

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL  
TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI –ABUJA**

**HIS LORDSHIP: HON.JUSTICE M.S. IDRIS**

**COURT NUMBER: 28**

**DATE:-13<sup>TH</sup>December,2023**

**FCT/HC/CR/626/2021**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA .....**

**COMPLAINANT**

**AND**

**MUSA JEJELOLA YUSUF .....**

**DEFENDANT**

**JUDGMENT**

The Defendant was arraigned for the offences bothering on obtaining the sum of One Million Five Hundred Thousand Naira (N1,500,000.00) by false pretense contrary to section 1(1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006. The two counts charge against the Defendant which are hereby reproduce hereinunder thus:-

**COUNT ONE**

That you Musa Jejelola Yusuf sometime in January, 2020 in Abuja within the Abuja judicial Division of the High Court of the Federal Capital Territory obtained the sum of Seven Hundred Thousand Naira (N700,000.00) from one Christina Onazi which was paid to your Zenith Bank Account with Number: 2003160200 under the false pretense that you are capable of securing employment for her daughter with the Petroleum Product Pricing Regulatory Agency (PPPRA) which pretense you knew to be false and you thereby committed an offence

contrary to section 1 (1) (A) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1(3) of the same Act.

### **COUNT TWO**

That you, Musa Jejelola Yusuf sometime in October, 2020 in Abuja within the Abuja Division of the High Court of the Federal Capital Territory obtained the sum of Eight Hundred Thousand Naira (N800,000.00) from one Christian Onazi which was paid to your Zenith bank Account with 2003160200 under the false pretense that you are capable of securing employment for her daughter with the Petroleum Product Pricing Regulatory Agency (PPPRA) which pretense you knew to be false and you thereby committed an offence contrary to section 1(1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1(3) of the same Act.

The Defendant upon arraignment pleaded not guilty for all the two counts charge and the prosecutor lead evidence through its witnesses, PW1 and PW2 and they were accordingly cross examined. The prosecutor in prove of his case tendered exhibit 1, which is the petition written by Mrs. Christiana Onazidated 13<sup>th</sup> day of July, 2022, opening of account, statement of account and certificate of identification dated 19<sup>th</sup> August, 2021 as exhibit 2, extra- judicial statement made by the Defendant is exhibit 3 while under cross- examination, the written withdrawal of the petition dated 28<sup>th</sup> October, 2021 was admitted as exhibit XXX1 and thereafter the prosecutor closed their case.

The Defendant formulated two issues for determination in the circumstance of this case namely:-

1. Whether Mrs. Christiana Onazi being the Petitioner has the right to compound the charges against the Defendant

2. Whether in the light of the totality of evidence led by the prosecution a prima facie case has been made against the Defendant warranting him to enter his defence.

In his legal argument learned defence Counsel argued that by way of preliminary part wherein the payment made by the Defendant to PW2 by writing exhibit A to the EFCC which commenced investigation leading to the arrest of the Defendant. The compensation N1,550,000.00 which was received by Mrs. Christiana Onazi and in return compounded the offence against the defendant by writing of exhibit 1 which position represented the position of law as at today. The question here is who has the right to compound the offence committed against her see ***PML(SECURITIES)CO. LTD VS FRN (2018)LPELR- 47993(SC)***. Relying on this principle of law Defendant's Counsel submits that Mrs. Christiana Onazi has the right to compound the offence against the Defendant see exhibit 1 tendered byPW1 thereafter having voluntarily written letter of withdrawal to the EFCC this Court is clothed with jurisdiction to give effect to the intention of **PW2** see ***FRN VS DENLYE (2011)13 NWLR (pt1265)530-548***.

It is therefore not in doubt that PW2 has the right to compound the offence against the Defendant which is in line with the provision of section 355 of ACJA 2015 which provides thus:-

"Where a complaint at any time before a final order is made in a case satisfies the Court there are sufficient grounds for permitting him to withdraw his complaint the Court may permit him to withdraw the complaint and shall thereupon against the Defendant"

The provision of section 355 of Administration of Criminal Justice Act 2015 has received judicial pronouncement in the case of ***FRN VS ONONYE 92018) LPELR 45667***.

To further demonstrate the compounded arraignment of the offence by PW2 under cross examination admitted that exhibit 1 was voluntarily made by her which terminates the charges against the Defendant. I now voluntarily wrote a withdrawal letter of my petition. The EFCC replied me that they don't have the power to do so that they already charge the Defendant to court

## **ON ISSUE TWO ABOVE**

The Defendant argued further that a careful consideration of the totality of the evidence of the prosecution will reveal that the prosecution discloses no prima facie case against the Defendant particularly all the essential element/ingredient of the alleged offence where not established by the prosecutor. To start with the legal burden of proof on the prosecutor does not shift and this is consistent with the provision of section 36 (5) of the 1999 constitution see ***RASAKI VS STATE (2011) 16 NWLR (pt 1273) 251 At 284 – A-F.***

The offence of obtaining by false pretense is created under the section of the Advance Fee Fraud and other Fraud Related Offences Act. Similarly the ingredient of the said offence have been stated in ***ONWUW VS FRN (2006) 10 NWLR (pt 988) 382 at 431 – 432*** paragraph H-C. in the instant case there is no lota of evidence to show that the Defendant misrepresented himself to PW2, PW2 testimony is reproduced thus:-

“ PW2 yes through one of our family friend by name Tunde Lawal the same Tunde Lawal introduced him to me as a job recruitment specialist the Defendant now told me he gives jobs to his wife”

The implication of the above scenario is that the Defendant did not in any way misrepresented his status in relation to his

contractual relationship with PPPR Agency to the nominal complainant who testified as PW2. The expression false pretense has been defend in the case of ***UZOKA VS FRN (2010)2 NWLR (pt.1177)118 at 140 H and 141 A-B***the factthat this arrangement with the staff of his contractual relationship with the staff of PPPR Agency did with the consent of the nominal complainant did not work as planned and as anticipated by the Defendant does not make the Defendant guilty of obtaining by false pretense.

In the case of ***ONWUOIKE VS FRN (supra)*** in an honest belief in the true of the statute on the part of the account which later turns out to be false, cannot found a conviction on false pretense”

The prosecution is totally bound to prove all the ingredients of the offence for which the Defendant is charge

***ANYANWU VS STATE (2012) 16 NWLR (pt1326) 221 at 270 F-H.***

The ingredient of “fraud” has not been established to demonstrate the absent of ingredient of fraud see exhibit 1

The prosecution through PW1 and PW2 who testified before the Court never inform this Court whether they visited the PPPRAor written letter sent to PPPRA denying the skills or connecting the Defendant here with the organization. A doubt has been created in the minds of the Court where a doubt exist in criminal cases such doubt must be resolved in favour of the Defendant see ***FRN VS OJO& ANOR (2018) LPELR 4554.***

The evidence of PW1 was totally hear say this is because under cross examination PW1 said

*" All what you told this Court is what the nominal complaint told you" answer PW1 yes."*

Do you have any document to show that the Defendant obtained money by false pretense.

PW1:- No.

The extra judicial statement made by the defendant exhibit 3 are consistent with the fact that the defendant did not in any way or manner committed the offence of obtaining by false pretense see ***OSENI VS STATE (2012) NWLR (pt 1293)***. On whether the no case submission found by the Defendant be sustain was because of the facts that the evidence of the prosecution was so discredited during cross examination see ***EMMANUEL EBEZIAKO VS COP (1963) NWLR PG.88& 94*** Counsel urge the Court to uphold the no case submission filed and discharge the Defendant in the interest of justice on the otherhand the prosecution raised two issues for determination:-

1. When there has been no evidence in the alleged offence
2. When the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal/ Court can safely convict on it see ***FAGRIOLA VS FRN (2014) ALL FWLR (pt724)74 Q 98***

*"What then does the phrase (No case submission means this mean that there is no evidence on which the Court would convict even if the Court believed the evidence adduced by the prosecution see OBIKEZE VS FRN (2017)LPELR 43240.At a stage of no case submission the Court should not consider the credibility of PW. It is also premature for the Court to believe or disbelieve the witnessstatement" see ***DPP VS BISHOP PAUL AUGUSTINE AKPAN (2018) LPELR 44047. ONAGORUN VS STATE (1993) 7 NWLR (pt 303) SUBERO VS STATE (2010)4 (Pt2) NSCQN 1169 -186****

**-1187** Counsel also referred the Court to section 303 (3) of the Administration of Criminal Justice Act 2015 (ACJA) in his argument Counsel maintained that the Court business is to consider the evidence of the prosecution written oral and documentary and the determine whether a prima facie case has been made out against the defendant for him to be called upon to answer the major parameters is whether the prosecution witness disclose a prima facie case see ***BASSEY VS FRN (2022)LPELR56950 EKWUMGO VS FRN (2008) 15 NWLR (pt 111) 6309 641, AGBO VS STATE (2013)11 NWLR (pt1356) page 377 q p. 394 paragraph C-D. UBANELN VS COP (2002)2 NWLRpg 129 paragraph B-C***

Prosecution's Counsel maintain that the oral testimony of the PW and the exhibits tendered strongly links the Defendant with the offence charge necessarily need for him to enter his defence.

The Defendant is standing trial on a 2 count charge contrary to see 1 (1) (9) of the Advance Fee Fraud and other Related Offence Act 2006. Provides that any person who by false pretense and with intent to defraud obtains from any other person in Nigeria or in any other country for himself or any other person whether or not the property obtained or its delivery is induced through the medium of a contract induced by the false pretense commits an offence under this Act see ***FRN VS TACTE (2022) LPELR 57088***.Held the following must be established for the prosecution to succeed.

1. That the accused made a pretense (representation) to a person or complainant.
2. That the parameter or representation was to obtain property for himself or any other person.

3. That the pretense or representation was false.
4. That the pretense or representation was with intent to defraud.
5. Whether or not the property is obtained or the delivery is induced through a contract induced by the false pretense is not a defence.

It is required by law that all the above ingredients of the charge be established by credible evidence beyond reasonable doubt before a conviction can be sustained see ***HAMDI VS FRNLPELR 57760***. When PW1 graphically testified which led to the tendering of some exhibits on how the Defendant is alleged to have committed the offence under cross examination PW1 stated that he did not witness the event that led to the filing of the charge but while the complainant told him what he investigated he further stated that the response from Zenith bank and investigation show that the Defendant obtained money by false pretense.

PW2 gave evidence on how she was deceitfully made to part with her N1,500,000.00 all to the pretense that the Defendant would provide a job for her daughter under cross examination PW2 confirm that she wrote a letter of withdrawal dated 28<sup>th</sup> October, 2021 address to the Chairman of the Commission from the totality of the evidence of PW and exhibits tendered it is evident that the defendant can be said to have committed the said offence.

In response to the argument raised by the Defendant issue one raised by the Defendant should be dismissed as the same issue has been dealt with and same has no place in a no case submission.

Contrary to the argument raised by the Defendant in paragraph 3.16 3.22 on issue 2 it is the case of the prosecution that the



Defendant personally informed the complainant that he carried out a background check and assured her of the vacancy at PPPRA and as such held himself out as being capable of securing the job contrary to the assertion made by the Defendants Counsel in his address on no case submission that the arrangement/plan does not make the Defendant guilty of obtaining by false pretens. In response the prosecution argued that the Defendant should enter his defence. Prosecution Counsel admitted that the burden of proving criminal offence beyond reasonable doubt is strictly on the prosecution Counsel referred the Court to ***STALO VS AHMED (2020) LPELR 49497 SC.***

The prosecution further argued that the prosecution has proved its case beyond reasonable doubt. The prosecution Counsel responded that he who assert must proof that it was the Defendant who asserted that he has the connection of securing job in the ***PPRA. See DASULI VS FRN& ORS (2018)LPELR 43897SC.*** Contrary to paragraph 3.35 PW1 said he did not witness the event that led to the filing of the charge but what the complainant told him and from his investigation and that he has the documents to show that the Defendant obtain money by false pretense. See also exhibit 3 where the Defendant admitted using the money to settle same directors. He later agreed that there was no such arrangement and that he only used the money for logistic. This clearly show how the Defendant was busy contracting himself. The duty of the Court is not to express opinion or the evidence it is only for Court take note and to rule accordingly that there is nothing before the Court or legal admissible evidence linking the defendant with the offence charged see ***AMEH VS FRN (2019) LPELR 46347 SC. IKENNA ISIBER VS THE STATE (2018)LPELR 44834 AITUMA VS STATE (2007) ALL***

***FWLR (PT 381)1798***. Finally, the prosecution said he has established it requirement of the crime committed by the Defendant and thereafter same urge the Court to call a the Defendant to enter his defence.

I have reproduced substantially the argument far and against in this judgment. The issue raised for determination are somehow the same by both learned gentlemen. I therefore without substituting those issues raised but have to formulate one issue by this Court for determination to wit " Whether the prosecution has establish a prima facie case against the Defendant"

It is my view that the evidence adduced by the prosecution witness especially PW2 made me to fully convinced that the prosecution has failed to establish such issue. The PW1 graphically adduced evidence on his fact finding regarding how the Defendant was alleged to have committed the said offence. However during cross examination same answered that some of his evidence adduced in chief was derived from PW2. This is hearsay more importantly based on the evidence adduced by the prosecution witnesses the element of the alleged offence have not been wholly established against the Defendant. I have no doubt in my mind that our criminal justice system in accusatorial in nature the accused is presumed innocent until the contrary in proof see section 36(5) of the 1999 Constitution.

In this judgment I must state that this Court is not trying to overrule itself regarding the application filed by the Defendant wherein its Court over rule same and urge the Counsel to proceed. However it was principally based on the evidence of PW2 that made me to totally agreed with the Defendants Counsel position in this regard.

The legal burden of proof is always on the prosecution same does not shift same is always constant see **RASELA VS STATE (2011) 16 NWLR (Pt 1278)251- 284 A-F**. In point of fact, the Defendant was not the one that approached the nominal complainant (PW2) to secure a job for her daughter, but it was the nominal complainant who heard about the connection the Defendant have with PPPRA. The implication of the above scenario in that the Defendant did not in any way mis represented his state in relation to his contractual relationship with PPPRA to the complainant who testified as PW2. The expression of false pretense has been defined in **UZOKA VS FRN (20A0) 2 NWLR (pt 1177) 118 -140**. from the cases cited supra by the prosecution hereby established the need to proceed for the Defendant to make same explanation to the Court regarding the offence alleged to have been committed by the Defendant. However the Court is quite aware of that position but the question that is begging for an answer is does the prosecution established all the essential element and the ingredients of the offence against the Defendant as required by law? The answer in my opinion is no. Because it is trite in law once there is doubt the issue must be resolved infavour of the Defendant. I have carefully relied on the evidence adduced by the prosecution witness and relied on same however the position of the law remain unchanged . this can be seen from the cases cited by the Defendant Counsel (supra) I have clearly attached judicial importance particularly on the evidence of PW2 who graphically gave account in Court while adducing evidencing in chief made her to withdrawn the case from the EFCC. By exhibit 2 it clearly show that the PW1 nominal complainant is no longer interested in prosecuting the Defendant by the EFCC. I have constantly emphasis in this judgment that the entire duty of the prosecution is to prove the offence alleged to have been committed by the Defendant lies

with the prosecution. By section 303 (3) of the Administration of Criminal Justice Act 2015. The complainant have the right to compound the offence against the Defendant it is the position of the Supreme Court that full opportunity should be given to the parties in the interest of justice without due regards to technicalities. Gone are the days where Court of law were only concerned with doing technical justice and abstract justice based on arid legalization. These are the days when Court of law do substantial justice in the light of the prevailing circumstances of a case the days of the Courts doing technical justice should not surface again see ***ABUBUKAR VS YARADUA (2008)4 NWLR (PT1078)465.***

Consequently from the facts of this case and the legal argument canvassed by Counsel for and against I found it worthy based on the position of the law to hold that the Defendant be discharged accordingly same is hereby discharged

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**HON. JUSTICE M.S  
IDRIS**

**(Presiding Judge)**

Appearance

Defendant in Court

M.MYusuf:- For the Defendant.

