

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 7 NYANYA ON THE 3RD DAY OF JUNE 2021
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CR/127/18

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

IGHODARO AUSTIN OSARETIN.....DEFENDANT

JUDGMENT

The Charge preferred against the Defendant by the Prosecution is dated 19/02/18 but filed on the 20th day of February 2018.

It state:

“That you Ighodaro Austin Osaretin sometimes between 13th March 2015 to 9th November 2015 in Abuja within the jurisdiction of this Court with intent to defraud did obtain property to wit:

The sum of \$328,974:37 from several customers across the Globe through the advert you placed on www.Unaedi.Org.ng the website of Universal Agricultural empowerment and Development Initiative under false pretence that your organization is

marketing goods and services which you knew to be false and thereby committed the offence of obtaining property by false pretence contrary to Section 1(a) of the Advance Fee Fraud & Other Related Offences Act 2006 and punishable under Section 1(3) of the same Act.

The Defendant was arraigned on 9/04/18 and he pleaded Not guilty.

In proof of its case the Prosecution called three witnesses.

The first Prosecution witness is Femi Alade.....

He is an Account Officer with Guarantee Trust Bank of No. 1072 J.S. Faskari Street, Area 3, Garki.

He described himself as the bridge between the bank and customers.

The Defendant is one of their customers. He came to their Asokoro Branch in company of a lady to make enquiries concerning some of their products.

He said he ran an NGO. That he has a functioning website with an address in Abuja.

That he wants an Account with which he can receive payment all over the world.

He provided him with all the requirement he needed to fulfill. He completed the Account Opening Forms and provided all necessary documents needed to open the Account.

The Naira Account was open and the Account number communicated to him.

They were supposed to go ahead with the documentation to open the platform where he could receive payment from all over the world.

He did not hear from him for some weeks until he got a call from his colleague that she has successfully concluded documentation for the platform and that she has opened the Dollar Account for him.

The Account name was Universal Agricultural Empowerment & Development Initiative.

As at the time the Account was opened, there were two signatories. The Defendant and the other lady.

His colleague at the behest of Defendant and the other lady requested that he relinquishes the management of the Account to her because she has a special relationship with the other lady. He settled it with his colleague internally.

A few months later, the Defendant came to his branch apologizing for requesting him to hands off the management of the Account, stating that he can continue to manage the Account since Asokoro was close to his base. He agreed.

That at that point inflows began to come in dollars which were converted into Naira and transferred out of the Account to another Bank.

These transfers were done using signed instructions or instruments in form of Cheques, Transfer Forms as well as Letter headed papers of the Company. They got a Board Resolution from the Company directing that the other lady should be removed as signatory to the Account leaving the Defendant as the sole signatory.

The bank acted on it and changed it accordingly.

About a year into the operation of the Account, the relationship team that manages the NGO Account got a mail from the E-payment Department stating that there were suspicious transactions in the Account.

They got a request from Master card to investigate the Account. The Account was duly restricted for further analysis.

That same period, they got a letter from EFCC stating that the Account was under investigation and that they should furnish them with the Account opening package, statement of Account, copies of transaction instruments and any other documents.

The request was duly obliged. They are Exhibits A – A3. Under Cross-examination by the defence the witness answered as follows:

That the platform was to enable the Defendant source for funds.

To another question, the witness said in order to guide against fraud, they have a 3D secured integration.

That it is not in all cases that the Account holder will have to supply a pin code.

That Master card owns the platform. That any other card can be used.

To another question, he says he knows what Charge-Back means.

That a transaction was done using a card but the card holder was not aware of the transaction.

In such a situation, the card holder writes to Master Card or the bank.

That his duty as an Account officer does not empower him with the information as to who is the card holder who complained. He does not have the information as to who complained to EFCC.

The 2nd Prosecution witness is Abdulrahman Mohammed Anabo, an Operative of the EFCC.

He is an Investigator of Financial and Economic Crime Cases assigned to Banks fraud Section.

He knows the Defendant.

That in April 2016, a petition was received against the Universal Agricultural Empowerment & Development Initiative & Black African Reorientation & Development Organization.

The Petitioners GTD alleged that they received a complaint from Master Card in respect of the several fraudulent transactions by Off Shore card holders .

That this fraudulent transactions were in favour of Universal Agricultural Empowerment & Development Initiative & Black African Reorientation & Development Organization.

That the amount involved is to the tune of 1,850,000 USD. That the alleged fraud took place between January – August 2015.

That upon receipt of the complaint from Mastercard, the Bank (GTB) initiated a review to ascertain if the fraud happened within the period under review.

The bank also alleged that preliminary findings confirmed that the transaction took place within the period.

That Master Card on their own also initiated investigation on or about 1/04/16 wrote to GTB that they have concluded investigation.

That GTB will refund 25% of the fraudulent amount which stood at \$450,000 USD for the two organizations represented by the Defendant. That about \$328,000 USD is the amount due to be refunded to the card holders by Universal Agricultural & Empowerment Initiative while about \$121,000 USD is to be refunded by Black African Reorientation & Development Organization – all totaling about \$450,000 USD.

The GTB alleged that Master Card debited that amount from their Account and declared that the two

organizations are questionable merchants and will be declared as such in the Global Security Bulletin.

Master Card debited GTB because all the card holders that reported to Master Card live outside the shores of Nigeria.

That upon receipt of the Petition, the complainant was invited and the representative of the bank.

That in the course of interaction they were informed that complainants to Master Card alleged that they made payment for goods and services on the online website of the two organizations and the goods were never delivered.

The representative of the bank further informed them that the bank has obtained a Court Order to secure money in the Account of the two Organizations.

That the total of about \$121,000 was recovered from the Black African Reorientation & Development Organization.

That before the bank could obtain the Court Order, the Universal Agricultural & Empowerment Initiative withdrew all monies in their Account as such the \$328,000 could not be recovered.

They wrote letters of Investigation activities to GTB to furnish us with Statement of Account, 328,000 could not be recovered.

We wrote letters of Investigation activities to GTB to furnish us with Statement of Account, Certificate of Identification.

A letter was also written to Corporate Affairs Commission to ascertain the Registration status of the two Organizations and also know the promoters.

Responses received were analyzed. It was discovered that the Defendant is the sole signatory to the Account of Universal Agricultural Empowerment Initiative domiciled with GTB.

That various payments were made to the Account between January – August 2015. It was also discovered that the said USD amount was either transferred to a Bureau de Change Account or withdrawn in cash.

Investigation revealed that the monies were for goods and services.

Another letter was written to GTB to furnish the Commission with the instruments used in withdrawing the money from the Account and transfers.

They obliged. It was discovered that Defendant made the cash withdrawals while transfers are to Bureau de Change Operator.

That response was also received from CAC.

The Universal Agricultural & Empowerment Initiative was registered as an NGO.

It was not mentioned in the objectives that the Organization should sell goods and services.

In June 2016, the Defendant was arrested. He informed them that he is the President and CEO of the Universal Agricultural & Empowerment Initiative. He also informed them that it is an NGO which deals with providing humanitarian services. That he placed adverts on their website to solicit for donations all over the world.

The address of the website is www.UNAEDI.ORG.NG.

That the Organization is purely NGO and does not sell goods and services.

That the Organization maintains a USD and Naira Account with GTB in which donations made to the organization are credited.

That he is the sole signatory to both Accounts.

He also said withdrawals from the dollar Account is strictly by transfer to the bureau de change Operators who later transfer the Naira equivalent to the organization's Naira Account and sometime the Naira equivalent is transferred to his personal Account. He said he did make cash withdrawal from the USD Account.

When he was confronted with evidence that he made cash withdrawals, he admitted.

The team went to the website and found that they market agricultural produce. He agreed that they market agricultural produce particularly potatoes chips. They visited the website again to print more information only to discovered that the website has been brought down.

All the investigation team did was oral interactions. They did not write anything down. The Defendant said the monies were used to provide food items to internally displaced persons in the North East and in Abuja. He was told to take the team to the IDP Camps, he promised to do that but he never did.

After the interaction, he volunteered a statement under caution.

Towards the end of investigation, it was discovered that the organization launched a new website with address [www.AGRIC DEV. NET](http://www.AGRICDEV.NET). They went into the website and discovered that it was still advertising agricultural produce.

The phone number of the Defendant was the only means of communication.

The ICT Unit of EFCC printed the information. They also gave a Certificate of Identification.

The petition by GTB Bank to EFCC and Certificate of identification, printout of UNAEDI website, Response from CAC and Statement of the Defendant were marked Exhibits B – B3.

Under Cross-examination by the defence, PW2 answered as follows:

That GTB did not furnish them with their final investigation.

That apart from the petition from GTB and attachment from Master Card, there is no other complaints from anywhere.

That all the card holders are outside the country.

To another question he answered that Master card had settled the Card holders and GTB debited. He further answered that GTB did not give the team evidence that they were debited.

That they did not invite any card holder. They did not obtain any statement from Master Card.

He does not know what is called 'Charge Back.'

He is aware of procedures of complaints of card holders in Nigeria.

That GTB avails them of the communication between them and Mastercard.

He does not know whether the publication of the UNAEDI in the Global Security bulletin was made.

That each and every transaction paid for goods and services.

To a further question he answered that it is not a crime to transfer dollars to Bureau de change neither is it a crime for Defendant to be a sole signatory.

That the complaint is against Universal Agricultures as in Exhibit B.

The 3rd Prosecution Witness is Olufemi Uwaosa. He works as an E-commerce Manage at GTB.

He does not know the Defendant.

An Account was opened in the bank for Universal Agricultural Programme & Initiative.

A Request was made to his department that a payment gateway is required in the Company's website to enable people process card-based transaction.

As usual with operations, they provided application programming interface that enabled the integration for the customer to receive card payment.

As they started processing transaction, they got an alert from Mastercard that the merchants are questionable.

That one of the said merchants is Universal Agricultures.

The reason for them being questionable is that Card holders were reporting to MasterCard that their cards are fraudulently used on the website. GTbank

conducted further diligence on Universal Agricultural Initiative's website.

They discovered that there is no evidence of fulfillment of payment i.e that goods were delivered. That since the bank could not provide evidence, MasterCard debited GTB.

Subsequently they reported to EFCC to recover their funds. Some of the transactions were for purchase of goods while some were for donations.

The money Mastercard debited GTB was money that was paid back to Card Holders. Peoples cards were used without their knowledge at the Agricultural Initiative's website

MasterCard raised Agricultural initiative merchant because the number of sales and subsequent complaints i.e fraud to sale ratio was far beyond threshold.

Charge back is when a card holder goes to his bank to complain that he did not do his transaction and there is a debit in the transaction.

The bank will now initiate a chargeback against when the money was spent.

Various card holders Complained to their bank that there Cards were fraudulently used. Their bank went to the scheme owner which is MasterCard, Visa etc to lodge the complaint.

The scheme owner came to the bank and merchants. they made further investigations through the Account officers.

I can't give the exact amount involved but it is about \$325,000.

Under Cross-examination by the defence, the witness answered:

That they marketed the platform to the Defendant as solution that can be used.

In order to ensure the integrity of transactions, they have what is called 3D Secure Integration.

They are familiar with how the system operates.

That when a card holder wants to make use of a card to denote, the system will ask two or three questions.

It relates to what the card holder sets as security.

GT Bank generates token while Some ask the secure questions. It depends on how the bank implements their own secure code.

The password or code is known only to the card owner. To a further question, he answered that they don't hold on the fund for 72 hours. That settlement comes.

That GT Bank will not see it until after 72 hours.

At the point Mastercard communicated about questionable transactions, they wrote to the merchant requesting for further information. They also engaged an Account team to enhance due diligence.

Mastercard wrote GTB supplying the information. They forwarded everything to the EFCC.

The Account management team engages the Account holder.

To another question, he answered that it would have been a letter.

He is not aware Defendant sued GTB in the High Court of the FCT.

To another question, he answered various single card holder complained to GTB because they are international transactions and there is a standard process for them to complain.

The above is the case of the Prosecution.

The Defence opened and the Defendant gave evidence for himself.

He said he is the President and Founder UNAEDI, Universal Agricultural Empowerment and Development Initiatives,

It is a non-governmental transaction that mobilizes, trains and empowers the farmers, youth unemployed privilege in our society in modern ways of agricultural practices and skill acquisition. They also carry out a lot of humanitarian services since 2010 till date. They have bagged a lot of awards.

In January 2015, a group of marketers from GTB came to their Head Office in Garki-Abuja and said they have a product to market to them that will be beneficial to them as an NGO. He asked what the product was and they said it was called 'Payment gateway'.

They said it is a platform for receiving donation. That to acquire the product will cost them N150,000.

That after giving them the project they will be the sole processor and manager to the platform.

That any donation that comes will not be credited into their Account for three working days.

That they will use the three days to carry out verification, clarification and final confirmation of every donation. If there is no issue after the three days, they (GTB) will deduct 5%

The reason being that they are the sole processor of the platform. He agreed. The same January, they (UNAEDI) went to Asokoro Branch of GTB to acquire the product.

They said it will take them 2 weeks to complete the integration on UNAEDI Website.

It eventually took them about two months to complete.

It ran from March – November 2015 successfully.

Donations were coming in. The Account Officer Femi

Olademehin called him to say he would want to meet

him in the month of September.

They met and he said GTB Manager did not want the

way money was leaving their (UNAEDI) Account to

other banks.

That they have a high target to meet up with hence

needed the money to stay in GTB.

He replied that the money was for voluntary humanitarian services/purposes.

In the subsequent month, he came again. He asked if he could convince the people who supply us (UNAEDI) relief materials to open Account in GTB. He said he would not do that because he is not a banker.

On the 19th day of December 2015, they place a lien on the Account.

From 19-12-15 to March 2016 they approached them orally to lift the lien but they refused.

On 9/03/16, GTB said they would remove the restriction on the Account before the close of business.

Surprisingly on the evening of that day, they started stealing the Account. They stole N412,000 on 9/03/16.

On the 10th, they went to the bank to ask if they had removed the restriction. They said No.

He then approached his lawyer to write to their MD which he did to remove the restriction and revert the money debited so far. The Lawyer gave me the endorsed copy.

He could not lay hands on the original. The copy is Exhibit C. while waiting for a response on 10/06/16 EFCC arrested him. He was detained. They did not confront him with any person he defrauded.

When he was given back his phone by PW2 after his bail, he received another debit alert of N4,242 ,000 from the Naira Account and \$3,123 from the dollar Account.

On 20/06/16, he went to EFCC to report as a routine, he told the investigators that his Account was debited when he was in detention. They kept mute.

He continued to report.

In June 2017, he was forced to take GTB to Court.

Judgment was entered in his favour on 25/09/19 against GTB.

It is Exhibit D.

Under Cross-examination, he answered that he runs an NGO. He is the Chief Executive Officer of the organization.

The Account was operated by him solely in accordance with a Board Resolution.

That he did a massive advert.

See Exhibit BC.

That they empowered youth through skill acquisition. They gave agric seedlings to over 50,000 people. See Exhibit B3. They also gave fertilizers. They also followed up.

He was not asked to take them to any of the persons they empowered. That some of the Trustees are abroad. They come and go.

The Partners fund (UNAEDI) through the platform.

It is not true that most of the money in the Account was transferred to Bureau de change. Most of the monies were transferred to companies rendering services. He has Invoices of 50,000 bags of rice delivered to him which were sent to IDPs and 10,500,000 training materials issued to the organization. The EFCC never requested for the said invoices.

The IDPs are in Nigeria. The investigators did not ask him to take them there

Parties filed and exchanged Written Addresses

The Defendant's Counsel in his Final Address posited a lone issue for determination which is whether the

Prosecution has proved beyond reasonable doubt the offences of obtaining money under false pretence to warrant the conviction of the Defendant.

He argues that the onus of proving the fraudulent transactions alleged by the Complainant is on the Prosecution.

That the particulars of fraud alleged must be pleaded and established. The proof he argues must be beyond reasonable doubt.

That the complainant's mere assertions that Mastercard received notifications from numerous cardholders about fraud and other irregularities occasioned by the Defendant could not suffice.

That the specific details of how the fraud was conducted, the persons who were defrauded, their address and the monetary figures involved ought to have been established.

The particulars of the alleged collusion must be pleaded with graphic details of each and every transaction given rise to the debits and deductions. The numerous card holders must give evidence of the fraud allegedly reported to the Complainant against the Defendant.

That anything short of the above is no proof.

The Prosecution's assertions are devoid of facts or evidence led to justify the diverse debits in UNAEDI'S Account.

No notification of card users alleging that they had been swindled were presented in evidence.

The letter of 1/04/16 allegedly written by Mastercard does not indicate the role played by the Defendant. Nothing is particularized as facts discovered in the course of the so called investigation by Mastercard which informed its decision to categorize UNAEDI as a questionable merchant. The letter from GTB to Mastercard requesting for further information was not tendered.

The letter of 1/04/26 from Mastercard that ignited the whole issue is completely against a different entity named Universal Agriculture. There is nothing to suggest that this is an acronym or short form for Universal Agricultural Empowerment and Development Initiative (UNAEDI).

There is nothing to suggest that payment to Universal Agriculture has paid into the Account numbers of UNAEDI. The EFCC did not did not invite Mastercard or any Card Holder. That a case of fraudulent transaction has not been made against the Defendant.

He finally urges the Court to dismiss the charge and discharge and acquit the Defendant.

The Prosecution adopted his Final Written Address dated 25/01/21 -but filed on 26/01/21

He adopted the sole issue formulated by the Defendant's Counsel for determination.

The Prosecution argues that the evidence of the Prosecution has not been contradicted.

The ingredients of the offence of obtaining under false pretence has been proved.

The Prosecution has demonstrated to this Court that UNAEDI was registered as a non profit organization. That advert placements were carried out on its website advertising for sale of goods to the general public. See Exhibit B1 and B3.

That there is no where UNAEDI was empowered to buy and sell in Exhibit B3. There was no goods anywhere to deliver to anyone.

That the Prosecution has proved the charge beyond reasonable doubt. The Prosecution has proved all the ingredients of the offence charged against the Defendant. He finally urges the Court to find him guilty as charged.

The one count charge preferred against the Defendant is under Section 1(1) (a) of the Advance Fee Fraud & Other Related Offences Act 2006 and punishable under Section 1 (...) of the same Act 2006.

Section 1 (1) of the said Act states:

“Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intent to defraud.

(a) Obtains from any person in Nigeria or in any other country for himself or any other person, commits an offence under this Act.

“3. A person who commits an offence under subsection 1 or 2 of this section is liable on conviction to imprisonment. A term of not more than 20 years and

not less than seven years without the option of a fine.”

The ingredients of the offence of obtaining money under false pretence under Section 1(a) of the Advance fee fraud and other related Offences Act are:

1. That there was a pretence
2. That the pretence emanated from the Defendant.
3. That the pretence was false
4. That the Defendant knew that it was false.
5. That there was an intention to defraud.
6. That the monies obtained was capable of being stolen.
7. That the Defendant induced the owner of the money to transfer his whole interest in the property.

See *ELVIS EZEANI VS. FRN (2019)LPER – 46800 (SC)*

There is no doubt that in criminal trials such as this, the burden of proving the guilt of a Defendant rests on the

Prosecution and does not shift. It is static throughout the trial.

ADEYEYE VS. STATE (2013) NWLR PT. 1364) 47

However, where the Prosecution has led credible evidence which establishes a prima facie case against the Defendant, it is the duty of the Defendant to lead evidence to explain why the Prosecution's evidence should not be believed.

MUFTAU BAKARE VS. STATE (1987) 1 NWLR (PT. 52) 579

The burden throughout in a criminal trial such as this is on the Prosecution to prove the guilt of the Defendant.

See ***BELLO VS. STATE (2007) 10 NWLR (PT.1043) 564.***

The fulcrum of the one count charge against the Defendant is that between 13th March 2015 to 9th November 2015 in Abuja with the intent to defraud, the Defendant obtained the sum of \$328,974.37 USD from several customers across the Globe through the advert he placed on www.unaedi.org.ng the website of Universal Agricultural Empowerment & Development Initiative under false pretence that the organization is marketing goods and services which he knew to be false.

I have earlier reproduced the evidence of the Prosecution.

I have also read and perused Exhibits A-A4,B – B3, C and D.

The adverts allegedly placed by the Defendant on www.unaedi.org.ng is not tendered in evidence.

It is difficult to find that the Defendant was marketing goods through the said advert.

However, Exhibit B1 is a print out from the website of Universal Agricultural Empowerment & Development Initiative at *http://agric.dev.net* tendered by the Prosecution which was set up after the former website was allegedly shut down.

The services rendered by the Universal Agricultural Empowerment & Development Initiations as listed in Exhibit B1 are:

1. Empowerment
2. Training internally displaced persons (IDPs).
3. Marketing of Agricultural Products.
4. Grass root development.
5. Production of Organic fertilizer

6. Agricultural consultation.
7. Mobilization.
8. Training Seminar/Workshop.

The Exhibit concluded thus:

“We would like to thank you for your generous donation. Your commitment to helping our community is sincerely appreciated.”

The Prosecution also tendered Exhibit B2.

It contains the incorporation document of the Universal Agricultural Empowerment & Development Initiative.

It also contains the constitution of the body.

In article 3, the aims and Objectives of the body, Universal Agricultural Empowerment & Development Initiative are stated.

There is nothing to suggest that the Defendant advertised for the sale of goods and services which are consistent with the oral evidence of PW1 that the Accounts were opened for Defendant to received donations globally.

Attached to Exhibit A4 is the Statement of Account of Universal Agricultural Empowerment & Development Initiative. Exhibit A2 is also a copy of the Account.

None of the witnesses linked the above Exhibit to the case.

No reference was made by any of the witnesses entries made and if any, the one that is fraudulent.

In **MAKU VS. AL-MAKURA & ORS. (2016) LPELR 48123 SC**, the Supreme Court held:

“It is also settled law that despite the tendering of Exhibits in proof of a Petition/Case, the onus of proving the case pleaded and for which the documents were tendered in evidence has on the petitioner/Prosecution ... It is the duty of the Prosecution to link these Exhibits with the case through the witnesses called.”

It is not the duty of this Court to make an inquisition or investigate which of the entries is being relied upon by the Prosecution. All the Prosecution has done was to

dump the Exhibit A2 and B1 on the Court. None of the persons allegedly defrauded was called to testify.

None of their names were mentioned.

Mastercard who allegedly noticed the suspicious transaction was also not called.

The alleged card owners who were defrauded were not called nor their statement obtained and tendered.

The monies were not shown to be paid to the Defendant but to Universal Agricultural Empowerment & Development Initiative. The transfers made or cash withdrawals were not shown the Court.

The Prosecution failed to show that there was a preference and or that the pretence emanated from the Defendant.

It also failed to show that the pretence if any was false and that there was an intention to defraud.

There is also no evidence that the alleged donors were induced to do so.

The team of investigation in my view failed to do a thorough job. They failed to carry out any investigation.

The assertions of the Defendant in his statement Exhibit B3 were not verified.

The evidence of PW2 the Investigator is a rehearsal of what GTB and the Defendant told him.

His evidence is basically hearsay. He did not do anything neither did he unearth any of the suspicious activities fingered by Mastercard.

In the circumstance, the payment/donations received by the Universal Agricultural Empowerment & Development Initiative is still in the realm of speculation.

The standard of proof in a criminal trial such as this is proof beyond reasonable doubt. This no doubt means that is not enough for the Prosecution to suspect a person of having committed a criminal offence. There must be evidence.

See *OKAFOR VS. STATE (2006) 4 NWLR (PT.969)*.

Suspicion, however strong, cannot take the place of legal proof.

Indeed it is no evidence. Items of evidence raising suspicion, which put together do not have the quality of being corroborative evidence cannot ground a conviction.

See *STATE VS. OGBUBUNJO (2001) 13 WRN*

The allegation and evidence against the Defendant and his organization is still in the realm of suspicion.

The EFCC did not unfortunately unravel the suspicion but merely scratched the surface.

In the circumstance of this case, the Prosecution failed to prove the one count charge against the Defendant beyond reasonable doubt and I so hold.

I find the Defendant NOT Guilty. He is accordingly discharged and acquitted.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

03/06/21