and confirmed under cross-examination and testimony in Chief by the DW1, the Defendant in this Suit, it is not in doubt that the parties knew each other since 2007 long before the incident that culminated into this Suit. They were members of the same Church; they had done similar business before this ill-fated one. They had gone to their Pastor to see if they will settle the issue in dispute but that failed. They had taken a step to see if the Norminal Complainant should take the house of the Defendant for the money had and received. But that also failed. Before they ended up in Court, the Defendant had issued a cheque of N11 Million

covering the amount in issue. But that also did not end the dispute. Hence they are before this Court. All witnesses have testified and awaiting the verdict of this Court.

By virtue of S.1(1) of Advance Fee Fraud and other Fraud related Offences Act it is an offence for anyone to obtain money by false pretence. Once it is established that anyone has obtained money by false pretence such person shall be convicted and sentenced accordingly see: the provision of Section 1(3) advance Fee Fraud and Other Fraud Related Act 2006.

In this case the Defendant Asekhamen Franklins accused of obtaining the sum of N3 Million from Mr. Emmanuel Nkwor under pretence of securing contract from NEMA with MDR/AD/10/08 and he also obtained N9 Million from the same Emmanuel Nkwor for the same FERMA contract in 2010, making a total of N11,000,000.

From all the above analysis can it be said that the Defendant actually obtained the said sum of N3 Million and N9 Million with intention to defraud the Plaintiff contrary to S.1(1) (a) of the Act and should therefore be convicted and sentenced under S.1(3) of the same Act?

It is my humble view that the Defendant, Askhamen Franklin obtained those monies by false pretence knowing that the whole contract promises was a hoax from inception. He is guilty of obtaining the said money by false pretence which is an offence under S.1 (1) (a) of the Advance Fee Fraud and other Fraud Related offences.

From inception the Defendant was out to defraud the Plaintiff that is why he presented a certificate that the

contract was re-awarded for Tuks Allied Services to M/S Embridge Global Concept, the company where the Plaintiff is the Director. Meanwhile the document he presented to the Plaintiff was not signed. He had told the Plaintiff deceptively that the M.D of FERMA will sign the said re-awarded contract but that never was. The money was released to the Defendant and he acknowledged receipts of them. Meanwhile the Defendant never gave the signed re-awarded letter of Award to the Plaintiff. This further confirms that he had intention to defraud the Plaintiff ab initio.

He had told the Plaintiff a lie about his status in the FERMA claiming to be the Secretary to the M.D of FERMA which he is not. In his testimony he had confirmed that he is a high way staff- a higher work superintendant attached to the AGM East operations where he assists the AGM on his day to day activities. By telling lie about his status it confirms he was out to defraud the Plaintiff.

Again, he gave the Plaintiff an impression that the contract was for sale. But the contract was never for sale. He never gave the Plaintiff any re-award letter. He only gave the Plaintiff a Power of Attorney purportedly issued by the Tuk Allied Company which was not dated. Even the title of the Power of Attorney was meant to deceive. It reads "Irrevocable Power of Attorney with Interest".

The Defendant knew there was no contract in existence in the name of the Plaintiff's company. He also knew that the so called Re-awarded contract does not exist and that there was no construction or execution of the contract. That is why he never called the

Engr.Nazereth.O.Nazereth as a witness though he claimed he met him at the EFCC. The same man he claimed to be the site Engineer who he claimed he paid money to .

The letter of contract for the job was issued to Tuks Allied services Ltd in August 2010. In the said Letter of award of the contract it was clearly stated in

Paragraph 8 thus:

“This contract shall become void if it is transferred, sold and or assigned in whatever manner”.

From the above, it is clear that even the purported “sale” and re-award and Power of Attorney were all illegal act and the Defendant being a staff of FERMA knows it. That is why there never was a letter of award.

He knew that there was no execution of the contract that is why all these while he refused to take the Plaintiff to visit the site. He had confirmed under cross-examination and in examination in chief that he knew that the contract was abandoned long ago and that it will expired on 18/12/10 going by the letter of the GM East Operations of FERMA dated 8/12/10. He knew that the expiration was after extension of time from November 18 to December 18, 2010 yet he was busy giving the Plaintiff impression that the contract was alive but it never was in existence.

Going by his statement at the EFCC and the date of the Houses built and vehicle he purchased, it is obvious that the Defendant used the money fraudulently obtained from the PW1 to build houses at Mararaba. He also used

the money he fraudulently obtained from the Plaintiff based on the hoax contract to buy himself and his wife the C-Class Mercedes Benz and Peugeot 406 respectively. He kept deceiving the Norminal Complainant/PW1 telling him that the work is ongoing while there was no work. He kept the hope of the Plaintiff alive and rising giving him impression that he will soon have the certificate of completion of the fake, non-existing project up until the time the plaintiff wrote to ICPC, Code of Conduct Bureau and later EFCC . For over 4 long years he kept deceiving the Plaintiff raising his hope, until his fraud was cast when the Plaintiff reported to the Pastor of their Church. That's why he quickly raised the cheque and was ready to give his house in refund of the money he fraudulently obtained from the Plaintiff.

He did not deny obtaining the money-N11 Million from the Plaintiff. He did not deny issuing the Cheque to the Plaintiff. He knew the contract from FERMA is not transferable or assignable yet he lied to the Plaintiff about sale of contract. He never presented any receipt to show that the Tuk Allied Company sold the contract and how much the contract was worth. He had sought to tender same receipt and after a 2nd thought decided to withdraw same after arguments were joined. The Court rejected the document after refusing the application for withdrawal.

A look at the letter for extension of time dated 23/11/2010 purportedly written by Tuks Allied Services Ltd show that it was signed by the Defendant- the document is Exhibit 4. It has exactly the same signature signed by the Defendant in the Cheque he tendered as

Exhibit 9, which he raised as repayment to Norminal Complainant. That shows that he is the man behind the company Turk Allied Services Ltd who claimed ownership of the contract which was cunningly sold to the Norminal Complainant PW1. Though the letter bears the name of the PW1 as MD of Turks Allied Services Ltd.

Also the letter dated 19/7/10 which was received by the FERMA on 19th July,2011- one year later- the letter was marked as Exhibit 6. It was request for extension of time for the project. This time the reason was because of the demise of the Site Engineer who the Defendant claimed in the letter has a protracted illness.

Going by the fundamental disparity in the date the letter was written and the date it was received -19/7/11 it shows that the Defendant was out to deceive and defraud. The same letter was signed by the same Defendant as representing Turks.

Exhibit 4 was written on 23/11/10 and received on 25/11/10. While exhibit 6 was written on 19/7/10 but was received on 19/7/11. Both referred to letter written by the FERMA on 16/8/10. Exhibit 4 was because of 1 month of Ramadan Fasting While Exhibit 6 was because of death of the site Engineer. The Defendant knowing what he is doing did not even mention the name of the so called Site Engineer. It is imperative to point out that by the contract agreement the contract was to last between 19/8/10 to 18/11/10. This is as confirmed by the letter of FERMA to EFCC-Exhibit 7. Again the amount for the contract was N17,349,704.40 Going by Exhibit 4 the contract had already expired (on 18/Nov/2010) 4 days before the letter for extension of time was written. As at

23/11/10 the contract was no longer in existence as its life span has expired.

A look at the Power of Attorney shows that, it was not signed. Again the subcontract Agreement was signed on 14/2/14 several years after the contract had expired. On the face of the document it was dated 14/2/14, while on the seal of commissioner for Oath it was 25/3/14. In the same document there is a paragraph C, showing that the Power of Attorney was made on 8/9/10. All these fundamental disparities in the documents show that Defendant had ab initio intention to defraud and actually defrauded the PW1 and his company. The fundamental difference in the contract sum is there also to reckon with: the Power of Attorney was not dated or signed by donor or donee

In paragraph 2 of the letter stated.

“The above contract was awardedin a letter dated 16th August, 2010.”

In paragraph 3 it stated that:

“ The contract sum was N17,349,704.40. The contract had a duration of 3 months, covering on the 19th day of August,2010 and ending on the 18th day of November, 2010”.

The letter Exhibit 7 went on to state thus:

“...the completion time was eventually extended to 17th day of November, 2011...”

The 67% work done was even unprotected as at October 2011 before the extension.

The performance status of the contract is that the contractor abandoned site since November, 2011.”

The above last paragraph shows that the Defendant knows that the site was abandoned even after the extension of time by the FERMA since November 2011. The provision of letter of award dated 16/8/10-paragraph 8 Attached to Exhibit 7 states:

“This Contract award SHALL become void if transferred, sold and/or assigned in whatever manner.”

The above is very clear. It makes illegal the whole idea of assigning the right of the Turks to PW1 and his company. The unsigned Power of Attorney and subcontract agreement too. So also the re-award document which the Defendant showed the PW1. This singular paragraph makes the whole transaction illegal and the Defendant knows it.

Unlike the statement of the Defendant the contract was revoked because of effluxion of time and abandonment. The Defendant knew this but pretended to the PW1 that it was still alive. This further confirms that the Defendant was out to defraud. That makes him guilty of allegation of obtaining money by false pretence contrary to S.1 (1) of the Advance Fee Fraud and other Fraud Related Offences. As a staff of the FERMA working at Road Maintenance Department- Highway Works Superintendent, the Defendant knew and ought to know that the contract in question was not transferable or assignable. He knew it was abandoned. He also knew that it had long expired yet he continued to deceive the PW1 and his company up to 2015 when the PW1 reported to their Pastor and EFCC.

From the statement the Defendant made to EFCC it is clear that he did not deny receiving the money from PW1. He was

ready to refund the money as he claimed in statement of 9/7/15 made to EFCC. But till date he had not fulfilled that promise, so also his statement of 15/3/16. In the said statement the Defendant had stated that if he failed to fulfil his promise to refund the money as stated therein, the PW1 should take any legal action against him. Based on his failure as stated in that statement the PW1 took this action which is the right step in the right direction.

It is the position of the law. S. 1 (1) Advance Fee Fraud and other Fraud Related offences Act 2006, that any person against who it has been established to have obtained money by false pretence is guilty of offence of obtaining by false pretence under the Act. Again it is the law and it is trite that whoever alleges must prove same with cogent facts and evidence. From the totality of the case for and against in this case it puts no one in doubt that the Prosecution has proved the case against the defendant beyond reasonable doubt in that it has established that the Defendant intended ab initio to defraud the PW1 and had actually defrauded the PW1 and his company Embridge Global concept Ltd by obtaining the sums of money as severally stated above from them using the contract for the reinstatement of Eroded Shoulder between CH.O+100-CH.1+470 along NurmanMayolope Road in Adamawa state contract No. MDR/AD/10-08 as a bait to lie the unsuspecting Norminal Complainant who fell for the fraud. He did not deny obtaining the said money.

The Prosecution proved its case against him. The Defendant is therefore guilty for obtaining money from the PW1 and his company by fraud contrary to the provision of S. 1 (1) Advance Fee Fraud and other Fraud Related Offences Act.

He is guilty of the 2 Count charges against him. He is hereby convicted of the 2 count Charge.

This is the Judgment of the Court delivered today.

By me convicting the Defendant.

Allocutus by Defendant Counsel:

However the Defendant is a first offender. As stated he had done business with PW1 and were friends with PW1. But he was pushed by the Defendant. We prayed Court to involve the most liberal sentence for the Defendant by the Court.

Prosecution Counsel:

We apply that in addition to the sentencing that the Court ordered that the Convict Asekhamen Franklin be ordered to rectitude the money he collects fraudulently from the PW1 and his company.

Defendant Counsel:

Asking Restitution of the money to PW1 is double jeopardy. We urged Court to discountenance the application.

Prosecution Counsel:

I urge Court to discountenance the objection we refer to S.321 ACJA.

We urge Court to order restitution.

COURT RULING ON RESTITUTION

This Court having listen to the Counsel for and against on restitution to be made by the Convict to the PW1 hereby order the convict Asekhamen Franklin retribute the N11 Million which he had defrauded when he collected from the PW1 shown in the Cheque he raised in the name of the PW1 and his company.

S.321 ACJA 2015 provides for restitution and this Court grants the order based on that. Application granted.

SENTENCING:

Once a person is convicted of offence by the Court, the next thing is for the Court to sentence the Convict to a term of imprisonment.

This Court having convicted the Defendant Franklin Asekhamen and having listened to the allocutus by the Defendant Counsel, as recorded above hereby sentence you Asekhamen Franklin to 5years imprisonment having been convicted of the above offences.

The sentence shall run concurrently.

This is the Judgment of this Court delivered today theday of.....2020 by me.

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K.N.OGBONNAYA
HON. JUDGE