

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON MONDAY, 4TH DAY OF JULY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

CHARGE NO. FCT/HC/CR/25/2016

BETWEEN

FEDERAL REPUBLIC OF NIGERIA --- COMPLAINANT

AND

**CHIKE AKWITTI [ALIAS "DR. JUSTIFIED
ISIOMA NNAEMEKA", "EMERALDS CHIKE"] } DEFENDANT**

JUDGMENT

On 15/11/2016, the Economic and Financial Crimes Commission [EFCC] filed Information of 4 counts against the defendant. The Statements of Offences in counts 1, 2 & 3 respectively read: "*Obtaining money under false pretence contrary to Section 1 [1] [a] and punishable under Section 1 [3] of the Advanced Fee Fraud and Other Fraud Related Offences Act 2006.*" The Statement of Offence in count 4 reads: "*Theft contrary to Section 286 [1] and punishable under Section 287 of the Penal Code.*"

The Particulars of Offence in respect of the 4 counts are:

COUNT 1

CHIKE AKWITTI ALIAS "DR. JUSTIFIED ISIOMA NNAEMEKA", "EMERALDS CHIKE", on or about the 12th day of May, 2015 at Abuja within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud did obtain the sum of N500,000.00 [Five Hundred Thousand Naira] only from one Nkechi Joy Ani under the false pretence that the money would be used to procure items to be used to perform the traditional rituals about your marriage to Nkechi Joy Ani, which pretence you knew to be false.

COUNT 2

CHIKE AKWITTI ALIAS "DR. JUSTIFIED ISIOMA NNAEMEKA", "EMERALDS CHIKE", on or about the 4th day of June and 24th day of November, 2015 at Abuja within the jurisdiction of the High Court of the Federal Capital Territory did with intent to defraud obtain the total sum of N870,000.00 [Eight Hundred and Seventy Thousand Naira] only from one Nkechi Joy Ani under the false pretence that the money would be used to procure items to perform traditional rituals for your maternal uncles before your traditional marriage to Nkechi Joy Ani, which pretence you knew to be false.

COUNT 3

CHIKE AKWITTI ALIAS "DR. JUSTIFIED ISIOMA NNAEMEKA", "EMERALDS CHIKE", between the 2nd and the 7th day of December, 2015 at Abuja within the jurisdiction of the High Court of the Federal Capital

Territory did with intent to defraud obtain the total sum of N5,000,000.00 [Five Million Naira] only from one Nkechi Joy Ani under the false pretence that the money would be used to finance a property transaction which pretence you knew to be false.

COUNT 4

CHIKE AKWITTI ALIAS "DR. JUSTIFIED ISIOMA NNAEMEKA", "EMERALDS CHIKE", on or about the 2nd day of July, 2015 at Abuja within the jurisdiction of the High Court of the Federal Capital Territory did take dishonestly the sum of \$3,000 [Three Thousand Dollars] from the custody of one Nkechi Joy Ani without her consent.

The defendant was arraigned before the Court on 14/12/2016 and he pleaded not guilty to each of the 4 counts. In proof of its case, the prosecution called 3 witnesses namely: Nkechi Joy Ani [PW1]; Remigius Ugwu[PW2]; and JantikuJudigalMamza[PW3]. The defendant testified in his defence as DW1.

Evidence of PW1 - Nkechi Joy Ani:

The evidence of PW1 is that the defendant came to her family and introduced himself as Prince Dr. Justified IsiomaNnaemeka, a gynaecologist and paediatrician, the lone prince of Ihekpekingdom, Ogwuashi Uku in Delta State. He said he is the last child of late Chief NnannaOkosisi and late Queen ObiezeNnaemeka. The defendant's real name is ChikeAkwitti from UvuruMbaise, in Imo State. She knew the defendant through a school mate

in Oko Polytechnic, Anambra State called Chimezie Agubalu. During Easter of 2015, Chimezie told her that he has a friend who is a medical doctor based in Omoku, Rivers State who is searching for a wife. Chimezie recommended her to the defendant. Chimezie gave her number to the defendant. Later, the defendant called her and introduced himself as Dr. Justified Isioma Nnaemeka. He said he is a medical doctor and has a big hospital in Omoku and Nnewi, Anambra State.

The defendant told her that based on what Chimezie told him, she possesses all the qualities he wanted in a wife. The defendant came to her office in the Federal Road Safety Commission, Abuja on a Thursday. She lodged him in a hotel close to where she was living. On Saturday, she picked the defendant from the hotel to her house. In her house, the defendant told her that he is supposed to be the next king of his kingdom but that they cannot crown him king since he is not married. He said he was ready to propose marriage to her at that time. He removed the bracelet he was wearing in his left wrist and asked her to stretch her hand. She asked him what the bracelet was for. He said it was a gift given to him by his late mother; and that before she died, she told him that it should be given to the woman that will take over her position as the queen mother of his kingdom. She collected the bracelet from him.

The defendant travelled back to Rivers State the next day. On Sunday evening, she called him to find out if he arrived Rivers State safely. He said no, because he stopped over at Nnewi to attend to his patients, and that he

will continue the journey the next day. Later, the defendant called her and said she should find time to come to his house in Nnewi so they can discuss about the marriage preparations and for him to go and see her family. Some weeks later, she went to Nnewi to see the defendant and went to her village to see her family. When they got there, the defendant saw her uncles and stated his intention to marry her. He had to see her uncles because her parents are late. He was given the list of items for the marriage rites.

PW1 further testified that on their way back to Nnewi, he asked the defendant when they would go to his village to see his people. He said she cannot go to his village until she gives birth to his son. He also said he had discussed with the prime minister of his kingdom and the chief priest of his kingdom that she will bear all the costs of the marriage according to their custom. The defendant said she would also bring some money to buy clothes and some ritual items to inform his late parents that the lone prince is getting married. He said after everything, he will refund all the money because that is their custom. The next day, she returned to Abuja. She called the defendant and asked how to send the money and who to send the money to.

The defendant said he will send an account number of the palace accountant for her to pay the money. She asked him the reason for the palace accountant's account instead of his own account. He said custom does not allow him to touch the money because he will die if he touched the money. On 12/5/2015, she paid N500,000 into the account number he gave to

her. The account name is Emeralds Chike in Zenith Bank. The defendant confirmed that he had heard from the palace accountant and that he had directed him on what to do with the money. Some weeks later, the defendant came to Abuja with some copies of invitation card he printed for their traditional marriage scheduled for 6/6/2015. He said he was proceeding to his maternal home to give them their invitation cards. The defendant called her from his maternal home and said they were not happy that they[*she and the defendant*] informed them of the wedding late; and that they will pay fine and buy some items for rituals.

The defendant said they had already given him the list of items to buy and that the total amount was N1,030,000. He said she is the one to bring the money for the items. When she asked him why she should pay for the items, he said it is a test for them to see if she is capable of being a wife to the lone prince. He reassured her that he had the money and that whatever she spent will be refunded. On 4/6/2015, 9/7/2015 and 22/10/2015, she paid N300,000, N150,000 and N320,000 respectively to the said Zenith Bank account. On 24/11/2015, she paid N100,000 to the account in the name of Emeralds Chike in First Bank which the defendant also gave to her. These monies were part of N1,030,000 meant for the defendant's maternal uncles for informing them of the marriage late; according to what the defendant told her.

The further evidence of Nkechi Joy Ani is that the traditional marriage took place on 6/6/2015. Few of his friends were there. The event manager from the

defendant's palace and the flower girls from his palace [as he told her] were there. Her family members were there. They took pictures with friends and families. They travelled from her village to Nnewi and from Nnewi to Abuja. They were together in her house when the personal assistant to the wife of her boss called her on phone and requested her to bring the envelope given to her [PW1] to give to the wife of her boss. When she ended the call, the defendant asked her what the call was about. She told him that the personal assistant called about an envelope that contained Dollars which she was asked to give to the wife of her boss. The defendant asked if she had the money and she said it was in the house. She brought the envelope and showed to him.

The defendant advised her not to give the money to the personal assistant. When he asked, she told him the amount i.e. 3,000 Dollars. He advised her to wait till the wife of her boss returned so she can give the money to her personally. She kept the 3,000 Dollars back. The next day, she left him alone in her house; only 2 of them were staying in her house. When she came back to her house in the evening, she discovered that the envelope was no longer where she kept it. She asked the defendant about the envelope and he said he knew nothing about it. He said he will call the chief priest in his kingdom who is a seer and he would be able to tell them what happened to the money. When he called the chief priest - according to what he told her - the chief priest told him that a spirit took the Dollars. She did not see the money again.

The further evidence of PW1 is that in November 2015, the defendant brought a document and said he had some properties in Omoku that he wanted to sell. He said Zenith Bank and Diamond Bank are interested in buying the properties and that he needed some money to execute the transaction i.e. the sale of the properties. He said he needed money to pay the agents that brought the buyer, the lawyer that will stand for him in the transaction and the lawyer who kept the documents for him. He said he needed to pay N2,500,000 to the agent, N1,500,000 to the lawyer that will stand for him and N1,000,000 to the lawyer that kept the documents safe for him. He pleaded with her to source for the money so that he can transact the business. He promised to pay back all the monies she had spent from the beginning once he concluded the transaction.

Her family money which she and her siblings kept in her name in Zenith Bank account Treasury Bill matured at that time. On 2/12/2015, she transferred N2,500,000 into the same account in Zenith Bank in the name of Emeralds Chikeas the defendant directed; on 7/12/2015, she transferred N1,500,000 into the same account; and on 8/12/2015, she transferred N1,000,000 to the same account. The defendant said the money paid by the 2 banks that bought the properties would mature on 23/12/2015. On 23/12/2015, the defendant left her and said he was going to complete the documents in the bank, access the money and transfer her own money into her Zenith Bank account to replace the family money. He left and never came back until 29/12/2015.

When she asked the defendant what kept him for the number of days and about the transaction, he said the lawyer that was to stand in for the bank did not show up despite several calls. When they went to his house, they noticed that the door was locked; and when they broke the door, they found the lawyer dead. As a result, they could not complete the transaction. At that point, she became suspicious because the stories were getting too many without any positive result. She decided to investigate. She used a phone that had true caller and dialled the number of the defendant. The name that came up was Chike. She noticed that defendant's phone was not around where they were. When she found the phone, she went through his phone call history and took the frequently called number in his phone and saved it in her phone.

The next morning, the defendant left and said he was going to the mechanic. She dialled the number she took from his phone. A woman answered the call. She told her that she got the number from a person called Justified Chike. She said she does not know any Justified but that she knows Chike, her first son. She was shocked because the defendant told her that his parents were late. She asked the woman if she was aware of the marriage of the defendant to a lady on 6/6/2015. She said no; and that her son married years back and a father of 3 children. She asked the woman if they are from Delta State. The woman said they are from Mbaise in Imo State and that the name of the defendant is Chike Akwitti and not Justified Nnaemeka. She asked the

woman if she knew the defendant's whereabouts. She said no; but that she will call him to find out where he was so as to confirm what she [PW1] told her.

On that day, the defendant did not come back. She called him severally but he did not pick the calls. She traced him to the house where they lived at Nnewi. She found that he had vacated from the house. She then wrote a petition to EFCC. PW1 tendered the following:

- i. The Zenith Bank deposit slips dated 12/5/2015, 4/6/2015, 9/7/2015 and 22/10/2015; Exhibits A1, A2, A3 & A4 respectively.
- ii. The Zenith Bank fund transfer forms No. 926617 [for N2,500,000 dated 2/12/2015]; No. 928946 [for N1,500,000 dated 7/12/2015]; and No. 655802 [for N1,000,000 dated 8/12/2015]; Exhibits B1, B2 & B3 respectively.
- iii. The bracelet: Exhibit C.
- iv. Wedding invitation card: Exhibit D.
- v. 6 photographs: Exhibits E1 - E6 respectively.
- vi. The petition of PW1 to EFCC dated 5/5/2016 is Exhibit F.

Nkechi Joy Ani further testified that the photograph, Exhibit E5, has defendant, herself and the people he hired to stand in as his friends and family members. She slept with the defendant and they had sex. She does not

consider herself married to defendant because the man she was joined in traditional marriage on 6/6/2015 does not exist.

During cross examination, PW1 stated that she is from Enugu State. In Enugu State, traditional marriage is a marriage. She sponsored the traditional marriage on the understanding that the defendant will refund the moneyshe expended on the traditional marriage to her. The other monies she gave to the defendant for the land transaction were on the agreement that he will pay her back. PW1 was asked: *“So, it is correct that all these monies were debt owed you by your husband.”* She said: *“It was an elaborate scam because all the stories the defendant told me to collect the monies were false.”* PW1 was asked if she married defendant out of love or because he told her that he is a medical doctor and a prince. Her answer was that she married him out of love. She further stated that defendant dropped some bank drafts for the sums of N400,000, N100,000, N150,000 and N100,000 making a total of N750,000 before he was granted bail.

Evidence of PW2 - Remigius Ugwu:

The evidence of PW2, a staff of Zenith Bank Plc., is that sometime in May 2016, Zenith Bank Plc. received a letter from EFCC requesting for account opening package, statement of account and certificate of identification for the account of Chike Emerald. They certified the said documents and responded to EFCC by supplying the requested documents. The letter from Zenith Bank Plc. to EFCC dated 31/5/2016 and the attached documents are Exhibit G. From

the account opening package, the profession of the customer is medical doctor. The name of the customer is Chike Emerald.

PW2 further stated that from the statement of account, on 4/6/2015 there was transfer of N300,000 from Princess Nkechi Joy; on 9/7/2015, there was transfer of N150,000 from Princess Joy Nkechi; on 22/10/2015, there was cash deposit of N320,000.00 by Nkechi Joy; on 22/10/2015, there was withdrawal of N320,000 by Emerald Chike; on 2/12/2015, there was transfer of N2,500,000 from Ani Nkechi Joy; on 7/12/2015, there was transfer of N1,500,000 from Ani Nkechi Joy; and on 8/12/2015, there was transfer of N1,000,000 from Ani Nkechi Joy.

When PW2 was cross examined, he stated that customers are free to make deposits or withdrawals from their accounts without stating what they are meant for.

Evidence of PW3 -JantikuIjudigalMamza:

PW3 stated that he is an investigator in EFCC. He was working in Team 1 of Advance Fee Fraud headed by Mercy Fadamo; there were 2 other members of the team. He knew the defendant with regards to the petition dated 5/5/2016 written by Ani Nkechi Joy to EFCC. The petitioner alleged that she paid money to the defendant through the accounts in First Bank and Zenith Bank. They wrote to Zenith Bank and First Bank to request for account opening package, statement of account and letter of identification. The defendant made his statement on 17/8/2016, the same date he was brought to Abuja office of

EFCC. They took additional statements from the defendant on 19/8/2016, 23/8/2016 and on 21/9/2016. At the end of each of the statements made after words of caution, the defendant signed and he signed.

The petitioner brought a wedding invitation card, photographs of traditional marriage and tellers of payments she made to the defendant. Over N6,000,000 was paid to the defendant's account in Zenith Bank and N100,000 to the First Bank account of the defendant. Some payments were made because of the documents which the defendant presented to the petitioner and told her that he had property for sale, which Diamond Bank and Zenith Bank were interested to buy. He asked the petitioner to lend him N5,000,000 so that he can pay the agent and lawyer who will facilitate the sale of the property. The defendant promised the petitioner to refund the monies after the marriage and after he sold the property.

During investigation, he found from the account opening package of the defendant in Zenith Bank that the photograph belongs to the defendant; the name of the account is Emerald Chike; in the occupation column, defendant filled that he is a medical doctor. In the account opening package from First Bank, he discovered that the name is Emerald Chike and the photograph is that of the defendant. In the space for occupation, the defendant filled that he is a laboratory science technologist. They discovered that Ihekpekingdom is not in existence because he went to Delta State; and that the defendant is from

AbohMbaise Local Government Area of Imo State based on the indigene letter he presented to them.

PW3 further testified that they discovered that nobody has the name Doctor Justified. The account which the defendant presented to the petitioner as that of the palace accountant belongs to him. At the end, the defendant refunded over N600,000 out of the money he collected from the petitioner. The defendant said he used the money he collected from the petitioner for his farming and plastic business. From their investigation, the name of the defendant is ChikeAkwitti and there was no property in existence which he wanted to sell.

In the course of the evidence of PW3 on 5/7/2017, the counsel for prosecution applied to tender the statements of the defendant dated 17/8/2016, 19/8/2016, 23/8/2016 and 21/9/2016. The defence counsel objected to the admissibility of the statements on the ground that the defendant told him that *“he actually wrote the statements under the influence and threat of the investigating officers including the PW3. He said and wrote what they wanted him to say or write, and not what he intended to say or write.”* The Court then ordered a trial within trial to determine the voluntariness or otherwise of the statements.

After the trial within the trial, the Court, in its Ruling delivered on 28/5/2018, admitted defendant’s statements made on 19/8/2016 and 21/9/2016 as Exhibits

H & J respectively; while hisconfessional statements dated 17/8/2016 and 23/8/2016 were rejected and respectively marked Rejected 1 & 2.

PW3 further testified that in the course of investigation, the team went to Delta State LiaisonOffice to confirm if Ihekpekingdom exists. They were informed that such kingdom does not exist. They asked defendant to bring his indigene letter to enable them know his place of origin. The defendant furnished the team with the indigene letter which confirmed that he is from Eziala Local Government Area in Imo State.The Identification Certificate of ChikeNnaemeka dated 19/9/2016 is Exhibit K. They traced payment of N5,000,000 made by the complainant into defendant's account in Zenith Bank and that the N5,000,000 was withdrawn by the defendant with his ATM card.

They asked defendant the purpose of the payment. He stated that the payment was made to facilitate the sale of his property. They asked the defendant to take the team to the property he intended to sell but he could not lead them to the property. They also traced the payment of N500,000.00 and N870,000.00 into the defendant's account in Zenith Bank. These sums of money were withdrawn by the defendant with his ATM card.After discussion with the nominal complainant and the defendant,the team discovered that the purpose of the payment was for traditional rituals in order to appease the gods and the maternal uncles of the defendant before the traditional marriage can take place. They also discovered that the Zenith Bank account belongs to the defendant.

During cross examination of PW3, he stated that under false pretence, the defendant entered into traditional marriage with the complainant. They did not visit the village of the complainant in the course of his investigation.

Evidence of DW1 - the Defendant:

The evidence of the defendant is that he is ChikeNnaemekaAkwitti. He is a businessman and resides at No. 48 Squadron, Okwuzi, Omoku in Rivers State. The complainant is his wife. He did not defraud Nkechi Joy; he cannot defraud someone he calls his wife and his love. After being introduced to Nkechi Joy by a friend called Chimezie Agubalu, he spoke with her and came to Abuja to see her. They met and became friends from there. Later, he made his intention to marry her known to her. It was based on the fact that he loves her. After her acceptance, he told her it was needful for him to know her people. She is from UmuelueUmuolua kindred in UmumbaNdiagu village in Ezeagu Local Government Area of Enugu state. They travelled to her village. They met her uncle and his wife because her parents were late. He made his intention known to her uncle and the wife. Nkechi's uncle called the kinsmen and told them his intention. He was given the list for the rites for the marriage to their daughter.

He informed his people about his intention to get married to Nkechi Joy. Later, the requirements in the list were fulfilled and they agreed on a date for the traditional marriage ceremony. The traditional marriage took place in

Nkechi's family compound on 6/6/2015. After the traditional marriage, they lived in peace until a particular day, he asked her how they are to be together bearing in mind that she works in Abuja and he does his business in the East. She said she will meet her boss in Abuja to know how he could be of help in that regard. Before she travelled to Abuja, they decided to settle in Nnewi pending hearing from her boss. He had monetary transaction with Nkechi; that was after her return from seeing her boss in Abuja. Nkechi said her boss was of the opinion that they come over to Abuja. He told her that it will not be possible for him to leave his business in the East and move over to Abuja until they are able to settle down very well.

The defendant further testified that they continued to live together; she visited him in Nnewi and he came to Abuja to see her. He told her of the need to "*enjoy an improvement*" in his business. He told her the efforts his mother had made in that regard. Nkechi said she could assist him with some money because what belongs to him belongs to her and viceversa. Nkechi assisted him. In their discussion, she said he will refund her as his business prospers and he agreed; the agreement was oral. She assisted him with over N5,000,000 which she paid into his Zenith Bank account on different occasions. Nkechi did not give him any other money in cash. Nkechi said at some time that there was 3,000 Dollars which her boss entrusted her with and that she was supposed to pay the money through her personal assistant. That was all he knew about the 3,000 Dollars. He never stole her 3,000 Dollars.

He started refunding the money that Nkechi lent him for his business but he has not completed the refund. He had refunded N750,000 through 3 bank drafts made in her name. He cannot remember the total sum Nkechi lent him for his business; it is not up to N6,000,000. He never told Nkechi that he was a gynaecologist and had hospitals in several places. His intention is to refund Nkechi the balance of the money she lent him as originally agreed.

The further evidence of the defendant is that the marriage between him and Nkechi is still on because in spite of the fact that they are in Court, every member of his family still sees Nkechi as his wife. He has not received words from her people against their marriage. Their marriage has not been dissolved traditionally. He made a move to see her uncle for the purpose of ensuring that they remain together. Her uncle said he will send words to Nkechi and let him and his people know; but he has not heard from her uncle. He has plans to reach out to her uncle. He wants the Court to assist him to ensure that peace is restored between him and his wife, Nkechi.

During the defendant's cross examination, he stated that he has Ordinary Level Diploma [OND]. He deals on plastics and livestock farming. His business address is in Omoku, Rivers State. His people followed him to the traditional marriage with Nkechi. He is a prince of Ishekpe village in Ogwashi-Uku Local Government Area of Delta State. That is his mother's community where he was born and raised. His father's place is Eziala-Amasii Autonomous Community in Imo state; he is a prince there. Nkechi

did not lend him any money before the traditional marriage; he sponsored the traditional marriage.

The defendant further stated during cross examination that he is referred to as Isioma; he is also called Justified and Nnaemeka. He is not referred to as a doctor. He has never told anybody that he is a medical doctor or a trained gynaecologist and pediatrician. At the traditional marriage ceremony, he was interviewed by the camera man. During the interview, he did not introduce himself as a trained consultant.

At this stage, prosecuting counsel applied to tender the video coverage of the traditional marriage of PW1 and the defendant dated 6/6/2015 and a Certificate of Identification in accordance with section 84 of the Evidence Act, 2011 dated 23/6/2015. The objection of the defence counsel to the admissibility of the video tape was overruled. The video tape and the Certificate of Identification were admitted in evidence as Exhibits L & L1 respectively. The Court granted the application of learned counsel for the prosecution to play the video tape in open Court. The video tape was played in open Court.

When DW1 was further cross examined, he maintained that having watched the video, he has never told anyone that he is a trained gynaecologist and pediatrician. His profession, as written in the account opening form for his account in Zenith Bank, is "*medical doctor self*". He did not personally fill the form; a staff of Zenith Bank took information from him and filled the form. He is a Christian. He is legally married to Ngozi Nnaemeka and the marriage

is blessed with 3 boys namely: Daniel, Living Proof and Samuel. Nkechi is aware of this fact. He is not aware that since he is legally married to Ngozi Nnaemeka, he cannot say he is married to Nkechi under the law.

Issues for Determination:

At the conclusion of trial, U. C. Oparaugo Esq. filed the defendant's final address on 13/1/2020; while Elizabeth Alabi Esq. filed the final address of the prosecution on 13/2/2020.

I pause to remark that the defendant stopped attending Court from 12/11/2019 until 6/4/2022 without any reason. On 6/4/2022, the Court permitted both learned counsel to adopt their final addresses in the absence of the defendant pursuant to section 352[4] of the Administration of Criminal Justice Act, 2015, which provides:

Where the court in exercise of its discretion has granted bail to the defendant and the defendant in disregard for court orders, fails to surrender to the order of court or fails to attend court without reasonable explanation, the court shall continue with the trial in his absence and convict him unless the court sees reasons otherwise, provided that proceedings in the absence of the defendant shall take place after two adjournments or as the court may deem fit.

In the final address of the defendant, U. C. Oparaugo Esq. formulated one issue for determination, to wit:

Whether the prosecution has discharged the burden of proof required of them on the four counts charge.

In the final address of the prosecution, Elizabeth Alabi Esq. distilled three issues for determination, namely:

1. Whether the prosecution has proved the offence of obtaining under false pretence against the defendant beyond reasonable doubt.
2. Whether the prosecution has proved the offence of theft against the defendant beyond reasonable doubt.
3. Whether the absence of persons mentioned under section 17[2] of ACJA would render a confessional statement inadmissible.

By virtue of section 36[5] of the 1999 Constitution [as amended], every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Thus, the prosecution has the duty or burden to prove the guilt of a person alleged to have committed a criminal offence beyond reasonable doubt.

In the light of the above, the Court is of the opinion that there are two issues for determination, which are:

1. Whether the prosecution has proved the charges in counts 1, 2 & 3 for the offence of obtaining money from PW1 under false pretence against the defendant beyond reasonable doubt.

2. Whether the prosecution has proved the charge in count 4 for the offence of theft against the defendant beyond reasonable doubt.

ISSUE 1

Whether the prosecution has proved the charges in counts 1, 2 & 3 for the offence of obtaining money from PW1 under false pretence against the defendant beyond reasonable doubt.

In counts 1, 2 & 3, the defendant is charged for the offence of obtaining money from Nkechi Joy Ani under false pretence contrary to section 1[1][a] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1[3] of the said Act. The said provisions read:

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

[a] obtains, from any other person, in Nigeria or in any other country, for himself or any other person;

[b]

[c]

is guilty of an offence under this Act.

Section 1[3] of the said Act provides:

A person who is guilty of an offence under subsection [1] or [2] of this section is liable on conviction to imprisonment for a term of not less than ten years without the option of a fine.

The elements or ingredients to be proved by the prosecution to establish the charge of obtaining money under false pretence are that: [i] there was a pretence; [ii] the pretence emanated from the accused person; [iii] the pretence was false; [iv] the accused person knew of the falsity of the pretence, or did not believe its truth; [v] there was an intention to defraud; [vi] the property or thing is capable of being stolen; and [vii] the accused person induced the owner to transfer his whole interest in the property. See the cases of Aguba v. F.R.N. [2014] LPELR-23211[CA], Onwudiwe v. F.R.N. [2006] 10 NWLR [Pt. 988] 382 and Darlington v. F.R.N. [2018] LPELR-43850 [SC].

Submissions of Learned Counsel for the Defendant:

Learned counsel for the defendant referred to the cases of Amadi v. F.R.N. [2008] 18 NWLR [Pt. 1119] 259, F.R.N. v. Amah [2017] 3 NWLR [Pt. 1551] 162 and Onwudiwe v. FRN [supra] for the ingredients of the offence of obtaining money under false pretence, which I have already set out.

The defence counsel posited that the only transaction between the complainant and the defendant was centred on marriage. Both parties are adults of full age and “*competent understanding*”. The defendant’s marriage proposal to the PW1 which she accepted was what convinced her after they had fallen in love. PW1 stated during cross examination that she married the

defendant out of love rather than his social or professional status. Mr. U. C. Oparaugonoted that the marriage between the nominal complainant and the defendant is valid under native law and custom.

On count 1, the defendant's counsel argued that there is no evidence that the sum of N500,000 was either obtained by false pretence or that it was not used for the traditional rituals since it was for traditional marriage between the parties. It was submitted that the prosecution failed to prove that the money was used for another purpose other than the purpose for which PW1 willingly sent the money to the defendant. The issue betweenPW1 and DW1 was civil disagreement which she decided to criminalize and the issue of money came to the fore between them after they had agreed to marry.

Mr. Oparaugo further argued that the parties agreed that the money spent bythe PW1 for the purpose of the marriage was to be refunded by the defendant. He pointed out that during cross examination, the PW1 admitted that she sponsored the traditional marriage on the understanding that defendant will refund the money she gave to him or the money she spent on the traditional marriage.

In respect of count 2, the defence counsel argued that the prosecution failed to state the items to be procured for the traditional rituals for the defendant's maternal uncles. He asked: [i] What are these items? [ii] Who are the maternal uncles? [iii] Were the items procured? [iv] Did the traditional marriage take place? [v] If the traditional marriage took place, can it be said that the money

which the parties agreed to use was obtained by false pretence? [vi] What is the intent to defraud here? Counsel then submitted that the above are vital questions which the prosecution must answer to convince the Court and satisfy the requirement of the law. He argued that prosecution could not lead evidence by calling any of the maternal uncles of the defendant to prove its case.

On count 3, learned counsel for the defendant remarked that it is curious and difficult to believe that the defendant, through the months stated in counts 1, 2 & 3, obtained monies by false pretence from an educated and well exposed complainant who is a staff of Federal Road Safety Commission. Under cross examination, PW1 admitted that the sums of money she gave to the defendant for the land transaction were on the agreement that he will pay her back. The prosecution failed to prove this count in the light of the admission of the PW1 that the money she gave to the defendant was purely an agreement between husband and wife, which was that the husband will pay back.

Submissions of Learned Counsel for the Prosecution:

The prosecuting counsel referred to section 20 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006, which defines false pretence as: “... *a representation, whether deliberate or reckless, made by word, in writing or conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be*

true." Counsel cited Onwudiwe v. FRN [supra] and Alake v. State [1991] 7 NWLR [Pt. 205] 567 for the ingredients of the offence of obtaining under false pretence.

Elizabeth Alabi Esq. stated that PW1 gave a vivid account of how she met the defendant. She testified that the defendant came to her under the pretence that he is a medical doctor - a gynaecologist and paediatrician - and gave his name as Dr. Justified Isioma Nnaemeka, the lone prince of Ihekpe kingdom in Delta State. Through the said representations, the defendant obtained several monies from PW1 under the guise that in his tradition, it is the wife to be that pays all the expenses towards the wedding. The defendant gave the PW1 the account of the palace accountant with the name Emeralds Chike Nnaemeka, which turned out to be his personal account.

The counsel for the prosecution further posited that it is in evidence that the defendant is from Imo State; he is not a prince; there is no kingdom called Ihekpe kingdom in Delta State; and his mother is alive. The defendant made a false representation or pretence to PW1 that he is the lone prince and will soon be crowned the king; and that by the tradition of his people, the wife to be of a lone prince will be the one to pay for all the sacrifices to be performed in the palace towards the wedding. The statement of account of the defendant shows the monies received by the defendant from PW1.

In respect of counts 1 and 2, Elizabeth Alabi Esq. submitted that the defendant obtained the total sum of N1,370,000 from PW1 under the pretence

that the sum was meant to procure items to be used to perform the traditional rituals towards the wedding. In respect of the allegation in count 3, counsel submitted that defendant obtained the sum of N5,000,000 from PW1 between 2/12/2015 and 8/12/2015 under the false pretence of financing a property transaction between him and Zenith Bank. The evidence before the Court is that defendant did not have property anywhere and he obtained the sum of N5,000,000 from PW1 fraudulently.

The further argument on behalf of the prosecution is that defendant admitted during cross examination that he is legally married to Ngozi Nnaemeka and the marriage is blessed with 3 boys. The defendant, having been married to Ngozi under the Act, there is no way he could have married PW1 because he knows that he is only entitled to one wife. The reason why he claimed to marry PW1 was simply to obtain money from her, which he did. Counsel reasoned that the person PW1 got married to is an unknown person because defendant's name on the wedding invitation card is different from the name on his State of Origin Certificate. Therefore, the marriage cannot be said to exist.

Learned counsel for the prosecution also stated that the defendant lied on oath that he never told PW1 or anyone that he is a gynaecologist and paediatrician. However, the video of the traditional marriage was played in Court where he introduced himself at the wedding as a gynaecologist and paediatrician. The PW1 believed that the defendant, as a medical doctor, is a

suitable suitor and responsible enough to pay back all the monies spent during the wedding, unknown to her that she was dealing with a fraudster. The defendant did all that to defraud the PW1, which he did.

Elizabeth Alabi Esq. further submitted that the defendant knew of the falsity of the pretences he made to PW1. In paragraph 4.13 of the final address of the prosecution, learned counsel listed the facts numbered [a]-[i] which show that the defendant knew of the falsity of the pretences or representations he made to PW1 to obtain the sums of money in counts 1, 2 & 3. The sums of N1,370,000 and N5,000,000 which the defendant fraudulently obtained from the PW1 are capable of being stolen. The defendant's statement of account shows how PW1 paid the monies into the account and how the defendant spent the money for his personal use.

Decision of the Court:

For the sake of clarity, it is necessary to reiterate that the charge in count 1 is that the defendant obtained the sum of N500,000 from the PW1 under the false pretence that the money *"would be used to procure items to be used to perform the traditional rituals about your marriage to Nkechi Joy Ani"*. In count 2, the allegation is that the defendant obtained the total sum of N870,000 from PW1 under the false pretence that the money *"would be used to procure items to perform traditional rituals for your maternal uncles before your traditional marriage to Nkechi Joy Ani"*.

In count 3, the charge is that defendant obtained the total sum of N5,000,000 from the PW1 under false pretence that the money “*would be used to finance a property transaction*”.

I have already set out the elements of the offence of obtaining under false pretence. The question arising from the first four elements of the offence is whether from the evidence before the Court, the prosecution proved beyond reasonable doubt that the defendant made a false pretence [or representation] to PW1 as stated in counts 1, 2 & 3, which he knew to be false or did not believe in its truth. I will evaluate the evidence in order to answer this question.

Firstly, the evidence of the PW1 is that the defendant told her that he is from Ihekpe kingdom in Delta State and that he is the lone prince of Ihekpe kingdom. Throughout his evidence in-chief, the defendant did not deny that he told PW1 that he is from Ihekpe kingdom in Delta State and that he is the lone prince of Ihekpe kingdom. In fact, in the invitation card for the traditional marriage between PW1 and defendant [Exhibit D] which, by the unchallenged evidence of PW1, was printed by the defendant, he described himself as: “*PRINCE [DR] JUSTIFIED ISIOMA NNAEMEKA of Ihekpe Kingdom in Delta State [THE LONE PRINCE OF IHEKPE KINGDOM]*”.

Also, in his testimony in-chief, the defendant did not adduce any evidence that he is from Ihekpe kingdom in Delta State or that he is the lone prince of

Ihekpe kingdom. The defendant's Identification Certificate dated 19/9/2016 [Exhibit K] shows that he is from EzialaAmaisii Village in Amaisii/Ndigbo Autonomous Community in Aboh-Mbaise Local Government Area of Imo State contrary to his pretence or representation. Also, during cross examination, the defendant stated that he is from Eziala-Amaisii Autonomous Community in Imo State.

It must be noted that during cross examination, the defendant stated that he is a prince of *"Ishekpe village in Ogwashi-uku Local Government Area, Delta State. This is where I was born and raised. This is my mother's community."* The defendant did not adduce any evidence to prove the following particular facts: [i] that *"Ihekpe"* kingdom as he stated in the traditional wedding invitation card [Exhibit D] or *"Ishekpe"* kingdom as he stated during cross examination exists in Delta State; [ii] that he is from Ihekpe kingdom; and [iii] that he is the lone prince of Ihekpe kingdom.

I am mindful of the position of the law that prosecution has the burden to prove the guilt of the defendant beyond reasonable doubt. However, section 136[1] of the Evidence Act, 2011 provides that: *"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other."*

I hold the respectful opinion that by virtue of the provision of section 136[1] of the Evidence Act, 2011, the defendant has the burden to prove the particular facts that Ihekpe kingdom is in Delta State; that he is from Ihekpe kingdom and that he is the lone prince of Ihekpe kingdom. The defendant failed to prove these particular facts to show that the pretence or representation he made to PW1 and in the traditional wedding invitation card [Exhibit D] that he is the lone prince of Ihekpe kingdom is not false.

In the light of the Identification Certificate of the defendant [Exhibit K] which shows that he is from EzialaAmaisii Village in Imo State, I hold that defendant made false pretences or representations to PW1 that he is from Ihekpe kingdom and that he is the lone prince of Ihekpe kingdom. I agree with the view of the prosecuting counsel in paragraph 4.13 of the prosecution's final address that since the defendant is from Imo State, he cannot be a lone prince in Delta State.

Secondly, the evidence of PW1 is that the defendant told her that his name is Justified IsiomaNnaemeka. In his evidence, the defendant did not deny this fact. In the invitation card [Exhibit D] which was printed by the defendant, he stated his name as Justified IsiomaNnaemeka. The defendant's Identification Certificate shows that his name is ChikeNnaemeka. In his evidence, defendant stated his name as ChikeNnaemekaAkwitti. In his extra-judicial statements [Exhibits H & J], the defendant stated his name as ChikeNnaemeka E. Also,

the documents relating to the defendant's account in Zenith Bank Plc. [Exhibit G] do not show that his name is Justified IsiomaNnaemeka.

In the light of the foregoing, I hold that the defendant made a false pretence or representation to the PW1 that his name is Justified IsiomaNnaemeka.

Thirdly, the PW1 testified that the defendant told her that he is a gynaecologist and paediatrician. I have earlier referred to the traditional wedding invitation card [Exhibit D] where the defendant described himself as DR. In his evidence in-chief, DW1 did not deny that he told the PW1 that he is a gynaecologist and paediatrician. During cross examination however, DW1 stated that he is not referred to as a doctor and he has never told anyone that he is a medical doctor; or a gynaecologist and paediatrician. When the video tape of the traditional wedding [Exhibit L] was played in Court, the defendant stated clearly that he is a "*consultant gynaecologist and paediatrist*".

The Court believes the evidence of PW1 that the defendant told her that he is a gynaecologist and paediatrician. The Court disbelieves defendant's denial. The traditional wedding invitation card [Exhibit D] and the video tape [Exhibit L] support the evidence of PW1. Since there is no evidence that the defendant is a gynaecologist and paediatrician [or a doctor], I hold that the representation or pretence made by the defendant to the PW1 that he is a gynaecologist and paediatrician was false.

Fourthly, in respect of count 1, the evidence of the PW1 is that on their way to Nnewi after she and the defendant visited her uncles and he was given the list of items for the marriage rites, she asked him when they would go to his village to see his people. The defendant told her that: [i] she cannot go to his village until she gives birth to his son; [ii] she will bear all the costs of the marriage according to their custom; and [iii] she will bring some money to buy clothes and some ritual items to inform his late parents that the lone prince is getting married. In his evidence, the defendant did not deny that he made the above pretences or representations to PW1.

The Court had earlier held that there is no evidence that the defendant's claim to be the lone prince of Ihekpe kingdom is true. Besides, there is no evidence that these representations or pretences about the custom of the so-called Ihekpe kingdom in Delta State is true. In particular, there is no evidence to support the defendant's pretence or representation that by his custom, PW1 cannot go to his village until she gives birth to his son; or that she will bear all the costs of the marriage; or that she will bring money to buy clothes and some ritual items to inform his late parents that he is getting married.

Fifthly, PW1 testified that the defendant told her to pay or deposit money into a Zenith Bank account in the name of Emeralds Chike and that the account belongs to the palace accountant. When she asked him the reason for the account number of the palace accountant instead of his account, the

defendant said his custom will not allow him to touch the money because he will die if he touches the money. In his evidence, the defendant did not deny that he made these pretences or representations to PW1. The evidence of PW1, PW2 & PW3 and the documents relating to the defendant's account in Zenith Bank [Exhibit G] show that the account belongs to the defendant. The defendant did not die after touching the monies which PW1 paid to the said account, which is his account. These are also false pretences made by the defendant to PW1.

Sixthly, in respect of count 2, the evidence of PW1 is that defendant informed her that when he sent the traditional wedding cards to his maternal relatives: [i] they were not happy that they were informed of the wedding late; [ii] his maternal relatives said they [i.e. PW1 and the defendant] will pay fine and buy some items for rituals; [iii] the list of items will cost N1,030,000; [iv] she will bring the money for the items because it is a test for his maternal relatives to see if she is capable of being a wife to the lone prince; and [v] the money should be paid to the account of the palace accountant as aforesaid.

The defendant did not deny that he made these pretences or representations to PW1 and there is no evidence that the pretences or representations are true. For emphasis, the evidence of the prosecution has shown that the said account belongs to defendant. The Court holds that these are some of the false pretences made by the defendant to PW1.

Learned counsel for the defendant argued that the prosecution did not adduce evidence to answer questions such as: [i] What are these items? [ii] Who are the maternal uncles? [iii] Were the items procured? He submitted that prosecution could not call any of the maternal uncles of the defendant to prove its case and since the traditional marriage took place, it cannot be said that the money which the parties agreed to use was obtained by false pretence.

My considered view is that since the defendant narrated his alleged discussion with his maternal uncles to PW1, by section 136[1] of the Evidence Act, 2011, he has the burden to prove the particular facts about his maternal uncles, the items for the rituals and whether the items were procured. I hold the humble opinion that the defendant is the one who ought to have called his maternal uncles as witnesses to testify that the pretences or representations he made to PW1 about his discussion with his maternal uncles were true.

Finally, in respect of count 3, the evidence of PW1 is that in November 2015, the defendant brought documents and said he had some properties in Omoku that he wanted to sell. He said Zenith Bank and Diamond Bank were interested to buy the properties and that he needed some money to enable him execute the transaction i.e. the sale of the properties. He said he needed money to pay the agents that brought the buyer and the lawyer that will

stand for him in the transaction. He said he also needed to pay the lawyer who kept the documents for him.

On the other hand, the evidence of the defendant is that he told the PW1 of the need to “*enjoy an improvement*” in his business. He told her the efforts his mother had made in that regard. Nkechi said she could assist him with some money. Nkechi assisted him. In their discussion, she said he will refund her as his business prospered and he agreed. She assisted him with over N5,000,000 which she paid into his Zenith Bank account on different occasions. During cross examination, the defendant was asked the nature of his business and he stated that he deals on plastics and livestock farming.

The Court had earlier found that defendant told PW1 that he is a gynaecologist and paediatrician [a medical doctor] and a lone prince. The Court disbelieves the evidence of the defendant that he told PW1 that he needed money to improve his business i.e. sale of plastics and livestock farming. Also, as I had said, the defendant did not deny the evidence of PW1 that he told her that his parents were late. Thus, the Court disbelieves the evidence of DW1 that he told the PW1 the efforts his mother had made to improve his business. The Court believes the evidence of PW1 that DW1 told her that he had some properties in Omoku which he wanted to sell and that he needed money from the PW1 to execute the transaction. These were false pretences or representations made by the defendant to PW1 as he did not

discredit or controvert the evidence of the prosecution that he had no property to sell.

From the evaluation of the evidence, it is clear that the prosecution has proved beyond reasonable doubt that the defendant made false representations or pretences to PW1 as stated in counts 1, 2 & 3, which he knew to be false or did not believe in its truth. The Court holds that the defendant had the intention to defraud PW1 and by the false pretences, he induced PW1 to transfer sums of money to him. The evidence of the prosecution especially the deposit slips [Exhibits A1-A4 & B1-B3] and the defendant's statement of account, which the Court believes, show that: [i] as a result of the false pretence in count 1, PW1 paid N500,000 to the defendant; [ii] as a result of the false pretence in count 2, PW1 paid the total of N870,000 to the defendant; and [iii] as a result of the false pretence in count 3, PW1 paid the total sum of N5,000,000 to the defendant.

From all that I have said, the decision of the Court is that the prosecution has proved the offence of obtaining money under false pretence in counts 1, 2 & 3 against the defendant beyond reasonable doubt.

ISSUE 2

Whether the prosecution has proved the charge in count 4 for the offence of theft against the defendant beyond reasonable doubt.

In count 4, it is alleged that the defendant “*did take dishonestly the sum of \$3,000 [Three Thousand Dollars only] from the custody of one Nkechi Joy Ani without her consent.*”Section 286[1] of the Penal Code under which defendant is charged in count 4 provides:

Whoever intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to take it is said to commit theft.

Submissions of Learned Counsel for the Defendant:

U. C. OparaugoEsq., learned counsel for the defendant, argued that from the evidence of the PW1 and the defendant, the allegation of theft of 3,000 Dollars has not been proved. He stated that when PW1 returned and did not see the money, she did not raise any alarm or accuse the defendant of stealing the money. It was submitted that the allegation that the defendant stole the money is an after-thought. The defence counsel also submitted that:

“Generally, a husband and wife cannot steal from each other being one person in law. From the time the parties met and eventually got married, everything was going on smoothly until when PW1 alleged that the defendant left her and refused to pick her calls.... the two are still seen in the eyes of the law as husband and wife. The prosecution has also failed to lead evidence to the fact that the marriage between parties has been dissolved...”

Submissions of Learned Counsel for the Prosecution:

Elizabeth Alabi Esq. relied on the evidence of PW1 that the defendant was the only one that knew where she kept the 3,000 Dollars and both of them were the only people that stayed in the house. The defendant in his statement to EFCC admitted taking the money but stated that he was compelled to admit that he took the money, which is an after-thought. It was then submitted that the prosecution has proved that the defendant took the 3,000 Dollars without the consent of PW1. Counsel referred to the evidence of PW1 that the defendant said his palace chief priest informed him that it was a spirit that took the 3,000 Dollars and reasoned that *“the spirit is definitely the Defendant”*.

Learned counsel for the prosecution referred to the confessional statements of the defendant dated 17/8/2016 and 23/8/2016 and pointed out that the defendant admitted in his extra-judicial statements that he took the 3,000 Dollars. Counsel urged me to hold that the said confessional statements of the defendant which were rejected on the ground of absence of his counsel when he wrote his statements are admissible.

The case of **A.V.M. Olutayo Tade Oguntoyinbo v. F.R.N. [2018] LPELR-45218 [CA]** was cited where the Court of Appeal held that the word *“may”* used in sections 15[4] and 17[2] of the Administration of Criminal Justice Act, 2015 should be construed as permissive and not mandatory. The Court of Appeal departed from its earlier decision in the case of **Charles Akaeze v. FRN [2018] LPELR-43922 [CA]** where it was held that the word *“may”* in the said sections should be construed as mandatory. The prosecuting counsel urged me to

admit the said statements which are admissible evidence that were wrongly rejected.

Decision of the Court:

The ingredients of the offence of theft are that: [i] the property in question is movable property; [ii] the property was in the possession of a person; [iii] the accused moved the property whilst in the possession of that person; [iv] the accused did so without the consent of that person; [v] the accused did so in order to take the property out of the possession of that person; and [vi] the accused did so with the intent to cause wrongful gain to himself or wrongful loss to that person.

In her evidence, PW1 narrated that she wanted to give the personal assistant to the wife of her boss an envelope that contained 3,000 Dollars but defendant advised her to wait for the wife of her boss to return so she could give the money to her personally. She kept the 3,000 Dollars back. The next day, she left the defendant alone in her house. When she came back to her house later in the

evening, she discovered that the envelope was no longer where she kept it. She asked the defendant about the envelope and he said he knew nothing about it. She did not see the money again.

On the other hand, the defendant testified that Nkechi said at some time that there was 3,000 Dollars which her boss entrusted her with and that she was supposed to pay the money through her personal assistant. That was all he knew about the 3,000 Dollars. He never stole the 3,000 Dollars.

Now, did the prosecution prove beyond reasonable doubt that the defendant took or stole the sum of 3,000 Dollars? What is before the Court is the *ipsi dixit* of PW1 and the *ipsi dixit* of the defendant. It seems to me that the evidence of the prosecution through the PW1 is at best suspicion that the defendant took or stole the money because PW1 left him in her house. I am of the considered view that the evidence of the PW1 without more is not sufficient to prove this charge. It is trite principle of law that suspicion no matter how strong cannot ground a conviction. See the cases of **Oputa v. FRN [2015] LPELR-404102 [CA]** and **Chibuike v. State [2017] LPELR-42727 [CA]**.

I have considered the submission of Elizabeth Alabi Esq. that the defendant's confessional statements dated 17/8/2016 and 23/8/2016 were wrongly rejected by the Court after the trial within trial and therefore should be admitted and relied upon. It is correct that in rejecting the confessional statements of the defendant dated 17/8/2016 and 23/8/2016, the Court, among other reasons, relied on the case of **Charles Akaeze v. FRN [supra]** where the Court of Appeal interpreted the word "*may*" in section 17[2] of the Administration of Criminal Justice Act, 2015 as mandatory.

For clarity, the said section stipulates that the statement of a defendant “*may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the peace or any other person of his choice. ...*”

Learned counsel for the prosecution urged me to follow the decision in the case of **A.V.M. OlutayoTadeOguntoyinbo v. F.R.N. [supra]**. I note that the said case was decided on 14/6/2018 after the Ruling of the Court in the trial within trial delivered on 28/5/2018. The decision in **Charles Akaeze v. FRN** was the applicable decision as at the date of the Ruling in the trial within trial.

I am aware of the position of the law that in the course of writing its judgment, a trial court has power to expunge from its records any inadmissible evidence which was wrongly admitted. See **Enwerem v. Abubakar [2016] LPELR-40369 [CA]**. However, it is not the law that in the course of writing its judgment, a trial court has power to admit a document which was wrongly rejected, as urged by Elizabeth Alabi Esq. Thus, assuming the Court was wrong when it rejected the said defendant’s extra-judicial confessional statements, the Court is *functus officio* and cannot admit the statements that were rejected

Conclusion:

From all that I have said, the Court finds the defendant guilty of the offence of obtaining under false pretence in counts 1, 2 and 3. The defendant is hereby convicted for the charges in counts 1, 2 and 3. The Court enters a verdict of not guilty in respect of the offence of theft in count 4. The defendant is discharged and acquitted on count 4.

As I said earlier, the defendant has been continuously absent from Court since 12/11/2019. Section 352[5] of the Administration of Criminal Justice Act, 2015 provides that: *“The Court shall impose a sentence only when the defendant is arrested or surrenders to the custody of the court.”* In the light of this provision, sentencing hearing and sentencing of the defendant shall be conducted when defendant is arrested by prosecution or when he surrenders to the custody of the Court.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. Elizabeth Alabi Esq. for the prosecution.
2. U. C. OparaugoEsq. for the defendant.