

**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/791/2020**

**DATE: : MONDAY 23<sup>RD</sup> MAY, 2022**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA .. COMPLAINANT**

**AND**

**HON. CHUMA NZERIBE ..... DEFENDANT**

## **JUDGMENT**

Defendant was charged before this Court on a 4 Count Amended Charge dated the 4<sup>th</sup> October, 2021 but filed on 5<sup>th</sup> October, 2021, as follows;-

### **COUNT 1**

That you Hon. ChumaNzeribe sometime in March, 2013 at Abuja, within the jurisdiction of this Honourable Court did have in your possession a document containing false pretense to wit: Re: Application for Statutory Right of occupancy within the Federal Capital Territory, Abuja with reference Number MFCT/LA/FCT 1302 dated 18<sup>th</sup> June, 2003, bearing the name of RamatuAlhassan and thereby committed an offence contrary to section 6, 8(b) of the Advance Fee Fraud and other fraud related

offences Act, 2006 and punishable under Section 1(3) of the same Act.

## **COUNT 2**

That you Hon. ChumaNzeribe sometime in 2005 at Abuja, within the jurisdiction of this Honourable Court did fraudulently make a false document to wit: Re: Application for Statutory Right of Occupancy within the Federal Capital Territory, Abuja with reference number MFCT/LA/FC 1302 dated 18<sup>th</sup> June, 2003, bearing the name of RamatuAlhassan and thereby committed an offence contrary to section 363 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) and punishable under section 364 of the same Act.

### **COUNT 3**

That you Hon. ChumaNzeribe sometime in 2005, at Abuja, within the jurisdiction of this Honourable Court did use as genuine a document to wit: Re: Application for Statutory Right of Occupancy within the Federal Capital Territory, Abuja with reference number MFCT/LA/FCT/ 1302 dated 18<sup>th</sup> June, 2003, bearing the name of RamatuAlhassan and thereby committed an offence contrary to section 366 of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria (Abuja) and punishable under section 364 of the same Act.

### **COUNT 4**

That you, Hon. ChumaNzeribe sometime in 2007 at Abuja, within the Jurisdiction of this Honourable Court, did cheat by personation, by representing

yourself to be RamatuAlhassan opposite Gwagwa Market AMAC, Gwagwa Village Abuja and thereby committed an offence contrary to section 321 of the Penal Code, Laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 324 of the same Act.

The Prosecution in proof of its case called five witnesses who testified as PW1, PW2, PW3, PW4 and PW5 before the court.

The Defendant on his part who pleaded not guilty, testified for himself as DW1 and as sole witness in his defence to the charges before the court against him.

PW1 (Ishaya M. Baba) gave evidence to the effect that he is a developer in Abuja and he wrote petition

to Economic and Financial Crimes Commission (EFCC) alleging that the accused person forged his land documents and was parading same. PW1 further gave evidence that sometime in 2009, he was not in the country and someone called him and said his land was being developed by another person. That he rushed down to Abuja and went to his plot to discover that the accused person has already began developing his land. That he contacted his friend that is the house of representative (Hon. Albert Atoricha) to help him talk to his friend i.e the accused who was also then a member of the House of representative. PW1 stated further that he approached development control to report same to them.

That the accused invited him to his office for a meeting wherein the accused offered him

N50,000,000.00 (Fifty Million Naira) pleading with him which he refused and walked out from his office.

That he reported the matter to FCDA and a committee consisting (4 people) was set and all were asked to come with their original title documents including the accused person. That they all appeared before the committee with their title document except the accused person.

That after the committee findings, a letter was written to him confirming the plot to be his with genuine title documents. That it was after the receipt of the letter that he paid for the certificate of occupancy and same was given to him.

PW1 was thereafter cross- examined and discharged.

PW2 (Olowu A. Daniel) was led in evidence.

He testified that he is a staff of FCDA with the Department of Land Administration. That his designation is going for site visits, respond to mails, witness to FCT Minister in court and any other assignment given to him by Director of Lands.

That he does not know the Defendant in person but his name featured in their correspondence on a matter with regards to plot 1306 Cadastral Zone 305 Maitama District, Abuja and that he was in Economic and Financial Crimes Commission (EFCC) to give statement with respect to the same plot.

PW2 further gave evidence that Plot No. 1306 had a case of multiple allocation and the case of forgery on it. The office had settled the matter of double allocation and closed that of forgery. The double



allocation was between file numbers AD10652, KD 11213, BN11187 wherein forgery was on file number FCT/10156 and the file had been closed because the matter had been resolved by the office. That the office had communicated with all the parties in the matter. The names of Applicants are Ishaya M. Baba (AD 10652), Tijjani (KD 11213), Asamao (BN 11187) while FCT 10156 (RamatuAlhasan).

It is further the evidence of PW2 that the Defendant wrote to the office (FCDA) alleging that some persons were trying to tamper with his land (Plot 1306) which he bought from RamatuAlhasan and this is how the Defendant came into the matter of the land.

That a written confirmation was requested by Economic and Financial Crimes Commission (EFCC) on the status of the plot. That he went to the commission with policy files (CTC) and in another time a letter was sent to the commission with the following:-

- i. Application Form.
- ii. Recertification letter
- iii. Copies of Right of Occupancy.
- iv. Ministerial Approval of the plot in question.
- v. Stop Work Order
- vi. Payment receipts
- vii. Memos from Desk officers to the Director and memos from the Director to the Minister

viii. Search light images for the plot in question were all part of the document sent to the EFCC.

That other documents were also forwarded to Economic and Financial Crimes Commission (EFCC) to wit; letter on clarification of status of the plot, Power of Attorney donated by Salisu to Ishaya M. Baba with memorandum of understanding between Ishaya M. Baba and Ramatu Alhasan.

PW2 tendered two files containing policy document and Response which were admitted in evidence and marked Exhibit “D” and “E”.

PW2 further gave evidence that there was a memo generated by a land officer called Nnamdi Akubozue which was transmitted to the minister where the issue of forgery was mentioned between AD 10652 and FCT 10156. The issue raised there was that the

plot in question was allocated to Salisu K. Garba as a replacement for an initial plot granted to him i.e plot 719 Gwagwalada/Giri District vide a ministerial approval dated 27th March, 1999. It was replaced with plot No. 1306 Maitama, Abuja. alh. Salisu G. Garba donated the plot vide Power of Attorney to Ishaya M. Baba. For RamatuAlhasan in FCT 10156, the initial allocation was for plot No. LD2 Gaabe Extension District vide a ministerial approval dated 7th April, 2003.

The said plot was replaced with plot 1306 Maitama District. The offer letter presented for recertification by RamatuAlhassan, the ministerial approval could not be seen on their records. The character of the typing is different from the usual replacement letters on their record upon comparism. The logo on the

replacement letter is different from those on their replacement letter.

The date on the replacement letter is suspected as forged as the FCT Minister (El-Rufai) had barely resumed work and hadn't allocated any land until about 1<sup>1/2</sup> years later. The memo from the company secretary/legal adviser, Department of Land Administration to the Director of Land stating that the allocation letter presented by the accused has been confirmed to be fake. In the letter accused person admitted signing a memo of understanding with allottee of file number AD10652/KB 577.

PW2 further gave evidence that it is stated in the said memo that a stop work notice was given to the accused person which accused failed to obey. In this regard the file for Ramatui.e FCT 10156 was

closed due to the suspected forgery. The office on the double allocation on plot 1306 went ahead to give Ishaya M. Baba the title document and copied Asamao Tijjan with file No. BN 11187 and KD 11213 respectively.

PW2 was cross – examined and discharged.

PW3 (Ramatu Alhasan) in her evidence stated that she does not know the Defendant and that she has never met him before. That she was invited by EFCC and she was told to submit her international passport. Data page of international passport was tendered and marked Exhibit “F”.

PW3 further gave evidence that she has never applied for any plot of land that it was her husband who once applied but did not get. That she has never

received any said document in respect of Plot 1306 in Maitama.

PW3 further stated that the signature in Exhibit “D” is not hers and that she does not know the witnesses in the said Exhibit. That she has never signed any Power of Attorney and that no one has ever applied for land on her behalf. PW3 was cross- examined and discharged.

PW4 (Jatau B. Jatau) stated that he is a staff of FCDA and a land surveyor.

In his evidence, PW4 stated that he is in court to give evidence on plot 1306 in Maitama where he took EFCC officials to. That the plot has five beacons, with a partially demolished building, it is a corner piece.

That at the time of allocation, the land was bare land.

PW4 was cross – examined and discharged.

PW5 (Agboola Joseph) stated that he is an operative of EFCC and his schedules of duties are investigation of cases assigned to him and his team, writing report on those case, invitation and arrest of suspects, recording of statement from parties i.e complainants or Defendants, invitation to scene of crime and any other lawful assignments given to him by his superiors.

He equally gave evidence that he knew the Defendant in the cause of an investigation of a case reported to Economic and Financial Crimes Commission (EFCC) by one Ishaya M. Baba. The commission received a petition in December, 2016 bothering on Criminal conspiracy, using false document to be genuine. The petition was written



against the Defendant, Christian Mbah and one Alhassan. That the petition was referred to his team with Basseffiong, Philemon Lawrence, Bilkisu Idris, Omale Sunday. That the team invited the petitioner to come and adopt his petition by making statement to the team with document collected from the petitioner. Letters of invitation activities were written to the Department of lands FCDA, mapping and survey Department, FCDA, FCT High Court Maitama.

That during their investigation, the Petitioner alleged that he bought from Salisu K. Garba who donated power of Attorney to him which he registered with AGIS and certificate of occupancy signed in his favour but was not conveyed to him due to a case of multiple allocation of the land. In their investigation, they discovered that the document relied upon by

**RamatuAlhassan** was forged and the allocation to the said Ramatu was revoked as same was forged. The file was closed, and that the said Ramatu said she was not aware of any land even though her husband applied for land using her details.

PW5 further stated that they tried to get Christian Mba so they went to his last address but could not get him. Defendant could not also get the Christian Mba. That when they invited the Defendant, to their office, he came and made statement. He wrote the statement himself and witnessed by one of his friend (Harrison Hussaini). That the statement was taken on Economic and Financial Crimes Commission (EFCC) statement form, in an opened office.

PW5 further stated in his evidence that no power of Attorney was produced by the Defendant. That he

only produced a sales agreement. That they further requested to know from the Defendant if he conducted any search to which he said no. and as to whether he met the original allottee of the land, he said no. As to the mode of payment, the Defendant said he paid cash of N5,000,000.00 (Five Million Naira) in two tranches i.e N3,000,000.00 (Three Million Naira) and N2,000,000.00 (Two Million Naira). He could not produce Power of Attorney between RamatuAlhassan and Christian Mbah which permitted Christian Mbah to deal on the property. And that the original title document handed over to the Defendant by Christian Mbah, Defendant said he handed over to his lawyer who said he had filed a civil matter in court.

PW5 was cross – examined and discharged.

The Prosecution at this stage closed its case to pave way for defence.

ChumaNzeribe is the Defendant in this case and he mounted the witness stand and gave evidence for himself as DW1.

DW1 in his evidence stated that the certificate of occupancy of the land in dispute has never been with him and that he does not know about it and nobody ever gave it to him.

That he only saw it when the process was filed by Mr. Baba in this court. It is his evidence that the Plot in question is plot 1306 in Maitama District where he has been developing a residential building.

It is further the evidence of DW1 that he did not make any Power of Attorney and that he did not alter any Power of Attorney. That nobody found him in

possession of any such Power of Attorney in this matter. Similarly, nobody has ever presented him with any such Power of Attorney.

DW1 further stated that he is not a party to the Memorandum of Understanding (MOU) and nobody presented it to him and he did not make use of it. That he bought his land as stated and the Memorandum of Understanding (MOU) was not part of his document for sale. That he presented his documents to Economic and Financial Crimes Commission (EFCC) when they came in respect of this property.

It is also the evidence of DW1 that when he bought the land he commenced development and has been in possession of the land. That it was after one (1) year of development when the building was getting

to its last stages that one Ishaya Baba approached him in his office with a colleague of his by name Albert Atoricha who claimed to be a friend or town's man of the said Ishaya Baba. He then told him that the said plot was a subject of double allocation which he was involved and DW1 reminded him that he had an approved building plan after having paid the necessary fees and has been on the land before his appearance.

DW1 stated that he did not present any Memorandum of Understanding to FCDA or anybody and the committee did not invite him so he could not have met the man who said he presented him with the said Memorandum of Understanding.

DW1 stated that he bought the land i.e plot 1306 in Maitama from Mr. Christian Mbah who also signed

on behalf of the owners and his name on the certification of the land by the FCDA and his wife Ifeoma Mbah was at the time a staff of FCDA and a surveyor and also signed the sales agreement as a witness to the transaction.

DW1 further stated that he bought the said land from Christian Mbah for the sum of N5,000,000.00 (Five Million Naira) and that a sales agreement was entered-into.

DW1 stated that he has never forged any document and he has no reason to do that.

DW1 equally gave evidence that he was not invited for any such meeting called by the FCDA to resolve the issue of multiple allocation of the said land. He tendered the sales agreement as Exhibit “D”.

Defendant who gave evidence as DW1 was discharged after cross – examination and case was adjourned for filing and adoption of final written addresses.

Learned respective counsel for the Prosecution and Defendant filed their respective final written addresses and reply and adopted same to give way for this judgment.

Defendant formulated a sole issue to wit; ***“Whether given the evidence before this Honourable Court, the prosecution has proved the 4(four) counts beyond reasonable doubt to warrant the conviction of the Defendant for each of the offences charged.”***

Learned counsel for the Defendant in its final written address and under the issue formulated for



determination, made elaborate submission on counts 1 to 4.

Learned counsel argued that for Prosecution to secure conviction on the offence of false pretense, the onus is on the prosecution to prove the essential ingredients of the offence beyond reasonable doubt. ***FRN VS AMAH & ANOR (2015) LPELR – 24563 (CA);***

***CONFIDO CONSULT SERVICES LTD VS FRN (2018) LPELR – 43676 (CA)*** were cited.

Learned counsel submits therefore that there is no evidence before this court which proved beyond reasonable doubt that;

- a. The application for statutory Right of Occupancy bearing RamatuAlhassan is forged.

- b. The Defendant was the Defendant who created the said application for statutory Right of Occupancy;
- c. The Defendant presented the said application to the department of land; and
- d. The Defendant presented the application knowing the same to be forged.

Learned counsel to the Defendant further urged the court to note that the fact application of statutory Right of Occupancy bearing RamatuAlhassan was signed Mallam M.S.U Kalgo, Director Land Administration and Resettlement for the FCT Minister. Thus, it is not the case of the Prosecution that Mallam M.S.U Kalgo is not the Director of Lands or that he did not sign the replacement letter. Interestingly, no statement was obtained from the

said MallamKalgo M.S.U Kalgo to confirm that the signature on the alleged document was not his signature.

Itfurthercounsel's argument, that there is no evidence before this court that the signature of the said MallamKalgo M.S.UKalgo was forged,neither was there forensic analysis conducted by the Economic and Financial Crimes Commission (EFCC) Team of investigators who investigated this case to determine whether the document was forged.

Learned counsel contends that the Economic and Financial Crimes Commission (EFCC) team rather abandoned their duty to investigate and accepted Nana H. Buhari's report based on suspicion. Also, Mallam El-Rufai was not called to give evidence and no attempt was made by the team of Economic and

Financial Crimes Commission (EFCC) investigators to interrogate or obtain his statement.

Counsel submits that the totality of the evidence before this court is insufficient in law to prove forgery of the application for statutory Right of Occupancy of RamatuAlhassan as forged.

Counsel contends therefore, that the whole evidence produced by the Prosecution to prove the offences as same was based on suspicion, and that suspicion cannot take the place of legal proof. On the argument that Defendant did not produce Power of Attorney, and or Deed of Assignment to establish title to the property, learned counsel for the Defendant contended that the absence of either Power of Attorney and or Deed of Assignment can or be fatal since no law says title to land shall be

proved by Deed of Assignment and or Power of Attorney. It is argument of counsel that Defendant tendered Sales Agreement which is enough. Thus, counsel urged the court to discharge and acquit the Defendant of the said charge.

On the part of the Prosecution, a sole issue was formulated to wit; *“Whether the Prosecution has proved its case against the Defendant beyond reasonable doubt as required by law.”*

Prosecution counsel submits that from the totality of evidence adduced at trial and the exhibit tendered, the Prosecution has proved its case against the Defendant beyond reason doubt as required by law.

***THE STATE VS NATHANIEL OKPALA (2012) 3 NWLR (Pt. 1287) Page 388 at Pages 400 – 401*** was cited.

Learned Prosecution Counsel contends that where the commission of a crime by a party to any proceedings is directly in issue in civil or criminal proceeding, it must be proved beyond reasonable doubt. Pursuant to Section 135 Evidence Act, 2011.

Learned counsel argued that above Section which is the same with 138 Evidence Act, 2004 was interpreted by Supreme Court in the case of ***THE STATE VS. NATHANIEL OKPALA (2013) 3 NWLR Pt. 1287 Page 388 at Paragraphs 400 – 401*** where Supreme Court said proof beyond reasonable doubt does not mean beyond all doubt or all shadow of doubt, but that establishing the guilt of the accused person with compelling and conclusive evidence. A degree of compulsion which is consistent with a high degree of probability.

Learned Prosecution counsel equally cited the case of *MICHAEL VS. THE STATE (2008) 13 NWLR Part 1104 Pages 361 – 386* on the same principle by Mustapher JSC.

It is also the argument of learned counsel Maryam Ahmed Aminu, Esq. for the Prosecution that reasonable doubt which will justify an acquittal is a doubt based on reason arising from evidence or lack of it.

It is a doubt which a reasonable man or woman might entertain. It is not fanciful doubt nor imaginary doubt, but a doubt that would cause a prudent man to hesitate before acting in matters of importance to themselves.

***UWAGBUE VS. STATE (2007)5 NWLR (Pt. 606)***  
***at Pages 523 – 624 Paragraphs F – B*** was cited by  
counsel.

Learned counsel argued that where all essential ingredients of an offence are proved, as in this case, the charge is proved beyond reasonable doubt.

The case of ***NWATURUOCHA VS. STATE (2011)***  
***Vol. 45 NSCQR Pages 300 – 301*** was cited in  
support.

It is therefore the argument of learned counsel for the Prosecution that Prosecution was able to lead evidence in prove of all the Counts having established all the ingredients vide the said witnesses who gave evidence.



Learned counsel contends that the evidence of the Defendant who was a lone witness did not cast any reasonable doubt on the Prosecution's case.

It is the argument of the Prosecution that Defendant admitted under cross-examination that the issue of double allocation was resolved in favour of PW1 who is the nominal complainant Ishaya Baba.

Mariam of Counsel, for the Prosecution also contended that there are gaping holes in the evidence of the Defendant which makes his evidence unreliable having been answered by the Prosecution witnesses. Court was urged to hold that Prosecution has been able to prove its case beyond reasonable doubt. Counsel similarly urged the Court to invoke the provisions of Section 11 of the Advance Fee

Fraud and Other Related Offences Act, 2006, and Section 78, PC to reconstitute PW1 of his land.

Defendant's Counsel filed an 11 page reply to the Prosecution final written address in exercise of right of reply.

Learned counsel for the Defendant, Charles I. Ndukwe, Esq. contends that the submission of learned counsel for the Prosecution on what the Defendant "**ought to have done**" could not have discharged the onus of proof in criminal trials and that proof in criminal trials is not discharged on conjectures or speculation as done by the Prosecution in this case.

The case of *AL-HALEEL VS. F.R.N (2015) LPELR – 24902 (CA)*;

***MUKAILA RAJI VS. THE STATE (2014) LPELR  
– 24254 (CA) Page II Paragraph A.***

It is the argument of learned counsel for the Defendant that there is no law which makes it mandatory that to prove ownership to land a person must produce Power of Attorney or Deed of Assignment, transfer or gift; and that Defendant tendered a purchase receipt as evidence of purchase of the said land from one Christian Mbah.

Learned counsel for the Defendant insists that Prosecution has failed to establish the ingredients of the said offences contained on Counts 1, 2, 3 and 4 and urge the Court to hold that Prosecution has not discharge the onus of prove.

## **COURT:-**

The law on the function of final written address is spent. No amount of brilliance can substitute written address for evidence.

See *DA'APE & ANOR VS. MUSA & ORS (2019) LPELR 48846 (CA)*.

I have considered the evidence of the Prosecution i.e viva voce and documentary evidence, on the one hand, and that of the Defendant on the other hand.

I hereby adopt the issue formulated by Defendant for determination as that of Court, to-wit;-

***“Whether given the evidence before this Honourable Court, the prosecution has proved the 4 (four) counts beyond reasonable doubt to***

**warrant the conviction of the Defendant for each of the offences charged.”**

It is the law that for the Prosecution to secure conviction in a criminal trial, it shall establish the guilt of an accused person beyond reasonable doubt in view of the constitutional presumption of innocence provided under Section 36(5) of 1999 Constitution of Federal Republic of Nigeria as amended.

See the case of ***C.O.P VS. AKUTA (2017) LPELR 41386 (SC)***.

The burden is always on the Prosecution to prove the guilt of an accused person and not the business of an accused to prove his innocence in view of the aforementioned Constitutional provision.

It is for the Prosecution to make out a prima facie case against the accused by leading credible evidence which must be revealing before the Court.

See also Section 138(1) of Evidence Act, 2011.

It's similarly important to note at the same time that the standard of proof by Prosecution is not beyond all shadows of doubt.

See ***ODILI VS. STATE (1977) 4 SC 1 at 9;***

***ALONGE VS. POLICE (1959) 4 FSC 203.***

The question is whether the Prosecution proved at the trial, the commission of the crime for which the accused person was charged, beyond reasonable doubt.

Let me now reproduce the said Section 138(1) Evidence Act, 2011 for clarity...

**“If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt”**

Lord Denning, M.R (of blessed memory) in ***MILLER VS. MINISTER OF PENSIONS (1947) 2 ALL ER 372***, has this to say on the issue of proof beyond reasonable doubt.

**“It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt”.**

Our legendary Oputa, JSC (of blessed memory) on the issue of proof in the case of ***BAKARE VS. STATE (1987) 1 NWLR (Pt. 52) 597*** stated that, **“Absolute certainty is impossible in any human**

*adventure including the administration of criminal justice. Proof beyond reasonable doubt means just what it says... it does not admit of plausible and fanciful possibilities, but it does admit high degree of cogency, consistency with an equal high degree of probability.”*

With above in mind, my take off point would be to consider the salient ingredients of the offences as contained in Counts 1, 2, 3 and 4 respectively framed against the Defendant, (ChumaNzeribe).

Count No. 1, touches on being in possession of a document containing False Pretense to-wit: Re: application for Statutory Right to Occupancy within the Federal Capital Territory, Abuja, with reference number **MFCT/LA/FCT/1302** dated 18<sup>th</sup> June, 2003 bearing the name of RamatuAlhassan, contrary to



Section 6, 8(b) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

I shall reproduce the said Sections 6 and 8(b) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006, for the purposes of clarity...

## **SECTION 6**

**“A person who is in possession of a letter containing a false pretense which constitutes an offence under this Act is guilty of an attempt to commit an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the letter contain the false pretense”.**

## SECTION 8(b)

*“Attempts to commit or is an accessory to an act or offence, or”*

The word “false pretense” is defined in Black’s Law Dictionary Seventh Edition at Page 619 as:

*“The crime of knowingly obtaining title to another’s personal property by misinterpreting a fact with intend to defraud”.*

The Oxford Dictionary of Current English New Revised Edition also defined false pretense as follows;

*“Misrepresentations made with intend to defraud”.* See *UZOKA VS. F.R.N (2009) LPELR-4950 (CA)*.

With respect to Count 1, I shall now consider the evidence of the Prosecution vis-à-vis that of the accused person to determine the offence of False Pretense as charged in Count 1.

What must the Prosecution prove to be able to secure conviction with respect to the offence of False Pretense as stated in Count No. 1?

To unravel this mystery, the juxtaposition of the evidence of the Defendant (**ChumaNzeribe**) and those of the witnesses of the Prosecution becomes most apparent and necessary.

I shall return back to the already reproduced evidence of all witnesses where necessary in the determination of this Court.

It is most expedient to note that the how and manner Hon. ChumaNzeribe came about being in possession

of the land in issue is the case against him... I now return back to his evidence.

This was what the Defendant has to say in evidence;-

*“The said certificate of occupancy has never been with me, I do not know about it and nobody ever gave it to me... I only saw it when the process was filed by Mr. Baba in Court. The plot in question in Plot 1306 in Maitama District where I have been developing a residential building. We have civil suit in this Court which is before Justice Belgore of FCT High Court.*

*My lord, I did not make any Power of Attorney, I did not alter any Power of Attorney. Nobody*

*found me in possession of any such Power of Attorney in this matter.*

*Nobody has ever presented me with any such Power of Attorney. This offence rests in the fathom of the accuser as no such offence exists as committed by me in this matter.*

*I am not a party to the Memorandum of Understanding (MOU) and nobody presented it to me and I did not make use of it and nobody gave it to me. I bought my land as stated and this Memorandum Of Understanding (MOU) was not part of my document for sale. I presented my documents to EFCC when they came in respect of this property. Any claim that I have anything to do whatsoever with the Memorandum Of Under-standing in whatever*

*form is false. It must be the parties mentioned in the Memorandum Of Understanding not me. When I bought the land I commenced development and have been in possession of the land. It was after one year of development when the building was getting to its last stage that one Ishaya Baba approached me in my office with a colleague of mine by name Albert Atinwage who claimed to be a friend or town's nlan of the said Ishaya Baba. He then told me that the said Plot was a subject of double allocation which he was involved and I reminded him that I had an approved building plan after having paid the necessary fees and have been on the land before his appearance.*

*I did not present any Memorandum Of Understanding to FCDA or anybody and the*

*committee did not invite me so I could not have met the man who said I presented him with the said Memorandum Of Understanding.*

*I bought the land from Mr. Christian Mbah who also signed on behalf of the owners and his name on the certification of the land by the FCDA and his wife IfeomaMba was at the time a Staff of FCDA and a Surveyor and also signed the sales agreement as a witness to the transaction. The statement of the Ifeoma is before the Court.*

*I bought the land N5,000,000.00 (Five Million Naira) then. Yes. It is the agreement.*

*I will like to say that I have never forged any document and I have no reason to do that. We have been in FCT High Court in civil matter*

*for about 8 years before the Judge was elevated. We were advised by the Court to try and settle the matter and in obedience the said Ishaya Baba (nominal complainant) invited me to Protea Hotel to discuss the matter. Barely have we stood down then two EFCC Officials came and invited me to their office. I fell too bad by those who brought me here.”*

Let me further state that the status of land in the FCT, Abuja is given. All land in the FCT belongs to Federal Government of Nigeria and the only way possible for any person/organization to obtain land in the FCT is through grant from the FCT Minister.

*See MADU VS. MADU (2008)6 NWLR (Pt. 1083) Page 296.*



Sections 297(2) of the 1999 Constitution of Nigeria (as amended) and 18 of the FCT Act are instructive on this issue.

It therefore follows logically speaking that the only way possibly to establish title to land in the FCT is either through such statutory grant from FCT Minister or purchase of such grant with evidence of such purchase before the Court for the unexpired residue of the term granted.

In *IDUDUN VS. OKUMAGHA (1976) 9 -10 SC. 227*, the following mode(s) was stated by Supreme Court as a way of proving title to land, as follows, i.e traditional evidence, production of title documents duly authenticated and executed, by act of ownership extending over a sufficient length of time, numerous and positive enough as to warrant

the inference of time and ownership, by Acts of long possession and enjoyment, or proof of possession of connected or adjacent land in circumstances rendering it possible that the owner of such connected or adjacent land would, in addition be the owner of the land in dispute.

Both ChumaNzeribe, the accused person and Ishaya Baba (Nominal Complainant)who testified as PW1 are laying claim to the said land i.e Plot 1306 relying on their respective title documents.

Whereas Ishaya Baba (Nominal Complainant) is relying on Power of Attorney duly registered wherein the unexpired residue was transferred to him by the initial allottee, ChumaNzeribe is relying on a Sales Agreement i.e Exhibit “D1”.

It suffices to say therefore, that the issue of ownership has been narrowed to the said title documents.

All I shall do is to unravel the myth with respect to their root of title to determine the respective status of the said title document in the eyes of the law, vis-à-vis the elements of the offence i.e;

1. That there is a document or writing;
2. That the document or writing contains a false pretense which constitutes an offence and;
3. That the accused person knows or ought to know having regard to the circumstances of the case that the document contain the false pretense.

I now garnish the evidence before me.

It is the evidence of PW2 (Olowu A. Daniel) a staff of Department of Lands Administration FCDA that the land in issue i.e Plot 1306 Cadastral Zone 305, Maitama – Abuja had a case of multiple allocation and a case of forgery and that their office had settled the case of double allocation and closed that of forgery.

It is his evidence also that the issue of double allocation involved file numbers

AD 10652 (Ishaya M. Baba); KD 11213 (Tijjani) and BN 11187 (Asomao); whereas the case of forgery was on file number FCT 10156 (RamatuAlhassan).

It is the evidence of PW2 that the plot in question was allocated to one SalisuK. Garba as replacement for plot 719 Gwagwalada/Giri District vide

ministerial approval dated the 27<sup>th</sup> March, 1999 which was replaced with plot 1306 Maitama, Abuja and that the said Alh. SalisuK. Garba donated Power of Attorney with respect to the plot to Ishaya M. Baba.

Ishaya M. Baba here is the nominal complainant who gave evidence as PW1.

On how the name of the Defendant featured, PW2 further gave evidence that Defendant wrote a letter to the Minister alluding fraudulent conversion and development on his land, and that Defendant equally wrote another letter alleging he bought the land from RamatuAlhassan and her agent in 2005 and that he had been in possession till date without any interference.

Receipt of payment between him and the said Christian Mbah.

It is equally the evidence of the Defendant that he paid N500,000.000.00 (Five Hundred Million Naira) as consideration for the land in issue.

It is his evidence also that one Alex Ilokwu witnessed his signature on the sales agreement and that he was given Recertification Certificate and Right of Occupancy.

I like to state at this juncture, that agreements with relation to land in the FCT is generally registrable, and failure to so register any such documents purporting to transfer title in FCT, cannot be used in court proceedings or tendered in evidence.

Section 15 of the land instrument registration laws, laws of the Federation Abuja Cap 515 is instructive here.

The said section has this to say...

**“No instrument shall be pleaded or given in evidence in a court as affecting land unless the same has been registered in the proper office specified in Section 3 of this Act.”**

I shall pause here and ask Defendant the following questions:-

- a. Where is Christian Mbah and or IfyMbah whom he allegedly bought the said land from?
- b. Why did the said Christian Mbah whom Defendant purports to have bought the said land from and whom he said he bought from

RamatuAlhassan not furnish the court with evidence of transaction of such sale between the said Christian Mbah and RamatuAlhassan?

- c. Why did Defendant fail to register the said sale agreement/receipt of payment?

These are questions that are very important to be asked and answered.

Defendant who is being accused of false pretense as contained in Count 1, aforementioned, is under an obligation to counter the evidence of the Prosecution who were able to show that the said file which bore the name of RamatuAlhassan was closed after investigation, same having been found to have been forged, and that the original owner donated Power of Attorney to the Nominal Complainant who gave evidence as PW1. What more, the said



RamatuAlhassan who's name featured in the said Exhibit "D1" i.e sale agreement which Defendant tendered as evidence of purchase of the land in issue, gave evidence as PW3. She denied ownership of any land in the FCT but admitted under cross – examination that he husband did apply for land on her behalf.

I ask again...

Was she given the land?

Did she transfer her title on the land to Christian Mbah?

How come Christian Mbah allegedly sold the said land to Defendant, if indeed he sold?

Supposing there was any such allocation to the said RamatuAlhassan, wasn't she expected to sign all transfer documents?

This is bizarre.

Defendant who claimed to have bought the said land from Christian Mbah has not established his nexus to the land, legally speaking. Where is the legal document from the alleged RamatuAlhassan to Christian Mbah and now Defendant (ChumaNzeribe)?

The said sale agreement for all intends and purposes are inadmissible to prove title in law for want of registration.

See ***COMMISSIONER OF LANDS AND HOUSING, KWARA STATE VS. ATANDA (2007) 2 NWLR (Pt. 1018) 360;***

***OYIKOLA VS. MACINHO & ANOR (2000) 9  
NWLR (Pt. 671) Page 77.***

Defendant clearly has not shown creditably the origin of the title document in question now that PW2 has given evidence which points to the fact that the said Right of Occupancy recertification documents were forged.

The person in who's name is on the title to the land documents in possession of Defendant. Ramatu Alhassan and who gave evidence as PW3, informed the court under examination in - chief that she has never applied for land in Abuja but that her husband who did apply on her behalf did not get the land. She equally stated in evidence that she was never given any land documents in respect to plot 1306 in Maitama.

PW3 denied ever signing any Power of Attorney between Alh. SalisuGarba and Ishaya Dan Baba.

Under cross – examination, PW3 admitted that her husband used her name to apply for land.

I am minded to observe here that Defence counsel who made heavy weather of the evidence on the fact that the husband of PW3 applied for land on her behalf did not lead evidence to show that any land was given to PW3 and that she indeed was the person who transferred her unexpired residue to the said Christian Mbah whom Defendant said he bought the land from vide Exhibit “D1”. It is my firm judgment that at the point Prosecution led evidence to show that the land in the name of RamatuAlhassan was investigated internally by the Lands Department of FCTA and FCDA and

eventually the file was closed, as stated in the policy files i.e Exhibits “D” and “E” respectively, which was followed up by the evidence of the woman who was allegedly granted the said title to the land in question which has found its way into the hands of the Defendant as stated in the preceding part of this judgment, the onus has shifted to the Defendant to now show the court how he came about the said subject matter – i.e Re – Application for Statutory Right of Occupancy dated the 18<sup>th</sup> June, 2003.

Defendant who claimed to have gotten the said land from one Christian Mbah vide Exhibit “D1” also said the same told him that he bought from PW3 i.e Ramatu Alhassan who though has given evidence distancing herself from the said land not to talk of transferring any right to Christian Mbah.

Defendant could not produce the said Christian Mbah or his wife who allegedly witnessed the transaction as claimed in Exhibit “D1”.

What is more to the conundrum is the fact that the alleged transaction between the said Christian Mbah and RamatuAlhassan was not registered at the applicable Land Registry pursuant to Section 3(1) of the Land Instrument Registration Law, Laws of the Federation, Abuja. The said provision has this to say;-

**“There shall be in the Federal Capital Territory, Abuja, a land registry with an office or offices at such place or places as the minister may, from time to time direct.”**

**3(2) “The Registry shall be the proper office for the registration of all instruments including Power of Attorney affecting land”.**

How is Defendant legally linked to the land in question? Exhibit “D1” is the only document. The said document is inadmissible in evidence to show title as I earlier stated in evidence. Defendant who had all the time to have registered his title documents at the applicable lands registry deliberately failed to do so because Defendant knew exactly what he was doing. He did not also call any person to give evidence in support of his case. Defendant’s counsel spent all the time dwelling on the fact that title to land is not established only through Power of Attorney and or Deed of Assignment.

Just as gold is tested in fire and success on the furnace of adversity, success of a case is usually on credible and reliable evidence.

It is true that all truth passes through three stages; first, it is ridiculed, then violently opposed and accepted as self-evident.

Whereas learned counsel for the Defendant argued very insistently on the fact that title to land is not only established through production of Power of Attorney and or Deed of Assignment, he however failed to lead evidence to establish the credibility of the root of title of the Defendant (ChumaNzeribe) moreso that the said land which title is traceable to RamatuAlhassan which Defendant brandishes was adjudged forged and filed investigated and closed by the authorities concerned i.e FCDA.



The decision of the FCTA which investigated the said issue of forgery and double allocation is contained in the policy file which was tendered and admitted as Exhibits “D” and “E” respectively.

Defendant who was invited to a meeting called by committee set up by FCDA to unravel the issue of double allocation and forgery on the 30<sup>th</sup> June, 2009 claimed not to be aware of such meeting but the letter inviting him for the said meeting was received on his behalf by his friend and neighbor by name Charles Chidi...Defendant mentioned the said Charles in his confessional statement i.e Exhibit “I”. It is therefore clear that Defendant knew about the said meeting held on the 30<sup>th</sup> June, 2009 but refused to so attend for obvious reasons.

What is more, Defendant all through held out himself as RamatuAlhassani.e PW3 and in that guise wrote letters to the FCT Minister alleging fraudulent conversion/ Development on his land, alleging he bought the land from RamatuAlhassan and her agent in 2005 and that he had been in possession without any interference.

It is most evident from the available evidence before the court that Defendant knew exactly what he was doing when he failed/refused/ignored to lead any evidence by calling Christian Mbah or his wife whom he allegedly linked to the purported sales agreement as a witness.. this is most disastrous.

In another breath, Defendant attempted to give evidence of the purported sales transaction between RamatuAlhassan and Christian Mbah without any

such written agreement of such transfer of unexpired residue, duly registered at the applicable lands registry in Abuja pursuant to Sections 3 and 15 of the Lands Instrument Registration Law, Laws of the Federation Abuja Cap 515, and Section 4 of Statute of Fraud 1677.

Defendant who was aware that the committee set up to unravel the issue surrounding the land had resolved the issue of double allocation in favour of the PW1 i.e. Ishaya Baba and subsequently revoked all such title documents which were given to the said Defendant i.e. Chuma Nzeribe who was masquerading as Ramatu Alhassan, remained on the said land, insisting it is his land. Exhibit "D1" coupled with non – registration of the said Exhibit "D1" remain fatal to the defence of the Defendant.

I dare say that the only source of survival of a foetus is its mother's placenta through the umbilical cord... once it is severed, the foetus shall suffocate and die.

The relationship of Defendant to the land in question is Exhibit "D1" which I have held cannot be validly used in FCT as evidence of title in the absence of registration... that is the connection of Defendant to the land in issue which Defendant has failed to so register. Defendant has also failed to tell the court the whereabouts of the said Christian Mbah now that the said documents in possession of the Defendant are adjudged to have been falsely made.

Prosecution has been able to lead evidence to establish the fact that the document i.e Re-application for Statutory Right of Occupancy which was found in

possession of the Defendant was not just forged but contained information that is not true hence a lie.

A case of being in possession of a document with false information has been made out against the Defendant. I so hold.

Prosecution has been able to lead evidence to show that the title of PW1 is traceable by way of root of title to SalisuK. Garba who donated Power of Attorney to the PW1.

Similarly, Prosecution was able to show that Defendant's documents to the land ie. Re – application for statutory Right of Occupancy did not emanate from the genuine source hence false and containing false pretense.

I am morethan satisfied, peradventure that Prosecution has been able to lead credible evidence in prove of Count 1.

Accordingly, Defendant is hereby convicted on the said Count as charged.

Next are Counts 2 and 3 which are forgery and using as genuine under Section 364 of the Penal Code.

In *ALAKE VS STATE (1992) 9 NWLR (Pt. 265) Page 260 at 270*, the court stated as follows;

**“To determine that a document is forged, it is the evidence of the authentic owner of such document that settles the issue.”**

It was similarly held in the case of *NIGERIAN AIRFORCE VS JAMES (2002) 18 NWLR (Pt. 798) Page 295 at 322 Paragraphs G – H, per Onu JSC*

*(as he then was)* on the ingredients of forgery and how to prove same as follows;

*“...each document was in itself telling a lie about itself and the lie was exposed and confirmed... what further proof of forgery was needed”?*

The case of *BABALOLA VS. STATE (1989) 4 NWLR (Pt. 115) Page 264 at 272, Paragraphs E – H is apt on this point.*

Evidence was led by the Prosecution to establish that the fond used on the genuine documents of SalisuK. Garba dated the 10<sup>th</sup> March, 2002 which was assigned to PW1 (Ishaya Baba) is quite different from the fonds on the document of the Defendant dated the 18<sup>th</sup> June, 2003. Prosecution also led

evidence to show that the logo on both document are different in size.

Whereas the logo on the forged document is small, the one on the original is big.

The issuing authorities have withdrawn the said document which culminated in the issuance of other statutory title documents and building approval which were all withdrawn and or cancelled, once it was discovered that Defendant presented forged document to the authorities concerned.

A document or writing is said to be false if the whole or some material part of the document or writing purports to be made by or on behalf of some persons who did not make it or authorize it to be made, or if, in a case where the time or place of making is material, although the document or



writing is made by or by the authority of the person by whom it purports to be made, it is with a fraudulent intent falsely dated as to the time and place of making.

See the case of ***BANK OF AMERICA (NATIONAL TRUST AND SAVINGS ASSOCIATION) VS. NIGERIAN TRAVEL AGENCIES LTD. (1967) LPELR 2535 (SC).***

Prosecution has clearly been able to establish by credible evidence through the five witnesses who gave evidence that indeed Defendant (ChumaNzeribe) forged the said Re – application for Statutory Right of Occupancy which was presented to the authorities concerned as genuine document.

Defendant is hereby accordingly convicted on Counts 2 and 3 as charged.

Cheating by personation is the next count pursuant to Section 321 of the penal code.

The said section provides “*A person is said to cheat by personation if he cheats by pretending to be some other person or by knowingly substituting one person for another or representing that he or any other person is a person other than he or such other person is a person other than he or such other person really is.*”

Ishaya Baba was found to have been given Power of Attorney as I stated in the preceding part of this judgment by one SalisuK. Garba who was given the said plot 1306 as replacement by the FCT Minister.

It is equally in evidence that the person in who's name the title documents in possession of Defendant is, i.e PW3 (RamatuAlhassan) denied knowledge of

the said land and or any transfer made by her to any person. Whatever Defendant was concealing that made him not to give evidence on the root of title of Christian Mbah whom he said sold the said land to him and or registration of the alleged transaction remains the headache of Defendant.

I have seen the policy files i.e Exhibits “D” and “E”, the said documents of title presented by Defendant.

I wish to pause for a moment and ask Defendant the following question;-

Are you RamatuAlhassan?

Why did you present the said title document and held-yourself out as the RamatuAlhassan who lived at Gwagwa Village?

RamatuAlhassan who gave evidence as PW3, distanced herself from the entire transaction and denied ever been allotted any such land in the FCT.

Where did you manufacture the said title documents from... I ask you Mr. ChumaNzeribe?

The custodian of land in the FCT, i.e Minister of FCT who is a delegatee of the President pursuant to Section 297 (2) of the 1999 Constitution as amended has denied allotting any such land to RamatuAlhassan after investigation.

Where is the nexus between RamatuAlhassan and Christian Mbah?

The case of Defendant was aptly described by Prof. Amadi, the renowned Professor of mathematics in the following quotation;-

*“A sensible way of becoming sensible is to distill sense from nonsense and add sense to another sense extracted from another nonsense. This is a recurring decimal which confronts us in the struggle to make sense out of our existence.”*

Prosecution has been able to establish by evidence that Defendant did present himself as RamatuAlhassan, opposite GwagwaladaMarket, Abuja Municipal Area Council (AMAC), GwagwaladaVillage Abuja.

Defendant who had the opportunity to provide the link between RamatuAlhassan and Christian Mbah never did when the onus shifted on to him to so do. He has failed.

Defendant who knew he was never RamatuAlhassan and who did not transact any such land business with RamatuAlhassan, ought to know that he needed a documentary nexus between Ramatu and Christian which would have been registered at the applicable land registry pursuant to Section 3(1) of the Lands Instrument Registration Laws, Laws of the Federation Abuja.

Defendant who is educated and enlightened, knew the implication of his action when he failed and or refused to register the said transaction he had with the alleged said Christian Mbah vide Exhibit “D1”.

Learned Counsel for the Defendant who failed woefully to lead evidence, credible and reliable evidence for that matter, used the final written address to raise issues centered on lack of forensic

evidence and absence of witnesses as his basis for wanting this Court to discharge and acquit his client i.e Chuma Nzeribe. It is already settled that Defendant who was found in possession of the said land documents mentioned in the preceding part of this Judgment, could not tell how and where he got the land document from i.e Re-application for Statutory Right of Occupancy in the name of Ramatu Alhassan. What else shall the Prosecution do?

Is it not enough evidence that the man who was found in possession of documents containing false information, did commit the offence of forgery in the absence of any verifiable, reliable and credible evidence as to the source of the document and the information contained therein??

The evidence before me suggests clearly that Defendant was the person who was found in possession of the said Re-application for Statutory Right of Occupancy contained in the policy files tendered as Exhibits “D” and “E” respectively, and did present same to the FCT Minister for allocation of land, which investigation revealed it was forged.

Defendant who sang different songs on his root of title, could not call any of those persons so mentioned by him as the people who transact the business with respect to Plot 1306 i.e subject matter of fraud to come to this Court and give evidence, nor was the said transaction registered to confirm and ascertain Defendant’s claim.

It takes two people to speak the truth.



Both parties know the truth with respect to the subject matter. It is therefore the Court that is on trial.

Is Defendant not guilty of personation in law?

He clearly is guilty as charged on Count 4.

Accordingly, I hereby convict Defendant as charged.

Learned counsel for the Prosecution, Maryam, Esq. has made a case for Restitution of the Nominal Complainant to the said land.

Now that I have found the Defendant guilty and convicted him on all the four (4) Counts before the Court, I now proceed to consider the issue of Restitution of the Nominal Complainant who gave evidence as PW1 in this case to the said land. The authorities concern who have the absolute

responsibility to allocate land in the whole of the FCT i.e FCT Minister, pursuant to Section 18 FCT and 297(2) of the 1999 Constitution have distanced themselves from the land document Convict (ChumaNzeribe) forged to lay claim to, and on the other hand confirmed as genuine those of PW1 (Ishaya Baba).

Accordingly, I hereby invoke the provision of Sections 11(1) of the Advance Fee Fraud and Other Related Offences Act, 2006, 78 of the Penal Code and 321 of the Administrative Criminal Justice Act (ACJA), 2015 to restitute the said Ishaya Baba who is victim of the fraud to the said Plot so described as Plot 1306 Cadastral Zone 305 Maitama District, FCT – Abuja forthwith. I so order.

See *EBUKA VS. STATE (2014) LPELR – 2349 (CA)*;

*Section 321 of ACJA, 2015, Section 11(1) of Advance Fee Fraud and Other Related Offences Act.*

*Justice Y. Halilu  
Hon. Judge  
23<sup>rd</sup> May, 2022*

In view of the fact that Bench Warrant has been issued for the arrest of the fleeing convict, I shall defer sentencing. It is hereby deferred.

*Justice Y. Halilu*  
*Hon. Judge*  
*23<sup>rd</sup> May, 2022*

**APPEARANCES**

Defendant not in Court.

Maryam A.A., Esq. for the Prosecution.

Victor Edem, Esq. for the Defendant.