

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : CHARGE NO: CR/240/2018
DATE: : FRIDAY 28TH JUNE, 2024

BETWEEN:

INSPECTOR GENERAL OF POLICE COMPLAINANT

AND

1. CAPT. ABBAS S. MAIGIDA, 'M' 41 YRS.
2. ALH. ALIYU MOHAMMED HEDEJA
'M' 67 YRS. } **DEFENDANTS**

JUDGMENT

The Defendants herein were charged with the criminal offences contrary to Sections 97, 312, 322, 317 and 177 of the Penal Code Act.

The Defendants were arraigned on the 15th day of November, 2018 on the following count charges.

Count 1

That you Capt. Abbas S. Maigada 'M' 41 years, male and Alh. Aliyu Mohammed 'M' 67 years all of Abuja on or at about sometime in 2008 in Abuja within the jurisdiction of this Honourable Court, did conspire with each other to commit an offence to wit: criminal breach of trust and cheating and thereby committed an offence punishable under section 97 of the penal code law of the Northern Nigeria.

Count 2

That you Capt. Abbas S. Maigida 'M' 41 years, male of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Honourable Court being entrusted with land documents which includes documents of Plot CD 32, Zone A, Gidan Mangoro, Karshi – Abuja with file No. Misc 98856 and 85615 by one Halima

Njobdi, fraudulently and intentionally disposed of it, without the consent of the said Halima Njobdi and thereby committed an offence punishable under section 312 penal code of the Northern Nigeria.

Count 3

That you Capt. Abbas S. Maigida 'M' 41 years, male of Abuja on or at about sometime in 2008 in Abuja within the jurisdiction of this Honourable Court, fraudulently and dishonestly converted the proceeds of the sales of landed property known as Plot CD 32, Zone A, GidanMangoro, Karshi, Abuja belonging to one Halima Njobdi and thereby committed an offence punishable under section 322 penal code of the Northern Nigeria.

Count 4

That you Alh. Aliyu Mohammed 'M' 67 years of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Honourable Court, dishonestly received and paid for a stolen property to with plot CD 32, Zone A, Gidan Mangoro, Karshi, Abuja belonging to one Halima Njobdi using the documents entrusted to you by the said Halima Njobdi and you thereby committed an offence punishable under section 177 penal code of the Northern Nigeria.

COUNT 5

That you Capt. Abbas S. Maigida, "M", 41 yrs, Male of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Honourable Court, fraudulently and dishonestly sold Plot CD 32, Zone A, Gidan Mangoro, Karshi Abuja belonging to one Halima Njobdi using the documents entrusted to you by the said Halima Njobdi and you thereby committed an offence punishable under **Section 177 Penal Code of the Northern Nigeria.**

Upon arraignment, the Defendants pleaded not guilty to all the Counts charge and the case proceeded into hearing.

PW1 (Halima Njobdi) in her evidence before the Court stated that she was a company secretary with Aliko Muhammad (Dan-iyana Misau), that her colleagues who were expatriates saw publication by FCT Minister calling investors into Abuja which coincided with relocation in FCT. PW1 stated that her colleagues were given allocations at Gidan Mangoro and Two Housing Estate Lands at Pegi Village and another at Idu.

PW1 gave evidence that she was to act as Client Manager for the land allocated to her colleagues expatriates at Gidan Mangoro, Pegi Village and Idu.. She gave evidence on how she gave photocopies of the said land allocation papers to the 1st

Defendant and how 1st Defendant requested for the original allocation papers from her and how he said one of the land was not in the system and advised that payment be made for application to which he was given N100, 000.00 (Hundred Thousand Naira).

She gave evidence on how 1st Defendant informed her that the two Plots at Pegi was going to be used as Widows Quarters and that alternative land would be given.

Concern was later raised when the vegetable land at Idu was sold by an unknown person for N130,000,000.00 (One Hundred and Thirty Million Naira). PW1 said being expatriates Plots, she was then being threatened with court by them. PW1 said 1st Defendant later informed her that he has found papers of land they have forgotten about.

PW1 also stated in her evidence how the same land 1st Defendant informed her was not in the system was later presented to her for sale when her colleague wanted to buy land to build IDP home to accommodate the North East. The 2nd Defendant was then introduced as the owner of the land, and upon presentation of the original allocation papers for signatory, she then saw her address.

PW1 later reported to the Police and when 2nd Defendant was arrested, he said 1st Defendant said he bought from PW1.

PW1 testified further that at a time she started questioning his relationship with her son reason being that she travelled and when she returned back with a buss she got to her home, entered and turned on the light and found 1st Defendant in her house, her son then wore his boxer shorts and left her house till today.

She further stated that she was arrested by police within the premises of this court.

PW1 in her testimony further stated that she made statement with respect to this matter and also gave documents.

PW1 was there after cross – examined and discharged.

Inspector Desmond Abella gave evidence as PW2 and stated how he investigated the petition written by PW1 against the 1st and 2nd Defendants. PW2 narrated how 1st Defendant received the allocation letter of land allocated to the PW1 in the name of her company and sold same without the knowledge of PW1 to 2nd Defendant.. PW2 stated how both Defendants admitted having had dealings with the allocation paper and that the allocation

paper was recovered from the 2nd Defendant but returned to him on BOND.

The extra judicial statement of 1st and 2nd Defendants was tendered and admitted in evidence and marked as Exhibits "B" and "C" respectively.

The following were tendered and admitted in evidence.

1. Statement of accused persons admitted and marked as Exhibit "D".
2. Bond to produce admitted and marked as Exhibit "E".
3. Deed of Assignment admitted and marked as Exhibit "F".

PW2 in his testimony stated further that, in his investigation, he discovered that the land was allocated to Marioti Industries Limited through Abuja Metropolitan Authority and Nominal Complainant owns it and the documents were all in her company's name and that none of the Defendants were members of Marioti Company Limited.

PW2 was cross-examined and eventually discharged.

The Complainant closed its case to pave way for Defence.

The Defendant (Aliyu M. Hedejia) himself testified as DW1.

It is the evidence of DW1 that he knows the Nominal Complainant and also the 1st Defendant as Sunday Maigida as a friend and they came to his house with PW1 sometimes in April, 2008 in Maitama. The 1st Defendant told him that he came to sale two properties lodged at Gidan Mangoro, he looked at the two papers and told the 1st Defendant that he has never seen this type of allocation written on a plane sheet of paper because it was never a Right of Occupancy or Certificate of Occupancy. 1st Defendant confirmed to him that it was a resettlement allocation. They then talked about the price and agreed for a consideration of N1,000,000.00 (One Million Naira). He told the 1st Defendant that papers will be subject to verification from the resettlement office and he accept and DW1 went to the resettlement office where he was advised to have a letter of authority and he issued a certified Bank payment through the Zenith Bank of the 1st Defendant.

DW1 in his evidence further stated that the he then proceeded to sign a sales agreement with the 1st Defendant. DW1 states in his evidence that after six (6) months of the transaction, PW1 reports to his house with three allocation papers and sought to know if he will be interested to purchase, he told her yes provided she

came with the 1st Defendant as they did the first time, she promised to come back but never did until after 7 to 8 years, she then came to his house with Rilwanu and requested to know if he was holding onto the previous Gidan Mangoro to which he told her he was still with it, She then indicated interest to buy it.

It is further the evidence of DW1 that they discussed and reached a level of N30 Million, she said she will be happy if she could have the copies of title documents to verify at AGIS.

DW1 gave evidence further on how they were surrounded at AGIS by the police officers wherein they were taken to a police post near AGIS and he stated how he came about the documents as requested by the D.P.O, that he purchased the documents from the 1st Defendant of which the PW1 knew him more than he did.

DW1 further testified that D.P.O then requested him to get the 1st Defendant who was in U.S.A attending a course and he told him why he was needed at the police station and 1st Defendant said he would be available in the next 48 hours where he did.

DW1 stated further in his testimony that D.P.O said the documents would be released to him on Bond which they did and that the next day, the case was transferred to Garki police station

and from Garki police station. PW1 took the matter to a court in Garki, the Court then sent a letter to police to reinvestigate the matter and eventually another letter was written to the police by the court saying they do not have jurisdiction to hear this case and the case was transferred to police monitoring unit and at the end they were in court.

DW1 further states that the land in question was not for sale before the PW1 approached him.

DW1 tendered the following document and admitted in evidence.

- a. Letter of authority dated the 18th April, 2008 tendered, is admitted and marked Exhibit "D1".

DW1 was cross examined and discharged.

DW2 (Ibrahim Musa) testified as follows: That some years back, he was at his brother's house when the gate was knocked and he was asked to open the gate, as he opened, he saw a man and woman inside Toyota Siena buss and he requested them to come in, after introducing themselves as Halima and Halima then said she came to see the 2nd Defendant in respect of a plot of land at Gidan Mangoro and that she was living and waited to come home

and build her father's home and requested to buy the Gidan Mangoro plot of land.

DW2 stated in his evidence that after some days, he was with the 2nd Defendant in his house which he gave him the documents to go and meet the said Halima at AGIS for search on the land.

DW2 stated further that he then went to AGIS Office at Area 11 where he met alone without Halima, they were asked to go to resettlement office, as they arrived there, suddenly three persons appeared and grabbed him, they identified themselves to be police men, he was then dragged out of the office straight to police out post Area 11 FCDA. That the D.P.O then requested to know how he came about the documents and that he explained to the D.P.O and he said there was a report of stolen documents and sought to know who gave him the documents.

DW2 in his testimony further stated that he then contacted his brother who reported himself in less than twenty minutes. Nominal Complainant eventually surfaced at that police station.

That a call was placed and the 1st Defendant came and the said nominal complainant stopped coming to the police station. The D.P.O said the matter was transferred to Garki Police Station.

DW2 was cross – examined and subsequently discharged.

DW3 (Capt. Abba Maigida) the 1st Defendant himself testified as follows:

It is the testimony of the 1st Defendant that sometimes around 2005/2006 the then Director Development control sent the PW1 to 1st him that the said PW1 was telling him that she was a developer and needed someone to partner with. As the P.A to the Managing Director, he was given a slot which was at Gidan Mangoro which was a relocation from Angwan Mada beside Abacha Barracks.

He gave evidence that a slip with a plot number was issued to him which was a plot size of about a hectre, he reserved same to her, the said allocation which he said had not been processed, she agreed for them to partner and he demanded for her company profile which she forwarded through her son named Gidado Yusuf.

DW3 further stated that on receipt of the document, he paid the processing fees of N21,000.00 and then forwarded the processed document to the officer in charge of the processing such allocation.

DW3 stated in his testimony that a hand written offer was issued to him and he invited PW1 and they had a gentlemen's discussion he then handed over the documents to her and within no time, she came back to him to say she had issues with payment of her rent and insisted that the documents be sold, but he told her it was not their arrangement, she insisted and persisted.

DW3 testifies further that he invited her to meet the 2nd Defendant at his residence at Maitama. They discussed with him and agreed to sell the land at the sum of N1,000,000.00 (One Million Naira), 2nd Defendant demanded to know the site to which he said he only know from layout.

2nd Defendant eventually located the site at Gidan Mongoro. He stated that PW1 later went back to meet the 2nd Defendant and requested for payment of the land but 2nd Defendant insisted that he be produced. On hearing that, the 1st Defendant stated that he was angered and decided to call off the transaction and that PW1 came back to the office and met people that knew the 1st Defendant and persuaded him to proceed with the transaction. And that on that promises, he spelt things out to her and she gave him the authority letter to dispose - off the land and 2nd Defendant later transferred N1,000,000.00 (One Million Naira)

into his Zenith Bank Account and upon receipt of the money he notified PW1 and he wrote a cheque of N500,000.00 (Five Hundred Thousand Naira) and gave to her which she cashed upon his confirmation.

DW3 testified further that sometimes in 2015 or 2016 he was at the United State for a training, he received a call at about 3am in the morning from the 2nd Defendant telling him they were at the police outpost FCDA Area 11, he demanded to speak with the D.P.O and requested that he be put on speaker, upon hearing what had happened by the D.P.O, he pleaded with him to give him 48 hours to return to Nigeria, when he arrived, he went to the police post and he sighted PW1. That at the police station D.P.O explained as to why the 1st Defendant was at the station since PW1 denied knowing him. D.P.O eventually called PW1 but she said she was not in town. DW3 stated that he excused the D.P.O. outside his office and pointed to a woman standing wearing black Hijab and informed him that it was PW1 (Halima). The D.P.O called her again to say she had been seen and that she should come over, on reaching the police station, she said she does not have time and that she was going for a meeting, and she eventually left.

DW3 stated that he indicated dissatisfaction with the attitude of PW1. He stated further that a meeting was rescheduled but PW2 refused to turn up. At the appointment date, the matter had been transferred to Garki 2 Police Station. The police then insisted to take the PW1 but she denied knowing the site, 2nd Defendant in company of Inspector Ishaya went to the site.

It is further the testimony of DW3 that they were directed to go to court and meeting was rescheduled by the court registrar with the judge and the judge said that the document before him was neither Right of Occupancy nor Certificate of Occupancy, It was a hand written document from (AMMA) Abuja Metropolitan Agency and for that reason has no jurisdiction to try the matter, and they report back to police station.

He further testified that he received seven test messages threatening him and his family which he left on his phone. The matter had been transferred to Garki IGP Monitory Unit.

DW3 further stated that PW1 preserved herself to the public as his wife and she equally wrote in her petition at Garki that she was married to him from 2013 – 2014, she also said he was a gay because he refused to sleep with her and he stated that being a public servant he did not have any company.

DW3 tendered the following documents and admitted in evidence:

1. 16 pages printed text and whatsapp messages and certificate of compliance tendered admitted in evidence and marked as Exhibit "D2".
2. U.B.A Teller No. 13233 tendered is admitted in evidence and marked as Exhibit "D3".
3. Police Report tendered is admitted in evidence and marked Exhibit "D4".
4. Petition dated the 5th February, 2026 tendered is admitted in evidence and marked as Exhibit "D5".

DW3 was cross – examined and subsequently discharged.

Parties closed their respective cases to pave way for filing and adoption of final written address.

Learned counsel for the 1st and 2nd Defendants filed written address wherein sole issue was distilled for determination to wit:

Whether or not the prosecution has proved his case against the Defendants as required by law.

Learned counsel while arguing the above submits that the prosecution's effort at proving the charge against the Defendants fell short of the high standard of proof set by law. Evidence is at variance with the charge and very essential witnesses were neither listed nor called, above all, the principal witness for the prosecution Halima Njobdi is not a witness of truth, her evidence did not in any way support the case of the Prosecution and indeed wanting in credibility.

The essential element of the offence must first be charged before it can be proved and the onus of proving same lies on the shoulders of the Prosecution.

Learned counsel submits that the charge failed woefully to specify this major element of the offence and that being the case, the various counts are grossly incompetent by virtue of being speculative and vague. The purpose of a charge is to let the Defendants know clearly the case against them. He cited ***FRN VS. SAMUEL (2017) LPELR – 43419 (CA)***

It is further the submission of learned counsel that the elements of offence charged must be specifically pleaded and cannot be left to speculation or conjecture, it is for the Prosecution to ensure that the elements of the offence are properly spelt out in

the charge. He cited ***TIMOTHY VS. FEDERAL REPUBLIC OF NIGERIA (2008) ALL FWLR (402) 1136.***

It is further the contention of the learned counsel that once an essential element in an offence has been omitted, there can be no question of proof beyond reasonable doubt. ***ALABI VS. STATE (1993) 7 NWLR (307).***

Learned counsel further contends that the starting point in proving the allegations against 1st and 2nd Defendants in respect of this case is to first of all charge Mariotti Industries Ltd. as the owner of Plot CD 32, Zone A Gidan Mangoro and that Plot. CD 32 Zone A was fraudulently sold and proceeds converted by the 1st Defendant, having failed to include that essential element in the charge, the Prosecution cannot by any stretch of imagination be said to have proved beyond reasonable doubt that Plot CD 32 Zone A belong to Mariotti Industries Ltd. and that same was fraudulently converted and sold by the 1st Defendant to the 2nd Defendant.

Learned counsel also submits that nothing was charged and nothing was proved by the Prosecution and as such, the case of the Prosecution is lifeless and the court is urge to so hold. See

the case of ***BELLO VS. COP (2018) 2 NWLR (Pt. 1603) 2671 SC was cited.***

Learned counsel further submits that the law is that where there are contradictions in the evidence of Prosecution's witnesses on a material fact as seen in the instant case, such contradictions ought to be explained to the satisfaction of the court by the Prosecution. He cited ***PRINCEWILL VS. STATE (1994) 6 NWLR (Pt. 353, 703 at 714) Paragraphs D – E.***

It is the contention of the learned counsel that PW1 unequivocally told the court that Plot CD 32, the subject matter of the trial was allocated to some expatriates by the Minister of FCT, she further told the court that files in respect to the allocation were handed over to her to act as a client manager, in all this, nothing was placed before the court to link the expatriates with Plot CD 32 and neither was anything placed before the court to show that PW1 was appointed to act as client manager in respect of the land.

Learned counsel submits that fact not supported by evidence goes to no issue, therefore PW1 testimony cannot proof the allegations contained in the charge for which the Defendants are standing trial particularly that the Defendants vehemently denied

and pleaded not guilty to the alleged offences. The case of ***OLORUNFEMI VS. ASHO (2000) 2 NWLR (Pt. 643) 143, 2001 SC 15 was cited.***

Learned counsel submits that the Prosecution failed to call material witnesses required to establish the elements of the offences charged and as such the offences charged were not proved, it is the law that the prosecution has a duty to call all material or vital witnesses to prove its case. ***OGUONZE VS. STATE (1998) 4 SC 110 AT 155 – 156 Paragraphs 40 -5 was cited.***

Learned counsel contended that the Prosecution if not duly bound to call all witnesses listed for the trial, the obligation incumbent on the Prosecution demands that relevant witnesses must be called to establish the various components otherwise known as the elements of the offence charged for such case to be established. He cited ***OKON VS. STATE (2017) LPELR – 42 – 639 CA.***

Flowing from the above, it is counsel's submission that failure of the Prosecution to call the vital witnesses in proof of its case is fatal, the court is urge to so hold.

In conclusion, from the totality of the argument and decisions canvassed above, it is counsel's submission that the legal burden placed on the Prosecution has not been discharged and as such court is duty bound to set the Defendants free. The court is urge to dismiss the charge, discharge and acquit the Defendants in the interest of justice.

Prosecution on its part formulated sole issue for determination to wit:-

Whether the Prosecution has proved its case beyond reasonable doubt.

It is the submission of the learned counsel that the Prosecution has proved its case beyond reasonable doubt, that PW1 to PW2 in their testimonies before the court made it clear that the 1st Defendant was entrusted with application papers of land by PW1 and it is in evidence that the allocation was made, the 1st Defendant in breach of the trust repose in him, sold the land to the 2nd Defendant, the 2nd Defendant who is aware the land is not in 1st Defendant's name bought the land in a bid to assist the 1st Defendant in concealing or disposing the land and after the sale, the 1st Defendant converted the money into his own personal use

in breach of the trust reposed in him. He cited ***ONUOHA VS. STATE (1988) L.P.E.L.R – 2706 (SC)***.

It is the submission of the learned counsel that on receiving stolen property, cited section 167(a) of the Evidence Act and section 316 of the penal code and further argued that the Defendant could not produce a letter of authority authorizing him to collect Plot CD 32 AMMAC Office FCDA or Power of Attorney showing how he was authorized by the PW1 to sell Plot CD 32 Gidan Managoro Karshi, Abuja to the 2nd Defendant and in his own name, even if he was authorized to sell he did not tell the court who and how was the proceed of the sell was paid to the person who authorized him and evidence of such payment to PW1. See the case of ***BOGOBIR VS. STATE (2013) LPELR – 20170 (CA)***.

It is the contention of counsel that, the Defendants who has testified in his defence that he was authorized to sell the land by PW1 produce a document he never produced during the cause of investigation and he never said in his statement before the Police, it is a fact that the purported letter of authority do not emanate from Marrioti Company Limited, assuming it emanate from PW1, nowhere in the document where Plot CD 32 was mentioned in

anyway whatsoever, the 2nd Defendant who is also aware that the 1st Defendant did not own the land in question, sold the land without the consent of the owner converted the money into his own personal use. The Court is urged to so hold.

Learned counsel submits, that from the evidence led by the Prosecution which are legally admissible, had linked the Defendant to the offences, because he did not have any legal justification to sell the property to 2nd Defendant his co-conspirator but went ahead and dispose - off the property, this assertion was never discredited under cross-examination, the Court is urged to so hold.

Learned counsel further submits that the evidence of PW1 to PW2 called by the Prosecution is very illuminating, stating specifically how the Defendants committed offences, that witnesses testimony was never discredited under cross-examination by the Defendant. Counsel cited ***ESSIEN VS. THE STATE (2017) 2 – 3 SC (Pt. 111) 101.***

Learned counsel argued, that even if the evidence presented by the Prosecution did not support the charge, the Court has a duty to convict Defendant if it appear in evidence that he committed a similar offence which he might have been charged and he may be

convicted of the offence if he is shown to have committed although he was not charged with it. Counsel cited Section 223 of the Administration of Criminal Justice Act, 2015.

Learned counsel further contends, that all the evidence of the Prosecution is not contradicted in any way that may create doubt in the mind of the Court as such in the absence of such contradictions, the Court is urged to rule in favour of the Prosecution and convict the Defendants. The case of ***ATTAH VS. STATE (2010) 10 NWLR (Pt. 1201) Paragraphs B – G was cited.***

It is the submission of learned counsel, that documents speak for itself and during cross-examination, 1st Defendant admitted when he was shown the document, purported letter of authority, he admitted that Plot 32 was not mentioned on the document and that the authority did not come from Marioti Industries Limited, that this is an admission on his own part. The case of ***AROGUNDADE VS. STATE (2009) ALL FWLR (Pt. 469) P. 411.***

Learned counsel concludes that the testimony of PW1 to PW2 and the entire exhibit tendered in this case including but not limited to the testimony of the Defendants linked them to the offences and

the Court is urged to hold that the Prosecution has proved its case against the Defendant.

In turn, learned counsel for the 1st and 2nd Defendants filed reply on points of law to the Prosecution final written address.

Learned counsel argued that on the consequences of failing to respond to issues raised by the Defendants, submits that the law is trite that where an opponent fails or neglects to counter any argument on issue validly raised in Brief of Argument or address, the issue not so contested is deemed conceded by defaulting opponent. See the case of ***NWANKWO VS. YAR'ADUA (2010) ALL FWLR (Pt. 534) Page at Page 22.***

Counsel also submits that, the Plot CD32 is the subject matter in this trial, the owner of the said plot alleged to have been sold by the 1st Defendant to the 2nd Defendant is an essential element of the offence which in law must be sufficiently disclosed in the charge, unfortunately in count after count, the Prosecution failed to disclose correctly the name of the person who is the owner of Plot CD32 alleged to have been sold by the 1st Defendant. It is further the counsel's submission that the Prosecution did not deem it fit to offer any response to the above submissions giving rise to the inference that the Prosecution concedes the points.

The court is urge to so hold. ***REGISTERED TRUSTEE VS. F.G.C (2007) ALL FWLR (Pt. 357) 978 at 985 Paragraphs E – G was cited.***

Learned Counsel argued further that the Prosecution failed to respond to the submission that the charge is emotionally motivated, that the content of Exhibit "D2" and "D5" would show to the court the reason why Defendants are standing trial before this court, the Prosecution again offers no answer to this submission, thereby conceding same in its entirety.

Learned counsel contends further on the failure of the Prosecution to offer any response to the submission that material witnesses were not called, Mr. Saminu, a staff of FCDA who PW1 said introduced her to the 1st Defendant to enable her follow up the allocation and the agent who marketed the land for her to buy when she was looking for land, it is the counsel's submission that no evidence was given to show that these vital witnesses that could have been called were all dead, or that they could not be found, or that they had become incapable of giving evidence. The implication of the failure to call these material witnesses is that the prosecution has failed to discharge the burden of proof placed upon it. The court is urge to so hold.

Learned counsel submits that in the Prosecution's final written address, certain submissions made by the Defendants in their final written were expressly admitted by the Prosecution. In law, an admission is relevant fact against the party who made it or his agent. Counsel cited ***TAIWO VS. ADEGBENRO (2011) ALL FWLR (Pt. 584) 52 at 67 SC.***

Learned counsel further argued, that the Prosecution misconstrued the contradictions referred to by the Defendants, the provision of the law cited by the Prosecution does not apply to the case of the Defendants.

It is further the argument of the learned counsel that prosecution submitted in their final written address the 1st Defendant was entrusted with application papers for land by PW1 and when the allocation was made, the 1st Defendant in breach of that trust sold the land to the 2nd Defendant thereby committed criminal breach of trust. Counsel hereby submits, that contrary to the submissions of the Prosecution, PW1 never at any time entrusted any land document to the 1st Defendant. There is no evidence before the Court either from PW1 herself or the people named to be involved in the transaction to show that PW1 indeed entrusted any land document to the 1st Defendant.

Learned counsel further argued that at page 3 of the Prosecution final written address, Prosecution contended that the 2nd Defendant received stolen property. It is the law that the offence of receiving stolen property does not i.e when the accused can give account of the possession of the alleged stolen property. Counsel cited Section 67(a) of the Evidence Act.

It is the further submission of learned counsel that the Prosecution in their final written address maintained that the entire exhibits tendered including the testimonies of witness links the Defendants with the alleged offences, learned counsel's response to the above is that the exhibits tendered are not admissible in evidence. Counsel cited Section 1(b) of the Evidence Act.

Learned counsel contends, that Exhibits "E", "D" and "F" were generated in February, 2016 and same were tendered in 2021 the law mandates Prosecution to serve the exhibits on the Defendants at the commencement of trial. The exhibits were never served on the Defendants. The express provision of the law was not complied with and that makes the exhibits though relevant but inadmissible. Counsel cited Section 379 (1 & 2) of ACJA. The Court is urged to so hold.

Learned counsel concludes that the case of Prosecution is manifestly unreliable fishy and speculative, this is most respectfully invited to discharge and acquit the Defendants.

COURT:-

The Constitutional provision of presumption of innocence pursuant to Section 36(5) of the 1999 Constitution of FRN is always the reason why Prosecution would have redouble effort to establish the basic ingredient of an offence beyond reasonable doubt for conviction of a Defendant to be served in line with section 135 of Evidence Act 2011.

This is further so because our adversarial criminal justice system is accusatorial in nature.

On above see the case of ***SALAY VS. STATE (2021) LPELR – 55653 (CA)***.

The charge against the Defendant is bothered on criminal conspiracy and breach of trust and cheating contrary to the provision of sections 97, 312, 322, 317 and 177 of the Penal Code.

Prosecution called two witnesses and tendered document whereas three witnesses were called by the Defendant.

Permit me to outline those ingredients that must be established under the aforementioned provision of the penal code for the Prosecution to be deemed to have discharged the onus thoughts upon them by law.

Prosecution is expected to establish the following ingredients of offence under Criminal Conspiracy pursuant to Section 97 of the Penal Code.

Prove:

- i. An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.
- ii. Where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by one or more of the parties in furtherance of the agreement.
- iii. Specifically that each of the accused individually participated in the conspiracy.

See the case of ***ADELEKE VS. STATE (2013) LPELR – 20971 (SC)***.

Under Criminal Breach of Trust, Prosecution is expected to lead evidence to establish the following:-

Prove:

- a. That the Accused was entrusted with property or with dominion over it.
- b. That he:
 - i. Misappropriated it; or
 - ii. Converted it to his own use.
 - iii. Used it: or
 - iv. 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 dis –charged; or
 - ii. Any legal contract expressed or implied which he had made concerning the trust; or
 - iii. That he intentionally allowed some other persons to do as above.

d. That he acted as in dishonestly.

See the case of ***ADEYANJU VS. F.R.N (2020) LPELR 50243 (CA)***

For cheating, Prosecution in law shall establish the following:-

Prove:

- i. That the person deceived delivered to someone or consented that some person shall retain certain property.
- ii. That the person deceived was induced by the Accused to do as above.
- iii. That the person acted upon the inducement in consequence of him having been deceived by the Accused.
- iv. That the accused acted fraudulently or dishonestly when so inducing that person.

See ***UZOAGBA & ANOR VS. C.O.P (2012) LPELR – 15525***

Prosecution is expected to establish under dishonest or fraudulent execution of deed of transfer containing false statement of consideration the follows:-

- a. That the Accused signed executed, or became a party to the Deed or Instrument.
- b. That the purpose of the document was to transfer, or to subject to a charge, the property or any interest in question.
- c. That the document contained a false statement relating to the consideration or relating to the person for whose use or benefit it was really intended to operate; and
- d. That the Accused acted dishonestly or fraudulently.

See ***AGUGU VS. BUHARI & ANOR (2016) LPELR – 41617 (CA)***.

Similarly, Prosecution is also expected to establish under dishonestly receiving stolen property the following:-

- a. That the property in question is stolen property
- b. That the Accused received or retained such property
- c. That he did so dishonestly.
- d. That he knew or had reason to believe that the property was stolen property.

See ***AYEFIGBO VS. STATE (2018) LPELR 45140 (CA)***.

It is not in doubt that the subject matter that led to the investigation and subsequent arraignment of the Defendants in that property situate at Plot CP32, Gidan Mangoro, Karshi FCT, Abuja.

Halima Njobdi, who is the Nominal Complainant in this case, gave evidence as PW1.

The kernel of the Prosecution's case is anchored on the fact that 1st Defendant sold land which is in the name of Nominal Complainant's company to the 2nd Defendant when both 1st and 2nd Defendants are not Directors of the Company.

I wish to note with concern the fact that the name of the company which was mentioned severally by prosecution witness was not made a part of the charge before to ensure due compliance.

This is so because, it is the property of the company that was sold, albeit, without the consent of the company, Defendants, not being Directors of the company.

It is instructive to note that the Nominal Complainant is a Director of the said Marioti Industries Company Limited, in which name the allocation of land was given.

I say this with every sense of responsibility that above answer was elicited from both PW1 and PW2.

Under cross-examination, PW1 (the Nominal Complainant) Halima Njobdi was asked the following questions:-

Qst: The Allocation are in the names of companies... are you a Director in the Companies?

Ans: Yes.

Under cross-examination of PW2 (IPO) stated as follows:-

Qst: You said Marioti Industries Limited does not belong to the Defendants... is there any evidence?

Ans: From my findings Marioti Industries Limited belongs to the Nominal Complainant.

As stated earlier, the duty of the Prosecution is to prove beyond reasonable doubt the guilt of the Accused person.

See ***UGWU VS. STATE (2002) LPELR – 3325 (SC)***

It is the evidence of the 1st Defendant who testified as DW3 that he had the authority of the Nominal Complainant i.e PW1 to deal in the property.

The said letter of authority was tendered and admitted as Exhibit "D1".

For the purposes of clarity, I shall reproduce the content of the said letter of authority, as follows:-

"28th April, 2008

To whom it may concern,

Subject; Authorization to sell properties.

I HALIMA NJOBDI, of EDEMACK HOUSE; Plot 90 Lusaka Street, Wuse Zone 6, Abuja, hereby authorize Mr. Sunday Abba Maigida of No. 12 Blantyre Street, Wuse II, Abuja to sell my properties in favour of Mariotti Industries Ltd. situated at Dei – Dei market and Gidan Mangoro Resettlement Layout in Karshi, FCT on my behalf.

I acknowledged Mr. Sunday Abba Maigida as my Official Agent and any act done by him on my behalf shall have the same effect as my own, together with the signing of the purchase documents to finalize the transactions."

It is not in doubt that the said property is in the name of a Limited Liability Company i.e Marioti Industries Ltd. with the nominal complainant as one of the Directors of the company.

It is the argument of Prosecution witness that even if the Nominal Complainant had given the letter of authority to sell the said property as contended in this case, Defendant not being Directors could not have had the capacity to deal.

I have seen the said letter of authority which was duly signed by one Halima Njobdi alleged to be the Nominal Complainant who gave evidence as PW1.

What gives life to a document is a signature... signature was defined at page 1415 Black's Law Dictionary 8th edition as a person's name or mark, written by that person or at the person's direction. See ***MICHMERAH INT'L LTD. VS. NIGERIA INT'L BANK LTD. (2015) LPELR 25768 (CA).***

I have looked at the signature on the Letter of Authority i.e Exhibit "D1" which Prosecution seems to distant Nominal Complainant from.

I have also seen the signature in Exhibit "D5" i.e Petition to Inspector General of Police (IGP) written by Nominal Complainant

to have case transferred dated the 5th February, 2016. I have compared both signatures and I am inclined to agree that both signatures were signed by one and the same person.

It is settled law that a Court of law can compare signatures to arrive at a just and fair decision.

See ***TOMTEC NIGERIA LTD. VS. F.H.A (2009) LPELR – 3256 (SC).***

It is therefore true that Nominal Complainant gave the said letter of authority to the 1st Defendant to deal in the property in issue.

The issue of whether the plot number is on the authority letter or not is an afterthought bearing in mind the fact that no evidence was led by Prosecution to show that there are two of such lands at Gidan Mangoro Resettlement Layout, Karshi.

Absence of consent and or authority of the Nominal Complainant who is a Director of Marioti Company would have turned the tables, but once 1st Defendant acted with the knowledge and authority of the Nominal Complainant, both Defendants cannot be said to have conspired, cheated and or sold/bought a stolen property.

This line of argument to my mind is most technical and unattainable.

The evidence of PW1 i.e Nominal Complainant that the N500,000.00 (Five Hundred Thousand Naira) given to her by the 1st Defendant which was meant to be her share of the sale of land was money from the proceeds of sale of the Honda Bullet. If I may ask, was the Honda Bullet which she said was bought for DW3 (1st Defendant) sold?

When was it sold?

There is no such evidence before me.

Injustice anywhere, is injustice everywhere.

All truth passes through three stages;

First, it is ridiculed;

Second, it is violently opposed;

Third, it is accepted as self-evident.

I have no doubt in my mind that the guilt of the Defendant has not been established.

I must dismiss the said charge against them in the interest of justice. The said Counts 1, 2, 3, 4 and 5 are hereby and accordingly dismissed.

Accordingly, Defendants are discharged and acquitted.

***Justice Y. Halilu
Hon. Judge
28th June, 2024***

APPEARANCES

Abdulrasheed Isiaku Sidi, Esq. with Adams Sani U., Esq., Mohammed Lukman Anthony, Esq. and Musa Mohammed, Esq. – for the Prosecution.

Innocent Ewa, Esq. – for the Defendants.