

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –
CHIEF JUDGE**

FRIDAY, 9TH MARCH, 2018

SUIT NO. B/EFCC/6/14

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA í í í í í í í COMPLAINANT

AND

JUSTUS IMONA RUSSEL í í í í í í í í í ACCUSED

J U D G M E N T

By information dated 8th October, 2014, the accused herein was charged in a five counts for the offences obtaining money by false pretence in Count 1, Forgery in Counts 2 and 3 and uttering in Counts 4 and 5. Count 5 was later dismissed while count 3 was amended.

At the trial, the prosecution called four (4) witnesses and tendered exhibits A, B, B1, B2, B3, B4, B5, C, C1, D, E, F, G, H while the counsel for the Accused person, M. A. Okwumabua Esq. called three witnesses and tendered exhibits J, J1, K and L.

The prosecution opened its case on 27/11/14 with PW1, Prof. Austine Obasohan, a medical practitioner stating that he was introduced to a stock brokering firm known as Best Worth Asset and Trusts, Benin City by one Mrs. Adeniyi, the Executive Director along with one Mr. Idogho introduced

as the Operations Manager as well as the accused (person then) the Benin Branch Manager. They advised him to invest in their premium funds since stocks were no longer profitable. Mrs. Adeniyi informed him further that the accused and Mr. Idogho will deal with him in their capacity as Benin Branch Manager and Operations Manager. He therefore invested the sum of ₦10 million for 90 days in 2011 at a negotiated interest of 3.75% to be rolled over. After few roll overs during which time the accused was coming to relate with him, the accused told him that he could get a higher interest of 6% for the 90 days especially as his fund was getting bigger if he invested the sum in his name. He agreed to the investment provided it was only investment for Best Worth Premium Fund which the accused agreed and that himself and Mr. Idogho would be the signatories in the document. He then invested ₦20 million signed by the accused and Mr. Idogho and he countersigned, however before the expiration of the 90 days tenure, he told the accused that he would want the invested sum at the completion of 90 days. At the expiration of 90 days, the accused could not make the money available to him rather he asked PW1 to accept half of the amount with the accrued interest while the other half is rolled over to give them time. According to him, accused reluctantly agreed to this but to his chagrin, even the ₦10 million was being paid in piecemeal such that there was still a balance of ₦1.15 million from the ₦10 million. His lawyer wrote the

accused person who declined communication and subsequently wrote to the Lagos Office but there was no reply. He then reported the matter to the Police. Mr. Idogho was arrested but the accused was no where to be found. Due to delay by the Police, he was forced to write to the EFCC and the accused was arrested.

When cross examined, he said that he never exceeded ₦20 million. He said he initially invested N10 million from 23/3/2011 to 22/6/2011 with the interest rate of 3.75%. He denied telling the accused that the interest was insufficient.

PW2, Mr. Idogho Anthony Momoh, the Operations Manager of Best Worth Asset and Trusts Limited on 10/12/2015, stated that he knew PW1 who was their client as well as the accused person who was a former branch head of BestWorth Asset and Trusts Limited Benin. Sometime in August, 2013, himself and an Executive Director in Lagos, Mrs. Davina Adeniyi, was invited to EFCC Office at Enugu where a petition written by PW1 was read to them and they were shown two contract notes. He was shocked as he was not aware of any such investment with BestWorth Asset and Trusts Limited. He denied the signature on both documents as they were not his. He was asked to give samples of his signature for forensic examination. He said that at the time of the transaction, the accused was no longer an

employee of their company and maintained that the transaction was not for his company.

PW3, Mr. Richard Ogberagha a detective with EFCC, Advanced Fee Fraud Section on 2/2/2016 stated that on 13/7/2013, his team received a petition written by Prof. Austin Obasohan (PW1) for the investigation of Justus Imona Russel, the former Manager of Best Worth Asset and Trusts and also against the Operations Manager, Mr. Anthony Idogho (PW2). On receipt of the petition, they invited the petitioner to give additional statement. He brought his investment certificates given him by the accused person. The Executive Director of Best Worth Assets, Mrs. Adeniyi was invited by EFCC to make a statement and she give the Commission a document after which PW2 was invited and he made statement denying the signature on the investment document given to PW1. Based on this, PW2's specimen signature in addition to the disputed signature in the documents were sent to a forensic analysis at EFCC head office, Abuja. The accused person later reported to their office and was given the petition to read. He admitted during oral interview that he did not invest the money invested by PW1 as indicated in the certificate.

Upon cross examination by Okwumabua Esq. he said that his investigation showed that the money was not lodged in BestWorth account with Ecobank.

PW4, Mr. Benedict Agweye a forensic document expert with the EFCC stated that on 15/4/2014, he received a letter with two categories of documents one set were disputed documents marked X and XI and the second set were known as comparative specimen signatures contained in documents marked A ó A4, requesting him to determine whether or not the author of the known specimen signature also made the signatures in the disputed specimen. The signatures of one Mr. Idogho Anthony were the disputed documents marked X and X1. In his analysis of the documents, he had to bear in mind three principles that guide examinations. He identified all the characteristics that exist in the two set of writings, he issued VSC 5000, laying the writings side by side comparing to see whether or not the characteristics exhibited were uniquely combined in the same way or not. At the conclusion of his analysis, he found the author of the known specimen signatures in the documents marked A to A4 and appendix I did not sign the signatures of Idogho Anthony on the disputed documents marked X and X1. He reduced his opinion into writing in the report dated 4/7/14. He attached 5 copies of the VSC 5000 images to the said report and sent them back to the requesting officer together with the known specimen signatures he received.

Upon cross examination, PW4 said that he did not carry out any

forensic examination on the other two signatures in that on the pictorial appearances, the two other signatures are incomparable with the known signature submitted. He said he was an expert and agreed that a person cannot sign his signature twice with mathematical exactitude. He also said that when a person is sick, it can also affect his signature.

After the close of the prosecution's case, the accused person opened his defence on 12/7/16.

The accused person, Justus Oloruntobi Imona Russel, a businessman and agent said he got to know PW1 in 2010 when he was doubling as the branch manager and an agent to Best Worth Asset and Trusts Limited. The business was dealing on shares, that is buying and selling of shares on one hand and port folio investment that is when clients who are willing to drop some money for interest rates as determined as the case may be. While at Best Worth Asset and Trusts, he was saddled with the responsibility of supervising and administering aggrieved customers as well as printing of stocks position of customers. PW1 was a customer who had closed his account with Best Worth Asset and Trusts Limited in 2011. He brought back customers who had left and PW1 was one of such customers. He agreed he was introduced to Pw1 by the Executive Director and Coordinating Officer of the Company and he convinced him to buy into their port folio known as Best Worth Premium Fund but before he invested, PW1

asked him how they make profit on such investment. He then told him that it was by buying and selling shares, contract jobs and oil business. Based on the facts he supplied PW1, he invested his first ₦10 million into the company at an interest rate of 3.75% for 90 days from 23/3/11 to 22/6/11. Upon the maturity date, Pw1 was paid the interest and capital amounting to ₦10,375,000. He again through him invested another amount of ₦10 million and negotiated a higher interest rate and he gave him a better deal of 4.5% on the condition that his monies be passed through him into Best Worth Asset and Trust Investment Company. This he did by using his name in writing between himself and Pw1. The investment was for a period of 90 days from 12/8/11 to 12/11/11. Upon maturity, PW1 was paid ₦10,450,000. There was a 3rd, 4th and 5th Investment through him of different sums, amounting to ₦16 million from 10/11/11 to 10/12/11, that is 30 days he was paid ₦16,240,000 based on interest of 4.5%, the 4th transaction was for 5% from 1/11/11 to 1/2/12 for 90 days for the sum of ₦20,000,000 and was he paid ₦21 million as shown in exhibits B1 ó B5 and the 5th transaction for ₦6 million from 10/12/11 to 10/2/12, on 4.5% interest for 60 days on maturity, he was paid ₦7,480,000. The 6th transaction was from 10/2/12 to 10/4/12 with investment of ₦16 million for 60 days at 4.5% interest, he was paid ₦480,000 interest in addition to his capital of ₦16 million. The 7th investment was ₦20 million for 31/5/2012 to 31/8/12 on interest of 5% and

upon the dwindling stock prices, this investment was not paid in full and part of it was made to run for another tenure. He was paid ₦8,900,000 million. There was a short fall. He explained the market situation to PW1 and he remarked "you win sometimes, you lose sometimes". ₦10 million from that 7th investment was reinvested to run from 31/8/2012 to 31/11/2012 being the 8th investment. The interest rate was 6% which is now in dispute. It was not paid in that the market forces was in bad shape. The money was invested in the oil sector and that was where the problem cropped up. When he was invited by the EFCC, he named the person he invested the money with. He said all the transactions were done in the comfort of PW1's home, none was done at Best Worth's office. According to him, one Emmanuel Aitokhuehi, an oil marketer admitted that the ₦10 million was invested through him to EFCC. He denied altering figures to get access to the ₦10 million.

Under cross examination, he said one Mrs. Adeniyi was the Executive Director when he was the Benin Branch Manager of Best Worth Asset and Trusts Limited who introduced him to PW1. He did not state that he was an agent to Best Worth in his statement because he was under pressure from the EFCC as they were guiding him in writing the statement. Part of the stocks of PW1 was bought through BestWorth and Value Line securities. He admitted that he assured PW1 that his money was being invested in Best Worth Asset and Trusts, but that PW1 knew that he was not

going to invest his money in Best Worth Asset and Trusts because the interest he proposed to them was unacceptable. Maintaining PW1 told him that all he was interested in was his money and interest, and so he gave the money in question through his brother to one Emmanuel Aitokhuehi. He is not a licensed broker but works with competent stock brokers though he does not have any limited liability company that is registered or licensed with CBN to carry out any financial transaction.

DW1, Mike Obazee, a stock broker with Valueline Securities Ltd, Benin Branch agreed that the accused person was his client, and that in 2012, he invested through them, and he has a statement of the details of the transaction.

Under cross examination, DW1 said he has been a stock broker since 1997 but denied they are investors in Oil and Gas rather in banking and capital.

DW2, Lemmy Oare Russell admitted that he gave his friend Mr. Emmanuel Aitokhuehi who is into Oil business ₦10 million in 2012 which he got from his brother, the accused entered a friendly loan agreement with the said Aitokhuehi.

Under cross examination, DW2 stated that it was during the investigation that he got to know that the N10 million his brother (the accused) gave him was what he got from Prof. Obasohan.

DW3, Emmanuel Aitokhuehi, an Independent Marketer stated that he needed money at a time and told his Pastor DW2 of his need. Later he got to know that DW2 collected the ₦10 million from the accused. At the close of the case for the accused both learned counsel filed written addresses. In his written address, counsel to EFCC formulated three issues for determination.

1. Whether the prosecution has proved the offence of obtaining money by false pretence against the accused beyond reasonable doubt.
2. Whether the prosecution has proved the offence of forgery against the accused beyond reasonable doubt.
3. Whether the prosecution has proved the offence of altering against the accused beyond reasonable doubt.

On the first issue for determination, Mainforce Adaka Etewu Esq. submitted that the prosecution proved beyond reasonable doubt the guilt of the accused person for the offence of obtaining money by false pretence contrary to Section 1 and Section 1(3) of the Advanced Fee Fraud and other Related Offences Act, 2006. He cited section 1(1)(a) of the Advanced Fee Fraud and other Fraud Related Offences Act, 2006, Section 20 of the Act, **Alake v State** (1991) 7 NWLR (pt. 205) 567 at 592, **FRN v Ogatimirin** (2005) Q.C.C.R. Vol. 3, **Onwudiwe v FRN** (2006) 10 NWLR (pt. 988) 382 at page

432, **Wakala v State** (1991) 8 NWLR (pt. 211) 552 and **Edamine v State** (1996) 3 NWLR (pt. 438) 530 at 539.

On issue two, the prosecuting counsel submitted that the prosecution has proved the offence of forgery against the accused beyond reasonable doubt. He cited **FRN v Harrison Odiawa** (2006) Q.C.C.R. vol. 5, Section 465 of the Criminal Code, **Babalola v State** (1998) 4 NWLR (pt. 115) 264, **Alaka v State** (1991) 7 NWLR (pt. 205) 567, **Offorletle v State** (2000) FWLR (pt. 12) 2081 at 2102, **Osondu v FRN** (2000) 12 NWLR (pt. 682) and **Alake v State** supra.

In conclusion, he submitted that the prosecution has proved its case beyond reasonable doubt and urged this Honourable Court to so hold.

In the final written address of the counsel for the accused, Mr. M. A. Akwumabua submitted on count 1, that Pw1 (the nominal complainant) was into a business deal with the accused. He relied on Exhibits B, B1 ó B5. He submitted that the accused acted within the ostensible authority of his client (PW1) and that the prosecution has failed to prove Count 1 against the accused person and urging this Honourable Court to discharge and acquit him in Count 1.

On counts 2 and 3 counsel submitted that the alleged forgery of Best Worth Premium Fund (90 days) dated the 31/5/12 and 31/8/2012 as in counts 2 and 3 has not been proved beyond reasonable doubt in that under

cross examination PW1 stated he was not deceived by exhibit B and he that he was paid interests throughout the transaction based on exhibits B1 ó B5 being the basis.

On Counts 3 and 4 learned counsel submitted that the two documents referred to as uttered, that is Best Worth Premium Fund (90 days) dated 31st of May, 2012 and that for 31/8/2012 have not been proved as false documents and therefore the counts for uttering must fail. He finally urged the court to find and hold that the entire issue was a failed business transaction.

I have examined the facts adduced in this case and the charge. In all criminal cases, the onus of proof is on the prosecution in that by Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria the accused person is presumed innocent until proven guilty. Therefore, in any criminal case, for the prosecution to succeed, the evidence must be such that excludes reasonable doubt. See **Ubani v The State** (2003) 12 SC (pt. 11) 1; 2003) 4 NWLR (pt. 809) 51 at 64.

Once the ingredients of the particular offence for which the accused is charged are proved, that constitutes proof beyond reasonable doubt. For the accused to be entitled to the benefit of doubt, the doubt must be genuine and reasonable and arising from some evidence before the court. See **Nwankwo v FRN** (2003) 4 NWLR (pt. 809) 1 at 35 ó 36.

The elements to be established by the prosecution in a charge of obtaining by false pretences contrary to Section 1(3) of the Advanced Fee Fraud and other Fraud Related Offences Act are:-

1. There was a pretence.
2. The pretence emanated from the accused.
3. The said pretence is false.
4. The accused knew of the falsity or did not believe its truth.
5. There was an intention to defraud.
6. The thing is capable of being stolen.
7. The accused person induced the owner to transfer his whole interest in the property.

See **Alake v The State** (1991) 7 NWLR (pt. 205) 567.

I have carefully examined the facts of this case as put forward by the prosecution witnesses. The facts are quite straight forward. The accused person and his witnesses confirm some aspects of the facts put forward by the prosecution especially as regards the fact of Pw1 giving some money for investment which was confirmed i.e. ₦10 million thereof given as a loan to another DW3. The areas of difference are as to the exact amount and whether the money was specifically given for investment in Bestworth Asset and Trusts. I am satisfied that the certificates issued PW1 by the accused person are pointers to the offences for which he is charged. He put the

signature of Pw2 on the contract notes exhibits A and F and PW2 denied the signing the documents. The expert witness PW4 confirmed the signatures are forged. Moreover at the time of preparing the said documents, PW1 had left the employment of Bestworth Asset and Trusts. I cannot find any tenable defence put forward by the accused person. I therefore find that the prosecution by the evidence put forward proved beyond reasonable doubt that the accused person on or about 31st day of August, 2012 obtained the sum of ₦10,000,000 from PW1 under the false pretence that the money has been invested in Bestworth Asset and Trust with intent to defraud in that he knew he was no longer in the stock brokering firm and he did not infact invest the money there. He had the intention to defraud which can be inferred. This establishes the offence in count 1 of the information.

In order to establish a charge of forgery as preferred in counts 2 and 3 the prosecution must prove the following:-

- (i) That there is a document or writing,
- (ii) That the document or writing is forged,
- (iii) That the forgery is by the accused person,
- (iv) That the accused knows that the writing is false,
- (v) That he intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

See **Alake v State** (1991) 7 NWLR (pt. 205) 567, **Osondu v FRN** (2000) 12 NWLR (pt. 682) 483.

All these elements above are present in the case at hand. Exhibits A and F were documents used as an intermediate step in the scheme of fraud, the documents have been shown to be false and they were presented and uttered by the accused person to PW1 in order to gain the advantage of PW1 placing his money as an investment with him which irresistibly leads to the inference that the accused forged the document.

It is my finding that the offence of forgery as stated in counts 2 and 3 was proved beyond reasonable doubt. The documents in question that is Bestworth Premium Fund (90 days) dated 31/5/2012 and 31/8/2012 were shown by credible evidence to be false and bore the purported signature of PW3. The accused person had no defence. It was further established that he uttered the said documents exhibits A and F to PW1. The documents are false and were meant and actually did deceive PW1 into parting with his money under the belief that he was investing with the Bestworth Asset and Trusts whereas the accused person was no longer working with them. To sustain a charge of uttering contrary to section 468 of the Criminal Code, the document in question must be false or forged and must have been uttered knowingly and fraudulently. See **Alake v The State** supra; **Osondu v FRN** (supra) 96.

To utter means to make known or to publish. It is the crime of presenting a false or worthless instrument with the intent to harm or defraud. See P 1582, Blacks Law Dictionary 8th Edition by Bryan A Garner. I find no merit in the arguments by learned defence counsel on behalf of the accused person as they have failed to sway me. Conversely, I am persuaded by the submission of learned counsel for the prosecution in his arguments especially on his issues two and three. The arguments are sound with the authorities on point. Consequently, I have no hesitation in holding that the prosecution has proved each of the counts of the charge as laid beyond reasonable doubt. I therefore find the accused person guilty as charged in each of the said counts of the charge and I convict him accordingly.

Record:- Nil.

Allocutus by Mr. Okwumabua:- Plead for leniency. Accused is a family man, I urge the court to caution and discharge the accused.

Sentence:- I have listened to the allocutus and I note that the accused person is a first offender. I therefore I would temper justice with mercy and invoke my inherent powers to tinker with the sentence.

In count 1, the accused person is sentenced to 3 years

Imprisonment with Hard Labour or to pay the sum of

₦10,000.000.00(Ten Million Naira) in restitution to Prof.

Obasohan as provided for under Section 11(1)(a) of the Advance Fee Fraud Act 2006.

Count 2: Accused is cautioned and discharged.

Count 3: Accused is cautioned and discharged.

HON. JUSTICE E. F. IKPONMWEN,
Chief Judge.
9/3/2018

Counsel:

M. A. Ekwru Esq. í . í . í . í . í . . í . í . for the prosecution.

M. A. Okwumabua Esq. í í í í í í for the Accused.