IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE PORTHARCOURT JUDICIAL DIVISION
HOLDEN AT PORT-HARCOURT
ON MONDAY THE 27TH DAY OF JUNE 2016
BEFORE HIS LORDSHIP
HON. JUSTICE M.A. ONYETENU
JUDGE

CHARGE NO: FHC/PH/28C/2010

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

IKECHUKWU CHUKWUMA .... ACCUSED

JUDGEMENT

The accused person is standing trial on a 3 count charge of obtaining monies by false pretences contrary to S.1(1) and (2) of the Advance Free Fraud and other Fraud related offense Act 2006 and punishable under S.1(3) of the same Act.

To prove its case against the accused the prosecution called 6 witnesses while the accused gave evidence on his own behalf and did not call any witness.

In all 36 exhibits were tendered to wit:-

Exhibit A – Letter dated 14/9/09 by Diamond Bank to Economic and Financial Crime Commission

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Exhibit A1 – Letter by Economic and Financial Crimes Commission to Diamond Bank dated 29/9/09

Exhibit A2 - Statement of Account of the Accused

Exhibit B - Statement of the Accused

Exhibit B1 - Additional Statement of the accused

Exhibit C - Bank Policy on Staff Account

Exhibit D - Note from accused asking for transfer from his staff account

Exhibit E - Deposit Slip of the account of the accused

Exhibit E1 - Note from accused for cash withdrawal from his account of N3,286,800

Exhibit E2 - Note from accused for cash withdrawal of N200,000 from his account

Exhibit F - Diamond Bank cheque in the sum of N3,000,000 in favour of the accused

Exhibit G - Letter dated 1/12/09 to the Chairman Economic and Financial Crimes Commission by Diamond Bank

Exhibit G1, G2, G3, G4,G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15, G16, G17, G18, G19, G20 – Instruction from the accused to the bank for transfer of the sum of N1,600 dollars from his domiciliary account and $1000, $7,100, $2000, $10,000, $10,000, $10,000, $1000, $10,000,

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$10,000,$10,000, $10,000, $90,000, $10,000, $10,000 $10,000, $10,000, $60,000, $5,000, $10,000, $10,000, $10,000 respectively.

Exhibit H - 2nd additional statement of the accused

Exhibit H1 - 3rd Statement of the accused

Exhibit H2 - Central Bank deposit slip of N1,000000 into EFCC account

Exhibit J - Letter from counsel to Diamond Bank to the accused person.

Briefly stated the case of the prosecution is that the accused was an auditor/control officer of Diamond Bank Plc in charge of 3 branches of the bank. The accused also had 3 accounts with the bank namely salary account, savings account and domiciliary account. According to the bank policy no staff is allowed to overdraw from his staff account except with consent of the human resources deferment of the bank. The accused however told the customer services Manager who is the customer service manager of 48 Ikwere road branch of the bank one of the 3 branches under the accused control that his uncle was processing the transfer of 3 million naira into his staff account and that he should allow him withdraw the said sum from his account which he will be paid back immediately the money from the said uncle comes around. The customer

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services manager approved the withdrawal of the said sum. The accused did likewise to the customer service manager of the bank branch at Obigbo and Yenegoa (PW1 and PW4) this time asking for transfer of N15,000,000 and N10,000,000 respectively from his salary account based on the same story.

Again the managers pf the branches consented since he was their boss. He later told them that the monies had been paid back which they believed.

The accused then withdrew the stated sums at different times purchased US dollars from dealers which he paid into his domiciliary account with the bank with instructions Exhibit G1 that the said sum should be paid into a forex company Alpari in U.K. He never paid back the various sums totaling N28 million. When this was discovered the 1st, 4th and 5th PW were dismissed and the accused was arrested.

In his own defence the accused admitted the evidence of the prosecution but stated that he did not get any information as to whether the said monies was actually transferred to Alpari Ltd in the United Kingdom. That he made contact with the said company but they stated they did not receive the said sum.

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He also stated that the EFCC asked him to pay the money and asked him to cooperate with them that he then paid back the sum of N1 million and that even though he was dismissed he got a call from the bank for the payment of N47 million the said sum and that this was described as a loan. He also stated that the EFCC officials coerced him to make his statements.

In his final written address counsel to accused gave a sole issue for determination to wit: whether from the totality of the evidence in this trial the charge of obtaining money under false pretences has been proved against the accused person.

Counsel referred to S.1 and 2 of the Advance Fee Fraud and other Fraud related offences Act 200 and submitted that by virtue of S.36 (5) of the 1999 Constitution and S. 138 of the Evidence Act the onus of proof is on the prosecution and the standard of proof is that any ingredient of the offence will be proved beyond reasonable doubt citing

Ayub-Khan v. State
1991 1 NWLR Pt. 172 at 127
Adigun V. A.G Oyo State
1987 1 NWLR Pt. 53 at 678
Ede v. FRN
2001 1 NWLR Pt. 695 at 502.

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Counsel then submitted that the words deliver and delivery in sections 1 (1) (b) and S .1 (1) (c) of the said Act constitute vital ingredients of the offence which has not been proved by the prosecution.

Counsel referred to the definition of delivery.In Black's law Dictionary 9th Edition on Pg. 494 and submitted that the various sums in the 3 count charge were transferred into the defendant's savings and salaried accounts with the bank and they transferred same into the accused person's domiciliary account with the bank. That there is no evidence to show whether the Alpari company received the dollars as instructed by the accused and that the accused gave uncontroverted evidence that such money was not delivered to Alpari Ltd hence there is no delivery as required under the said section of the Act.

Counsel further submitted that in a criminal trial the burden of proof never shifts citing

Fatoyinbo v.A.G. Western Nigeria

1966 1 SCNLR 101

submitting that the PW6 in his evidence admitted that the entire transaction withdrawal of Naira and the subsequent lodgment of the equivalent sum in dollars took place within the complainant's system hence there was no delivery to any other person.

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Counsel further submitted that the prosecution did not invite anyone to confirm that Alpari Ltd received the alleged sum or any part of it and this is a vital point in issue and where there is a witness whose evidence would settle in one way or the other any vital issue that witness ought to be called citing

Amusa v. State

1986 3 NWLR Pt. 30 at 536

Ubanatu v. COP

2000 1 SC 31

Obiosa v. Nig. Airforce

2001 CLRN 207

Onah v. State

1985 3 NWLR Pt. 12 336

and where such witness is not called it will be presumed that had that witness been called his evidence would have been unfavourable to the party who refused to call him. He urged this court to invoke the provisions of S.167 (1) of the Evidence Act 2011 (As Amended) against the prosecution citing

Awosile v. Sotunbo

1986 3 NWLR Pt. 29 47

Again counsel submitted that the PW6 under cross-examination admitted that the amount involved in this case

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is N29 million and that this included interest. That he also admitted that the accused was entitled to make withdrawal on his credit card but that the accused exceeded the limit he was authorized to make hence there is inconsistency in the sums involved and that this court cannot choose between the various sums citing

Enigwe v. Akaigwe

1992 2 NWLR Pt. 225 at 505

and thus the doubt created should be resolved in favour of the accused citing

Odeneye v. State

2001 1 SC (Pt. 1) 1

Obiosa v. State (supra

and referring to the presumption of innocence of an accused person as provided by S. 36 (5) of the 1999 Constitution.

Finally counsel submitted that even though the accused admitted in his statement Exhibit H that he used the money he had obtained under false pretence for forex trading with Alpari limited the accused did not say that Alpari limited received the money. It was for the prosecution to prove this which they failed to do citing

Ozaki v. State

1990 1 NWLR Pt. 124 at 92

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Fatoyinbo v. A.G. Western Nigeria (supra)

Counsel thus urged this court to discharge and acquit the accused on the 3 count charge.

In their own written address the prosecution gave as sole issue for determination that given by counsel to the accused but submitted however that the prosecution has proved the guilt of the accused person beyond reasonable doubt referring to S. 137 of the Evidence Act.

Counsel submitted that what the prosecution had to prove is that the accused actually obtained a sum of money, and that element of fraud, inducement, mispresentation or outright falsehood was used to facilitate the giving and receipt of the said money and this the 1st to6th PWs have done.

Counsel referred to S.1 (1) (2) and (3) of the Advance Fee Fraud and other fraud related offences Act 2006 and gave the ingredients of this offence as

(i) That there is a pretence

(ii) That the pretence emanated from the accused person

(iii) That the pretence is false

(iv) That the accused knew of its falsify and did not believe in its truth

(v) That the thing is capable of being stolen

(vi) That the accused induced the owner citing

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Onwudiwe v. FRN

2006 All FWLR Pt. 319 para. 774 at 812 para.

813 G-F

Also 2006 7 NWLR Pt. 988

Alake v. State

1991 7 NWLR Pt. 205 at 567.

On (i –iv) counsel submitted that from the evidence of PW1, PW3 to 6 and admission of the accused in Exhibits B – B1 which he corroborated under cross-examination that the accused deceived his subordinates one Akudo, PW4 and PW5 to approve the transfer of the sum of N3 million, N15 million and N10 million respectively from his salary account into his savings account on a fraudulent and deceitful claim that he was expecting a transfer of equivalent sums from his uncle who was processing the transfer from one of the bank branches in Lagos.

With respect to (v) (vi) (vii) prosecuting counsel submitted that there was clear intention to defraud by the accused as can be seen by his conduct and actions on 1/4/09, 18/6/09 and 13/8/09.

Counsel then submitted that the 4th prosecution witness testified that the accused told him that the money he was expecting had been paid into his account and he could not check and did not know that the account was already

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overdrawn at the time. That this evidence was not challenged by the defence neither was the witness corss-examined on it and it is thus deemed admitted citing

Njokwuemeni v. Ochei

2004 15 NWLR Pt. 895 at 196

Oforlete v. State

2000 12 NWLR PT 681 at 415

Shehu v. State

2010 All FWLR Pt. 523 at 1841

Daggashi v. Bulema

14 NWLR Pt. 892 at 144

Azeez v. State

1986 NWLR Pt. 23 at 541

On the last 2 ingredients, prosecuting counsel submitted that the accused withdrew from his unfunded salary account which had N3,152.76k outstanding balance, Depositor's money held in trust by the bank and capable of being stolen and that the accused admitted knowing the policies of the bank, regarding overdraft and he did not apply for such.

Moreover counsel submitted that by teaching PW4 and PW5 the pay plus upload system to circumvent the bank policy of overdraft on staff salary account which the accused as an internal control officer of the bank ought to

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ensure strict compliance with the accused had an intention to defraud the bank.

On the defence of the accused that the monies credited to his salary account is an overdraft, prosecuting counsel submitted that this does not hold water as the accused stated categorically under cross-examination that he did not apply for a loan or overdraft.

Again counsel submitted that the provision of the law in

Aderanti & Anor v. A.G. Western Nigeria

1965 1 ANLR 226 at 270

which states that if a customer of a bank draws a cheque in excess of the account standing to his credit it is a request for a loan and if the cheque is honoured then the customer had borrowed the money by way of an overdraft has now changed in the face of the law to wit:-

Bank and other Financial Institution Act and the Failed Banks (recovery of debts and financial malpractices in Bank Act 2004 which requires a customer of a bank who intends to obtain credit or overdraft facility to apply for it and furnish collateral security which the accused in this case has not done,

On the issue of accused person challenging the voluntariness of his extra judicial statements Exhibit B – B1, H – H1 prosecuting counsel submitted that these statements

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were tendered and admitted without any objection by the accused. That still under cross-examination the accused admitted making same statements. Counsel then submitted that the proper time for an accused person to challenge the voluntariness of his statement is when the statement is sought to be tendered citing the case of

Olalekan v. State

2002 1 MJSC 159 at 170

On the issue of the said monies not being transferred from the accused person domiciliary account to Alpari in U.K. prosecuting counsel submitted it is an afterthought and a fact within the personal knowledge of the accused which he must prove and the prosecution has shown by Exhibit A2 pages 4-6 that the money was wired to Alpari U.K on his instructions. Thus the prosecution has discharged the burden of proof imposed on it by the law and the burden of purported non remittance of the said sums has shifted to the DW1 (the accused) being a fact within his personal knowledge and this the accused must show by credible compelling positive evidence and not speculation.

On the contention that the prosecutor did not prove that Alpari limited "actually" received the money the prosecution submitted that this is not supported by any known law.

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Counsel cited the case of Onwudiwe v. FRN (supra) submitting that this case decided on what the prosecution must prove in a case of obtaining by false pretence under S.419 of the criminal code which is impari materia with the provisions of S. 1 (1) (2) and 3 of the Advance Fee Fraud and other Fraud Related offences Act under which this charge is brought and is this applicable to this case.

Counsel further submitted that the proof of delivery under false pretences of the sum of money in the 3 counts charge to DW1 is the delivery of the said sum to DW1 which puts him in actual possession or control and NOT subsequent delivery and or transfer of the said sums by DW1 to Alpari Ltd.

That immediately the said sum was transferred from DW 1's unfunded salary account into his savings account with the bank under false pretence that he was expecting equivalent amount in to that account from his non existing uncle/relative DW1 was technically in actual possession or control of the said sums hence he was able to immediately make withdrawals of the said sums from his savings account.

Counsel then submitted that whatever use D.W1 subsequently puts the money into is not an ingredient of the offence required to be proved by the prosecution.

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That moreover the various sums of money in the 3 counts were transferred to DW1's savings account which he withdrew at various times and used to purchase U.S. dollars referring to 4 -6 of Exhibit A2. That on the instruction of DW1 vide exhibits G1 – G19 the said sums was lodged by DW1 in his domiciliary account with the bank and was transferred to Alpari Ltd referring to pages 4 – 6 of Exhibit A1 and Exhibits G1 – G19.

On the contention that failure of prosecution to call any witness from the complainant's treasury department to show that Alpari Ltd received the money is fatal to the prosecution case, the prosecuting counsel submitted firstly that the said claim was made for the 1st time at trial and hence is an afterthought as it was not stated in any of the accused person's statement referring to Exhibits B – B1 and H – H1 citing

Egharevba v. Osagwe

2009 12 MJSC 24 at 305

Ohuyon v. State

1996 NWLR Pt 346 at 264

Secondly the said claim is within the special of the accused which he has to prove.

Thirdly the said claim is hearsay as DW1 has not called anybody from Alpari limited to testify to the effect that the

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said money was not received, the prosecution having shown that money was transferred to Alpari Ltd vide exhibit G1 – G19.

Fourthly that the prosecution is not obliged to call a host of witnesses on a point to suceed but has a discretion as to who to call as witness citing

Oteki v A.G Bendel State

1986 2 NWLR Pt 24 648

Alake v. State (supra)

Akalonu v. State

2000 2 NWLR Pt 643 165

Counsel further submitted that where the prosecution fails to call a particular witness nothing stops the defence from doing so citing

Afolabi v. State

2010 16 NWLR P 1220 at 58

Again the prosecution submitted that the accused will not be allowed to blow hot and cold in the same transaction. That while in his extra judicial statements he stated he was into forex trading and lost the money in the process he cannot at trial now give a different version that Alpari said it did not receive the money citing

Sokoto State Govt v. Kamdas Nig Ltd

2004 9 NWLR Pt 878 and 345

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On the contention by the defence counsel that this court should invoke the provisions of S. 167(d) of the Evidence Act 2011 against the prosecution on the authority of Onah v. State and Awosile v. Sotunbo (supra) prosecuting counsel submitted that that provision deals with withholding of evidence and not failure to call a particular witness to testify citing

Nigeria Airforce v. Obiosa (supra)

Counsel also submitted that the prosecution could not have withheld evidence of persons that it has no contact with nor took statement from and that the accused has not shown that the statements by persons in the Treasury department of the bank would be favourable to DW1 the accused.

On the contention by the defence that there is contradiction in the evidence of the prosecution because the petition which is Exhibit A is alleging the sum of N29 million while evidence of witness is alleging N28 million, Prosecution submitted that money in the charge is the total sum of N29 million and that the accused was charged with obtaining the sum of N3,000,000, N15,000,000 and N10,000,000 respectively and it is these sums that the prosecution has to prove and not the one alleged in Exhibit A the petition in this case.

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Thirdly the prosecution urged this court that in addition to convicting the DW1 that this court should make an order that the accused make restitution to the victim of the fraud Diamond Bank Plc the sum of N28 million which she was defrauded under false pretences pursuant to S. 11 of the Advance fee fraud and other Related offences Act 2006 and S. 319 (1)(a) of the Administration of Criminal justice Act 2015.

In his reply on point of law counsel to the accused submitted that if it is accepted that the accused did not apply for any overdraft or loan for the sums stated in the 3 count charge against him then he complaint has waived the requirement for any formal application for an overdraft or loan facility in this suit as the PW1 the I.P.O in this suit during cross-examination admitted that with the charging of interest on the amounts in the 3 count charge the complaint had converted the amounts into a loan.

Counsel submitted that this was corroborated by Exhibit J the complainant solicitor's letter to the accused demanding the payment of the amount charged together with interest which was not challenged by the prosecution citing

Oforlete v State

2000 12 NWLR Pt 681 415

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On the issue of contradiction in the prosecution case counsel submitted that under cross-examination PW6 gave uncontradicted evidence of N28 million which he stated was all the withdrawals and interest and in another breath gave N29 million and it is not for the court to pick and choose between their 2 evidence citing

Enigwe v Akagwe

1992 2 NWLR Pt 225 at 505

And this has created a doubt which this court ought to resolve in favour of the accused persons citing

Ayus Khan v State (supra)

On the issue of this court invoking S. 167 (d) of the Evidence Act 2011 and the case of Nigerian Airforce v Obiosa counsel to the Accused submitted that the evidence that Alpari received the alleged transferred sum that is the issue not the calling of any particular witness.

Counsel further submitted that the evidence of the defence that Alpari Ltd did not receive the amount allegedly transferred by the complainant and the failure of the complainant to adduce evidence that Alpari ltd received the money has become a serious fact in issue and in contention between the prosecution and the accused person and it is thus a vital point which the prosecution has to prove citing

Amusa v. State (supra)

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Onah v State

and it is the duty of the prosecution to negative the defence beyond reasonable doubt citing

Ozaki v State

1990 1 NWLR Pt 124 at 92

On the issue of restitution, counsel to the accused submitted that there is unchallenged evidence that the complainant has dismissed the accused person from its employment and granting this will amount to double jeopardy.

Counsel therefore urged this court to discharge and acquit the accused person in this case.

Now I have carefully considered the charge against the accused person and the evidence adduced by the prosecution in proof thereof. I have also considered the defence of the accused person and the address of both counsel in this suit

In my humble view a sole issue calls for determination by this court to wit:-

Whether the prosecution has proved the guilt of the accused person beyond reasonable doubt on the 3 count charge.

The 3 count charge against the accused person are all on obtaining various sums of money by false pretences.

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I had earlier in my ruling on a submission that the accused had no case to answer on 27/11/14 considered the element of this offence. But let me again consider the ingredients of that offence as given by the Supreme Court in the case of

Onwudiwe v FRN (supra)

cited by prosecuting counsel.

That case gave the ingredients of this offence as:

(i) That there is a pretence

(ii) That the pretence emanated from the accused person

(iii) That it was false

(iv) That the accused knew of its falsity or did not believe in its provision

(v) That there is an intention to defraud

(vi) That the thing is capable of being stolen

(vii) That the accused in the

I will take the 1st to 4th ingredients together. All the prosecution witnesses testified to the accused stating that he was expecting some money from his uncle hence his account should be

In his statement Exhibit H the accused stated that he has no uncle in Lagos who was going to credit his account that he

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told the bank staff that so as to persuade them to carry out his instruction.

Thus the confessional statement is direct and positive and the accused did not object to it when it was sought to be tendered.

Moreover under cross-examination by the prosecution the accused admitted that the story about his uncle putting money into his credit was false.

Thus it is clear there was a pretence and that the pretence emanated from the accused it is also clear that the accused knew of its falsity.

On the 5th ingredients, though in his statement the accused stated he did not intend to defraud the bank there is nothing to show this. He obtained credit 3 times at different branches and no effort was ever made by him to make good this credit. He stated he intended to refund the money and the money got lost yet he did not go to the said family and friends trials as he stated in his statement to go and collect monies to refund this amount. It is clear to me that the accused had an intention to defraud.

On the 6th ingredients on whether the item obtained is capable of being stolen what the accused obtained was the sum of N3 million, N15 million and N10 million credit paid to

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his account. The prosecution witnesses led evidence to this which the accused did not deny.

There is no doubt that these sums of money are capable of being stolen.

The next is whether the accused induced the owner. In this case he induced the bank staff in charge of the sums to wit Akudo, Abiye, Henry and Datubor Brown to credit him with the said amount.

Thus the ingredient of the offence have been established thoroughly by the prosecution.

Now what is the defence of the accused person?

In his address counsel to the accused raised the issue that the prosecution failed to rebut the evidence of the accused person that the said sum was not received by Alpari Ltd the forex exchange broker the accused sent the money to hence there was no delivery and that PW6 admitted that the entire transaction, withdrawal of naira and the subsequent lodgment equivalent sum in dollars took place within the defendant's savings, salaries and domiciliary accounts.

The prosecution on their own part stated that this is not the law and that proof of delivery of the said sums is to accused and not Alpari U.K Ltd.

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The accused person has not denied that his salaried account was credited by reason of false pretence. I agree with the prosecution that the delivery required in proof of this offence is delivery of the said sums to the accused person as once this is delivered to him he is in control of the said sum and can deal with it anyhow likes which he did by making withdrawals.

Whatever use the accused subsequently makes of the said money is not an ingredient of this offence.

See Onwudiwe v. FRN (supra)

The claim by the accused that Alpari Ltd did not receive the money does not hold water as in Exhibit H the confessional statement of the accused he stated

"I sent a mail to TROPS meaning Treasury operations in head office asking them to transfer the funds to a Forex Broker."THIS HAS BEEN DONE SINCE APRIL 2009"(capital letters mine).

In other words the accused admitted that the said sum has been transferred to Alpari Ltd. There is therefore no need for the prosecution to prove this as it is trite law that what is admitted need no further proof.

The prosecution has submitted that Alpari UK receipt of this money is a fact with DW1 in the special knowledge.

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It is clear that the transaction between the accused and the forex company Alpari was by themselves alone. I therefore agree with the prosecution on this issue.

See S. 139(1) of the Evidence Act that it is for the accused to give evidence as to this.

I agree with the prosecution also that this defence of the accused is an afterthought as throughout the investigation of this case the accused never raised this issue. Moreover he has stated that the money had been transferred in his confessional statement. He had not told this court how he came to the knowledge that Alpari U.K did not receive the said sum.

In his statement Exh H he stated

"All the funds were practically lost during trading."

In Exhibit B he stated he used the funds to trade and that he can get the money back if given time to do so.

This means that the said sum was no longer in the complainant's system. It has been moved out. Again as I stated the actus reus of this offence is complete.

The accused no doubt has given 2 different version of this transaction first that Alpari UK did not receive the money (in other words it was not transferred to them by the complainant and then that the money was lost during forex

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trading. I therefore agree with the prosecution that the accused blowing hot and cold does not help his case.

I also agree with the prosecution that since the issue of receipt by Alpari U.K is within the accused special knowledge it is for him to call witness to that effect if this evidence is very essential to his defence. Nothing stops him from calling witness to that effect.

See Afolayan v State (supra)

Nigeria Airforce v. Obiosa (supra)

I therefore find no reason to invoke the provision of S. 167 (d) of the Evidence Act against the prosecution.

As for the decision of the court in Ohuyon v The State (supra) on the prosecution having to call witness on a fact in issue seriously in contention between the parties in my humble view the issue of Alpari Ltd receiving the said sum is not a fact seriously in contention between the prosecution and the defence as the prosecution has established that the elements of this offence does not require proof of this fact. and the accused in his statement had already stated that the said sum got lost during forex trading so that the cases of Amusa v State, Onah v State (supra) and Ogaki v State (supra) cited by the accused counsel is not applicable in this suit.

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Another issue raised by counsel to the accused is that there are inconsistences in the evidence of the prosecution witnesses that while PW6 under cross-examination gave the sum involved as N29 million and then N28 million there is doubt as to prosecution case which should be resolved in favour of the accused.

I have since examined the evidence of PW6 under cross-examination. He made it clear that the accused withdrew the sum of N3 million at Ikwerre branch of Diamond Bank and a further withdrawal of N15 million at Obi Ogbor branch and then N10 million from Yenogoa branch and that the accused had made withdrawals on his debit card and the salary account in which interest had accrued and this made the sum N29 million naira. It is therefore clear that the actual sum in which the accused obtained by false pretence is N28 million the sum stated in the 3 counts but that the accused had debit with the bank which had accrued interest and that makes the total sum of all monies in the accused transaction with the bank N29 million.

Thus I see no contradiction in the prosecution case as all that they had to prove is the sums obtained by false pretence as stated in the charge and they have done so so that the case of Ayub Khan v State,

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I.G.P v. Oguntade, Enigwe v Akagiwe and Akinfe v. State cited by the defence counsel in this case is not applicable in this case.

Defence counsel has sought to show this court that even if it is conceded that the accused did not apply for loan or overdraft that the complainant has waived that requirement of any formal application for an overdraft or a loan facility in the instant case as they had charged the accused interest on the said sum as stated by the 1st PW and Exhibit J the letter of counsel to the complainant bank asking the accused to pay the said sum given to him as a loan facility.

I have examined the evidence of 1st PW he did not state anything about the accused being charged interest on the said amount. It is the 3rd prosecution witness Macaulay Okwus who in his evidence in chief stated that as the monies were withdrawn from the accused person's account by him there was debit on his salaries account, and this accrued interest for the period. In other words in the normal cause of banking transaction as an account is overdrawn it attracts interest and it is clear that the bank was unaware of the antics of the accused that he was receiving credit fraudulently (see the evidence of 1st to 6th PWs) hence his account attracted interest not because the bank had

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granted the accused a loan facility from the bank Exh J and in any event that exhibit does not state the sum as a loan granted to the accused. The fact of an accused getting credit through a fraudulent transaction does not translate into loan facility.

Counsel also submitted that by virtue of Exhibit J the bank had converted the sum in the charge to a loan facility. First Exhibit J is a document made after institution of this action.

Secondly it is clear that a case of obtaining by false pretences have been established by the prosecution. Even the accused in his statement admitted obtaining monies by false pretences. The fact that the complainant subsequently declares such money illegally obtained a loan does not rob the action the accrued criminality.

The fact still remains that the accused admitted he did not apply for any loan and the prosecution witnesses led evidence to show that no such loan was granted to the accused. Rather the accused played on the intelligence of Akudo, Henry Abiye and Datubur to obtain credit facility fraudulently from the bank. Exhibit J did not disburse the said sum as a loan but a facility granted to the accused. It requests the accused to repay the facility obtained through fraud by him not facility given as a loan. The fact of accrued

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interest on a fraudulent transaction does not translate into a loan facility.

From the foregoing therefore I find that the evidence adduced by the prosecution against the accused is overwhelming.

I therefore find that the prosecution has proved the guilt of the accused person beyond reasonable doubt on the 3 counts and I so hold. The accused is therefore found guilty as charged on all the 3 counts.

M.A. Onyetenu

M.A. ONYETENU
JUDGE
21/3/2016

M.A Onyetenu