

IN THE COURT OF APPEAL OF NIGERIA
LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON FRIDAY, THE 9TH DAY OF JANUARY, 2026

BEFORE THEIR LORDSHIPS

<u>YARGATA BYENCHIT NIMPAR</u>	-	<u>JUSTICE, COURT OF APPEAL</u>
<u>DANLAMI ZAMA SENCHI</u>	-	<u>JUSTICE, COURT OF APPEAL</u>
<u>ABDULAZEEZ MOHAMMED ANKA</u>	-	<u>JUSTICE, COURT OF APPEAL</u>

APPEAL NO: CA/L/CR/881/2024

BETWEEN:

ALH. SHARAFADEEN IRORUN ----- **APPELLANT**

AND

THE STATE OF LAGOS ----- **RESPONDENT**

JUDGEMENT

(DELIVERED BY YARGATA BYENCHIT NIMPAR, JCA)

This appeal is against the decision of the High Court of Lagos State, sitting at Ikeja Judicial Division and delivered by **HON. JUSTICE O. A. OGALA** on the 29th of April, 2024 in Charge No: ID/4605^C/2017, wherein the trial court found the Appellant (Defendant at the court below) guilty on count 1 and 5, obtaining by false pretence and 2 and 6, stealing, contrary to Section 312 and 285 (9) (b) of the Criminal Law of Lagos State 2011 respectively. He was discharged and acquitted on count 3, 4, 7, 8, 9,

APPEAL NO:CA/L/CR/881/2024

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
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SIGN.....
DATE..... 28/1/26

9, 10, 11 and 12. From the Record of Appeal as contained at page 150 to 153, the charge against the Appellant goes thus:

"STATEMENT OF OFFENCE-1ST COUNT

Obtaining by false pretence contrary to Section 312 of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division did fraudulently obtain the sum of Seven Million, Five Hundred Thousand Naira (N7, 500, 000) property of Alhaji Kabibiru Abdulahi (M) under the false pretence that you would prepare his customers to perform the 2014 Hajj pilgrimage.

STATEMENT OF OFFENCE-2ND COUNT

Stealing contrary to Section 285 (9) (b) of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division stole the sum of Seven Million, Five Hundred Thousand Naira (N7, 500, 000) property of Alhaji Kabiru Abdulahi (M).

STATEMENT OF OFFENCE-3RD COUNT

Obtaining by false pretence contrary to Section 312 of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division did fraudulently obtain the sum of Eleven Million, Nine Hundred and Fifty Thousand Naira (N11, 950, 000) property of Alhaji Adebayo Salami (M) under the false pretence that you would prepare his customers to perform the 2014 Hajj pilgrimage.

STATEMENT OF OFFENCE- 4TH COUNT

Stealing contrary to Section 285 (9) (b) of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division stole the sum of Eleven Million, Nine Hundred and Fifty Thousand Naira (=N=11, 950, 000.00) property of Alhaji Adebayo Salami (M).

STATEMENT OF OFFENCE- 5TH COUNT

Obtaining by false pretence contrary to Section 312 of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division did fraudulently obtain the sum of Eight Hundred and Seventy Thousand Naira (N870, 000.00) property of Alhaji Fatai Kareem (M) under the false pretence that you would prepare him to perform the 2014 Hajj pilgrimage.



STATEMENT OF OFFENCE- 6TH COUNT

Stealing contrary to Section 285 (9) (b) of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division stole the sum of Eight Hundred and Seventy Thousand Naira (=N=870, 000.00) property of Alhaji Fatai Kareem (M).

STATEMENT OF OFFENCE- 7TH COUNT

Obtaining by false pretence contrary to Section 312 of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division did fraudulently obtain the sum of Two Million, Seven Hundred Thousand Naira (N2, 000, 000.00) property of Abdul Rasheed A. Abubakri (M) under the false pretence that you would prepare his customers to perform the 2014 Hajj pilgrimage.

STATEMENT OF OFFENCE- 8TH COUNT

Stealing contrary to Section 285 (9) (b) of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division stole the sum of Two Million, Seven

*Hundred Thousand Naira (=N= 2, 000, 000.00)
property of Abdul Rasheed A. Abubakri (M).*

STATEMENT OF OFFENCE- 9TH COUNT

*Obtaining by false pretence contrary to Section 312
of the Criminal Law of Lagos State, 2011.*

PARTICULARS OF OFFENCE

*ALH. SHARAFADEEN IRORUN (M) and others at large
sometime in 2014 at Ikeja, Lagos in the Ikeja
Judicial Division did fraudulently obtain the sum of
Eight Hundred Thousand Naira (=N=800, 000.00)
property of Muyideen Abdul Hamid (M) under the
false pretence that you would prepare him to
perform the 2014 Hajj pilgrimage.*

STATEMENT OF OFFENCE- 10TH COUNT

*Stealing contrary to Section 285 (9) (b) of the
Criminal Law of Lagos State, 2011.*

PARTICULARS OF OFFENCE

*ALH. SHARAFADEEN IRORUN (M) and others at large
sometime in 2014 at Ikeja, Lagos in the Ikeja
Judicial Division stole the sum of Eight Hundred
Thousand Naira (N800, 000.00) property of
Muyideen Abdul Hamid (M).*

STATEMENT OF OFFENCE- 11TH COUNT

*Obtaining by false pretence contrary to Section 312
of the Criminal Law of Lagos State, 2011.*

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division did fraudulently obtain the sum of Eight Hundred and Seventy Thousand Naira (N870, 000.00) property of Mr. Hakeem O. (M) under the false pretence that you would prepare his sister by name, Mrs. Ogunnake Adijat Abiodun to perform the 2014 Hajj pilgrimage.

STATEMENT OF OFFENCE- 12TH COUNT

Stealing contrary to Section 285 (9) (b) of the Criminal Law of Lagos State, 2011.

PARTICULARS OF OFFENCE

ALH. SHARAFADEEN IRORUN (M) and others at large sometime in 2014 at Ikeja, Lagos in the Ikeja Judicial Division stole the sum of Eight Hundred and Seventy Thousand Naira (N870, 000.00) property of Mr. Hakeem O. (M)."

Upon due trial, the Appellant was convicted and sentenced to 10 years imprisonment on Counts 1, 2, 5 and 6. Dissatisfied with the decision of the trial Court, the Appellant filed a Notice of Appeal on the 17th of July, 2024, setting out nine (9) grounds of appeal. The record of appeal was transmitted on the 10th of October, 2024.

This appeal borders on the offence of Obtaining by False Pretence and Stealing, and the facts leading to this appeal can be simply summarized. The Appellant was alleged to have fraudulently obtained monies for Hajj pilgrimage slots through a third party, PW3 (Alhaji Luqman Abdul Kareem). The Appellant was arraigned before the High Court of



Lagos State, sitting at the Ikeja Judicial Division on a 12-count amended information for Obtaining by False Pretence and Stealing under Sections 312 and 285(b) of the Criminal Law of Lagos State, 2011. After trial, the court convicted the Appellant on Counts 1, 2, 5, and 6, sentencing him to 10 years imprisonment on each count, and acquitted him on the remaining counts. The Appellant has appealed, contending that the conviction was wrong in law and unsupported by evidence.

At the trial, the Prosecution called three (3) witnesses (PW1 – PW3) and tendered an Exhibit, Exhibit PW1 (a)- Analysis of Expenditure. The Appellant testified for himself as a sole witness in defence and tendered no exhibit.

Upon determination of the case, the trial judge relied on the evidence of the prosecution witnesses to convict the Appellant on count 1, 2, 5 and 6. Dissatisfied with the decision of the trial court, the Appellant appealed to the court.

In accordance with the rules of Court, the Appellant and Respondent counsel filed their respective briefs of argument which was adopted at the hearing of the appeal. The Appellant's Brief of Argument settled by **EMEKE EMEDO ANANYI ESQ.**, was filed on the 19th of November, 2024. The Appellant distilled two (2) issues for determination as follows:

- 1. "Having regards to the burden and standard of proving guilt of criminal offence beyond reasonable doubt, whether the lower court was wrong in convicting the Appellant for the offence of obtaining by false pretence in Counts 1 and 5 of the Amended Information dated 14th April, 2022? (Grounds 1, 2, 3, 4 and 6).*

2. Considering the facts and evidence before the court and Appellant's right to fair hearing, whether the lower court was wrong to have convicted the Appellant for the offence of Stealing in Counts 2 and 6 of the Amended Information dated 14th April, 2022? (Grounds 5, 7, 8 and 9)."

The Respondent's Brief of Argument was settled by **YUSUF A. SULE ESQ.**, and was filed on the 18th of March, 2025, but deemed on the 15th of October, 2025. The Respondent's counsel formulated a sole issue for determination as follow:

"Whether from the facts and circumstances of this case, the Respondent has proved the guilt of the Appellant beyond reasonable doubt so as to warrant his conviction and sentence by the Trial Judge?"

The Appellant filed a reply brief on the 11th of June, 2025 but was deemed on the 15th of October, 2025.

APPELLANT'S SUBMISSIONS

ISSUE ONE

The crux of this issue centers on the offence of Obtaining by False Pretence contending that the Court below wrongly convicted the Appellant on Count 1 and 5 under **Section 313 and 314 of the Criminal Law of Lagos State, 2011**. In line with ingredients of obtaining by false pretence as enumerated by the Supreme Court in **IKPA VS. THE STATE (2018) 4 NWLR (PT. 1609) 175 AT 237**, there was no proof that a pretence was made by the Appellant as stated in count 1. Alhaji Kabiru Abdullahi who was the nominal complainant in count 1 and testified as PW1, said that he



never dealt or interacted with the Appellant, but was dealing with one Alhaji Luqman. Also, that the Appellant never gave him any pilgrimage form and that he neither dealt with the Appellant nor made any payment to him. These gives credence to the fact that no representation or pretence was made by the Appellant to PW1 in any form. He argued that in a criminal trial, a court is bound to limit itself to the charge before it. Therefore, the essential elements of obtaining by false pretence in respect of count 1 is completely missing. PW1 and PW2 never interacted nor dealt with the Appellant. Counsel relied on **DAWODU VS. MAJOLAGBE (2001) 4 NWLR (PT. 703) 234 AT 244.**

In further argument, the Appellant was alleged in count 2 to have made false pretence to Alhaji Fatai Kareem (PW2). Throughout the testimony of PW2, there was no evidence of communication or relation with the Appellant. Also, under cross-examination, PW2 admitted that he never dealt with, transacted nor paid any money to the Appellant. Hence, there was no avenue for making pretence or representation to PW2 who testified that he never interacted with the Appellant. On count 5, the Appellant was alleged to have obtained the sum of ₦850,000.00 from Alhaji Fatai Kareem under false pretence. There was no evidence to support the allegation. Therefore, count 5 remains within the realm of bare allegation without evidence. More so, it was Alhaji Luqman (PW3) who made representations that he will procure Hajj pilgrimage for PW2. If there was any representation, it was made by PW3. The finding of the trial court was at variance with the evidence led and relied on **FEDERAL REPUBLIC OF NIGERIA VS. SHAHIMI TALAL (2022) LPELR-57088 (CA) 1 AT 23-24.**

Furthermore, PW1 and PW2 were informed by PW3 that he had pilgrimage slots and collected money from them. It was not the case of PW1 and PW2 that the Appellant gave such information or represented to them of having the ability to procure pilgrimage slot for them, having never interacted or seen the Appellant. The subsequent requirement of proving that the pretence was false pretence is standing on nothing and must as of legal compulsion fail. He relied on **MACFOY VS. UNITED AFRICA CO. LTD (1962) A.C. 152 AT 160**. More so, the actus reus of making a false pretence was absent, and this absence defeats any determination of mens rea or guilty mind in carrying out the actus reus. The mens rea of the offence in count 1 and 5 were not proved, it is a legal impossibility to infer a guilty mind for an act or representation that was never made. The act of speculating and conjecturing is outside the jurisdictional competence of the trial court. **OKOROGBA VS. THE STATE (1992) 2 NWLR (PT.222) 244 AT 253** and **RADDA VENTURES NIGERIA LIMITED & ANOR VS. UNITY BANK PLC (2022) I.PELR-58301 (CA) 1 AT 13**, were cited in support. Hence, if there must be conviction, it can only be against PW3 who represented to PW1 and PW2 that he will procure Hajj slots for them and obtained sums of money from them.

ISSUE TWO

In arguing the second issue, learned counsel submitted that a court of law is bound to give reasons for its decisions, such that the court must set out by dint of evidence the reason behind the conclusion reached, and cited **SPEAKER K.S.H.A VS. ADEGBE (2010) 10 NWLR (PT. 1201) 45 AT 77**. Count 2 alleged that the Appellant fraudulently stole the sum of ₦7, 500,000.00 from Alhaji Kabiru Abdulahi (PW1), yet PW1 testified that he



never dealt with the Appellant neither did he testify about the sum of ₦7,500,000.00. The testimony of PW1 was that he paid ₦11, 000, 950.00 to Alhaji Luqman for 16 Hajj pilgrims. The Appellant was not facing trial for ₦11,000,950, as there was no count for the said sum, and also, the Appellant never took a plea on the said sum. More so, a charge is the fundamental document in criminal trials and the prosecution is bound to limit itself to the allegations therein. The prosecution is not permitted to charge an accused person for one particular offence, and give evidence on another offence, as same would amount to breach of the constitutional right to fair hearing as enshrined in **Section 36 (6) (a) of the Constitution of the Federal Republic of Nigeria (as amended)** and **OLUGBEMI VS. THE STATE (2023) 11 NWLR (PT. 1895) 359 AT 384**. The case of the prosecution at the court below was filled with doubts and ought to have been resolved in favour of the Appellant and relied on **ESEU VS. THE PEOPLE OF LAGOS (2024) 11 NWLR (PT. 1948) 95 AT 113-114**.

Contending on count 6, counsel posited that PW1 and PW2 never testified that the Appellant stole the sum of ₦870,000 from him or any other sum. The testimony of PW2 was that he paid Alhaji Luqman ₦800,000.00 each for eight persons. PW2 never testified that the Appellant stole ₦870,000.00 as alleged in count 6, neither was any evidence led in respect of ₦870, 000,00 as contained in count 6. Hence, the finding of the trial court on count 6 is perverse and liable to be set aside, despite the admission of PW2 and PW1 that no money was paid to the Appellant. He cited **ENEBELI VS. THE STATE (2022) 17 NWLR (PT. 1860) 487 AT 526; CHIEF CHUKWUEMEKA ODUMEGWU OJUKWU VS. DR. EDWIN**



ONWUDIWE & ORS. (1984) LPELR-2402 (SC) and **GEORGE VS. FRN (2014) 5 NWLR (PT.1399) 1 AT 24**. Therefore, the conviction of the Appellant for the offence of stealing did not come within the confines of the particulars in count 2 and 6 which expressly stated the sums of ₦7, 500, 000.00 and ₦870, 000.00 were fraudulently stolen by the Appellant from PW1 and PW2. The vital ingredient of the offence in count 2 and 6 were not proved at the trial court, hereby making **Section 287 of the Criminal Law of Lagos State** very germane to this appeal, particularly to this issue and the case of **OYEBANJI VS. THE STATE (2015) 14 NWLR (PT. 1479) 270 AT 290**.

Aside the fact that no evidence was given in respect of the said sums by the nominal complainants (PW1 and PW2), the evidence of PW1 and PW2 is that various sums of monies were paid to PW3 via bank transfers. The prosecution did not tender any bank statement to show that there were such transfers. More so, bank transfers are documented in permanent form and it is the law that, where facts or transactions have been put in a document, the only cognizable evidence pertaining to such transaction is by tendering the document and not by ipse dixit of witness. The offence of stealing is only established when the prosecution proves that the accused unlawfully took another person's property with the intention of permanently depriving the owner of its use. Counsel cited **MICHAEL UGOCHUKWU NWOKOCHA VS. FEDERAL REPUBLIC OF NIGERIA (2017) LPELR-44961 (CA) 1 AT 17**. Also, PW3 gave hearsay evidence in respect of what the Police told him. Despite been hearsay, the trial court treated what Sikiru told PW3 as a direct testimony. The offence of stealing in count 2 and 6 going by Section 287 of the Criminal Law of Lagos State,

2011 places a maximum sentence of 3 years imprisonment. It buttresses the point that the judgment of the trial court is unsustainable and liable to be set aside.

Finally, counsel urged the court to resolve all issues in favour of the Appellant and set aside the judgment of the trial court.

RESPONDENT'S SUBMISSIONS ON LONE ISSUE

Arguing his sole issue, counsel for the Respondent emphasised that the burden of proving the guilt of the Defendant beyond reasonable doubt is on the prosecution, and same does not shift. The standard of proof is not proof beyond any shadow of doubt, and cited **Section 138 of the Evidence Act, 2011 (as Amended 2023); CHUKWUMA VS. FRN (2011) VOL.5 (PT. 11) MJSC 1** and **AUDU VS. THE STATE (2003) NWLR (PT. 820) PG. 554**. That once all the ingredients of the offence are proved, it constitutes proof beyond reasonable doubt. For the Appellant to be entitled to the benefit of doubt, the doubt must be genuine and reasonable, arising from some evidence before the court and relied on **NWANKWO VS. FRN (2003) 4 NWLR (PT. 809) PG. 1 AT 35-36**. More so, having been convicted, the onus is on the Appellant to prove that the judgment of the trial court was perverse. This has not been discharged by the Appellant. Counsel cited **F.I.R. S. VS. AGROMIX (NIG) LTD (2025) 1 NWLR (PT. 1974) 649 AT 709**.

Arguing further, in proving the ingredient of the offence of obtaining by false pretence as enumerated in **IKPA VS. THE STATE (supra); ONWUDIWE VS. FRN (2006) 10 NWLR (PT. 988) 382; ALAKE VS. THE STATE (1991) 7 NWLR (PT. 205) 567** and **OFORLETE VS. THE STATE (2000) 12 NWLR (PT. 681) 415**, Respondent called PW1, PW2

and PW3 who gave unchallenged and uncontroverted evidence at the trial court establishing that the Appellant was guilty, as clearly seen in the transaction involving the Appellant and PW3. The Appellant 's argument in paragraphs 4.7-4.9 of his brief of argument is misconceived and unfounded. The totality of evidence and corroborative testimonies link the Appellant to the fraudulent scheme. The transfer of ₦ 11, 000, 950 by PW1 to PW3's account was a strong link in the chain of evidence. It is not a requirement to tender bank statement to show that the Appellant received monies from PW3. The Appellant was the orchestrator of the scheme which facilitated the transfer of funds and he received the funds. Also, PW1 transferred and lost his money to the Appellant and cannot escape criminal liability on the mere ground that PW1 and PW2 did not transact or deal with him directly. Therefore, the court below was correct in finding that the Appellant obtained the sum of ₦7, 500, 000.00 under false pretence.

Furthermore, the evidence on record demonstrates that the Appellant held himself out as capable of providing services that were never rendered, thereby inducing PW3 to part with his money. The actus reus of obtaining by false pretence was sufficiently established on count 1. To further demonstrate, PW3 had a direct interaction with the Appellant who presented him Hajj forms and even instructed him to call PW1 and PW2 on phone to get them details to fill the forms which turned out fake. He also testified that the Appellant took him to Saki, Oyo State to reassure him that the transaction was genuine and further introduce him to his other conspirators who are at large. These testimonies were corroborated by PW1 and PW2. PW1 also stated that during investigation by the police, while at the Appellant's house at Saki, the Appellant attempted to cause

chaos by inviting the army to his house on the pretext that armed robbers were in his house after he got information that the police were in his house to arrest him.

In proving the ingredients of stealing as contained in **Section 279 of the Criminal Law of Lagos State, 2011** and **ADEJOBI & ANOR VS. THE STATE (2011) 6-7 SC (PT. 111) 65**, the testimony of PW3 showed that the Appellant collected money from PW3 and converted same to his personal use. This is sufficient to sustain all the charges of stealing levied against the Appellant on count 2 and 6 for stealing. Contrary to paragraph 13 of the Appellant's brief, if the requirement of proof beyond reasonable doubt is to eliminate all possible doubt, no matter the evidence presented, every accused person like the Appellant would evade conviction by simply denying guilt and cited **AUDU VS. THE STATE (supra)** and **DIBIE VS. THE STATE (2007) 9 (NWLR) PT. 1038 PG. 56-57**.

Interestingly, a court can and is entitled to act on the evidence of one single witness provided the witness is credible enough to establish a case beyond reasonable doubt. In this case, PW1, PW2 and PW3 were vital witnesses which the trial court believed to be credible and direct, and was not discredited during cross-examination. It is trite that an Appellate court will not ordinarily disturb the findings of a trial court unless the findings are perverse, not supported by credible evidence which has occasioned miscarriage of justice. Counsel cited **IGBO VS. THE STATE (1975) 9-11 S.C. 129-136**; **ONAFOWOKAN VS. THE STATE (1987) 3 NWLR (PT. 61) 538 @ 552**; **MICHAEL OMISADE VS. THE STATE (1976) 11 SC 75** and **THE STATE VS. SHONTO (2019) LPELR-47431 (SC)**.

Finally, counsel urged the court to resolved the sole issue for determination in favour of the Respondent.

APPELLANT'S REPLY BRIEF

Some of the arguments of the Appellant's counsel in his reply brief are contained in the Appellant's main brief. However, the Respondent raised arguments necessary for the Appellant to respond which shall be restricted to that, to avoid repetition of submissions and arguments.

In response to paragraphs 4.6. of the Respondent's brief that the evidence of PW1, PW2 and PW3 were unchallenged, and that the trial court rightly relied on the said evidence, does not reflect the rigorous cross-examination of the said witnesses. PW1 and PW2 admitted under cross-examination that they never had any dealing with the Appellant and never paid money to him. Therefore, the finding and conviction for the offence of obtaining by false pretence is not supported by evidence. There was no count in relation to PW3, and the trial court rightly acknowledged that the Appellant was not facing charges in respect of any payment or interaction with PW3. The proof that a pretence emanated from the accused to the nominal complainant was conspicuously absent. He cited **ONAOLAPO VS. FRN (2022) 2 NWLR (PT. 1814) 247 AT 268** and concluded that, the evidence of PW1, PW2 and PW3 were controverted, unreliable and incapable of sustaining the wrongful conviction of the Appellant.

In response to paragraph 4.7, the admission that the Appellant never had any dealing with the Appellant knocks the bottom off the offence of obtaining by false pretence, because the critical ingredient is that, the accused person made some representation to the complainant which was

false, leading to the obtainment of monetary value and relied on **EZEANI VS. FRN (2019) 12 NWLR (PT. 1686) 221 AT 249-250.**

Reacting to paragraph 4.8 - 4.12 on the issue of the Appellant holding himself out to PW3, even though unproved, is of no moment and academic. The charge before the trial court is limited to PW1 and PW2. Therefore, any conviction that is anchored on alleged pretence made to PW3 is contrary to the information on which the Appellant was charged and took his plea on. Conclusively, the Respondent failed to discharge the burden of proof as the Respondent's case is filled with plethora of doubts which ought to be resolved in favour of the Appellant.

RESOLUTION

I have carefully considered the Notice of Appeal, the record of appeal and the briefs of argument filed by counsel in respect of this appeal, the Appellant formulated two issues for determination while the Respondent formulated a lone issue for determination. The issues formulated by the Appellant shall be adopted in determining this appeal, he being the aggrieved party and the two issues shall be determined together for expediency and to avoid repetition, the two issues are interrelated. However, arguments canvassed by the Respondent shall be duly considered.

The submissions and arguments of both counsel in respect of issues formulated for determination have been summarized earlier in this judgment.

ISSUE ONE & TWO

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1. *"Having regards to the burden and standard of proving guilt of criminal offence beyond reasonable doubt, whether the lower court was wrong in convicting the Appellant for the offence of obtaining by false pretence in Counts 1 and 5 of the Amended Information dated 14th April, 2022? (Grounds 1, 2, 3, 4 and 6).*
2. *Considering the facts and evidence before the court and Appellant's right to fair hearing, whether the lower court was wrong to have convicted the Appellant for the offence of Stealing in Counts 2 and 6 of the Amended Information dated 14th April, 2022? (Grounds 5, 7, 8 and 9)."*

The principle is settled that a person charged with an offence is presumed innocent until proven guilty as enshrined in **Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended 2023)**, it says:

"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty".

The Respondent in this case, preferred an amended criminal charge of obtaining by false pretence and stealing against the Appellant, it therefore has the sole duty to prove, otherwise, the Appellant's innocence which the law has clothed him with must prevail. It is the law that he who asserts must prove, see **Section 131 (1) & (2), 132 and 135(1) of the Evidence Act 2011 (as Amended 2023)**.

Also, the Supreme Court held in **OMOREGBE VS. THE STATE (2024) LPELR- 62997 (SC)** thusly:



"It is elementary that the standard of proof in criminal cases is proof beyond reasonable doubt and the burden of proof is on the prosecution. It should however be noted that proof beyond reasonable doubt does not mean proof to the hilt or beyond all shadow of doubt. It is rather proof that will lead any reasonable man to agree that the accused person committed the offence because it is compelling and convincing with no room for serious or substantial doubt. If the doubt that exists is fanciful or unreasonable, in the sense that it does not have a bearing on the elements of the offence(s) charged or will not play on the mind of a reasonable person or the judicial mind of the Court, the prosecution would have satisfied the requirement of the law to prove the guilt of the accused person beyond reasonable doubt. Consequently, if the evidence is strong against an accused person as to leave only a remote possibility in his favour which can be dismissed with the sentence, of course it is possible but not in the least probable, the case is proved beyond reasonable doubt".

See also the case of **CHUKWUMA VS. FRN (Supra)** and **AUDU VS. THE STATE (supra)** cited by the Respondent counsel.

To sustain a conviction in an offence of obtaining by false pretence, the Respondent must discharge the burden of proof placed on it by the law, by proving the ingredients of the offence beyond reasonable doubt as listed in the case of **IKPA VS. THE STATE (supra)** cited by the Appellant counsel and the Respondent counsel thus:

"It is to be noted that for the prosecution to prove the offence of obtaining by false pretence it must be established thus: -

- a. A pretence was made by the accused person.*
- b. The pretence was false.*
- c. The accused knew the pretence to be false and did not believe it to be true.*
- d. The pretence operated on the mind of the person from whom the property was obtained.*
- e. That there was an intention to defraud.*
- f. That the monies obtained from the victim was capable of being stolen.*
- g. Some property must have been obtained as a result of the pretence."*

The Supreme court more elaborately in **MADUAGWU VS. FRN (2024) LPELR-62582 (SC)** also highlighted the elements of the offence of obtaining by false pretence namely:

"It is paramount to state that in this appeal, the evidence disclosed that the Appellant, by false pretenses, induced the nominal complainants to supply him with a batch of chemicals products, calcium chloride powder, to the tune of \$179,000 USD, which he had no intention of paying for and thus committed the offence of obtaining goods under false pretense. The essential ingredients of the offence charged are that:

- (1) There was a pretense;*
- (2) The pretense emanated from the defendant;*
- (3) The pretense was false;*
- (4) The defendant knew the falsity;*



(5) There was an intention to defraud another person of property;

(6) The property is capable of being stolen; and

(7) The defendant induced the owner of the property to transfer his whole interest in the property."

See also: **EZERIKE VS. THE STATE (2022) LPELR-59158 (SC).**

To prove the ingredients of the alleged offence, the Respondent on the authority of **OKERE VS. IGP (2024) LPELR-62530 (SC)** can rely on any of the following way or a combination of the ways namely:

"(a) By the confessional statement of the accused person which is direct, positive, un-equivocal and voluntarily made and discloses beyond reasonable doubt that the accused has admitted to the commission of the offence charged.

(b) By circumstantial evidence which shows beyond reasonable doubt that the accused person and no other person committed the offence.

(c) By the testimony or testimonies of eye witness(es) who saw when the offence was committed."

See also **ABDULLAHI VS. THE STATE (2023) LPELR-60696 (SC).**

On the authority of **OKERE VS. IGP (supra)**, the Respondent in fulfilment of one of ways of proving the offence of obtaining by false pretence, resorted to testimonies of eye witness (es) who saw when the offence was committed in respect of count 1 and 5. This the Respondent did by calling PW1 to PW3. Crucial testimonies of the PW1 to PW3 in

relation to count 1 and 5 is hereby reproduced. PW1 on the 5th of October, 2022, in his evidence in chief as contained at pages 235 to 245 of the record of appeal, testified as follows:

"My name is Kabir Abdulahi. I'm living at number 6, Iyalode Obe Street Isale Oja, Agege. I'm a businessman, I'm a Hajj agent and bureau dechange. I'm in court today about the money that I paid for hajj in 2014. 2014 hajj we are dealing with armed forces. Yes, I know him, Sharafa Irorun. What happened my Lord, May 2014, we are paying Hajj through Nigerian Armed Forces. That year, Federal government, 2014, Nigeria and Saudi Arabia; they reduced the seat that's supposed to give the pilgrims; that is enough of seat for our pilgrims. That Lagos State Government gave some commissioners that they are not want to go; he used to bring olit (sic) for individual people. I asked Alhaji Salam how much, he told me that they gave him that seat him 20, 000 for commission, that's 70070. That is 700 and 70. Yes. He sent his account to me, Union Bank. After, we went to the bank, there is no network for Union Bank, we cannot transfer to that account. After, he called Alhaji Luqman to send his own account directly to him, immediately; Alhaji Luqman sent his own account, he told me that I should sent 750, 000 per seat; we will first send for 5 people. For the time first time. After they said that they have another 5, we sent another 5, that's 10. After, I sent another 5, that's 15. I sent 1, that one, he gave me 700, that's total money that I sent to Alhaji Luqman account is 11, 000,950 for 16 pilgrims for Hajj 201. Fifty what, 950? 50 thousand Naira. After I pay, if I pay for the 5, Alhaji Salami will bring the 5 forms for



Lagos State pilgrims for me, we will fill it with the passport, international passport and photograph; I will submit it to Alhaji Salami. Just hold on, the Alhaji will bring the Lagos State forms? For me, if he bring the form, we will fill the form, we give it back with the international passport and the photograph, 2 passports. That's where I filled my 16 international passport; I filled all the 16 forms; I gave Aaji Luqman is the one that will submit to people that give him if the slot. They told us that we could wait, they will call us, because if they are going to pilgrim, they will fixed date for lecture and some other activities. They will give them their bags and other necessary things. They gave us the date that we are going there; they gave us venue august. 2014, at Ifako Ijaye Ojokoro; inside the Local Government. They gave us the venue and address. As we went there, we saw many pilgrims, they the lecture. When you say we, who is the we? That's another pilgrims. You said we joined them, who are the we, you and who? My 16 people that I paid for; for them and other pilgrims, we are here present with the people at thrt sharing bags and other things for the pilgrims, we asked where, we go ask them, they said we should tender our names, they checked all the names, no any of our names there. We asked, they told us that we should, who is the coordinator, I told them we paid through Alhaji Luqman; Alhaji Luqman is there too with other people that paid through Alhaji Luqman; through Al. Luqman is there. After, Alhaji Luqman start calling phone for the people he paid money for, they told him they are coming, they are coming; their own is special. After we are not seeing our names in the list, himself, Alhaji Luqman he didn't see, all his people, he didn't see their



names, he started calling phone, the people that he paid money for, they told him they are coming. The people he paid money to? Yes. He started calling, they told him his own is special package. After, they refused to pick call again. Yes. From that place, the coordinators that are in charge of that place, they notified us that Alhaji Luqman has fall to the wrong hand..... From there, the next day, I went to the Zone 2, I laid a complain, they invite Alhaji Luqman.....After that Alhaji Luqman went Zone 2, police start investigation,.....Alhaji Luqman said he paid money to Sharafa Irorun and co. Sharafa Irorun is the leader. Police start investigation, tracking some information that we get to Saki, because we go together, we get to Saki, that's the village of Sharafa Irorun. We went there at least 7 to 8 in the night. Immediately, because we already know his house, he has two houses....., they showed us the Sharafa room for that house, police knocked and entered..... Yes we saw the wife in the room ,the wife started shouting. The policeman asked him, where is your hucome(sic). His wife called him? Yes, my Lord, told him police come to his house. The-the just invite the wife to the compound outside, police, we are outside together with the police, we are 4 in number, we just saw soldier, Nigerian Army with full ammunition, they come with their vehicle.....They come with Sharafa. Sharafa told them that armed robbers have come to his house. That army, those army, they were ready to shoot.....The day that we went to Sharafa's house, police searched the house, immediately they opened the cupboard, they see Lagos State Hajj Pilgrim form, the form that they used to give us.....".



At the conclusion of his evidence in-chief, PW1 under cross examination by Appellant's counsel gave the following answers as contained at pages 245 to 249 of the record of appeal.

"Q: Witness, have you ever met the Defendant before you pay any money to him?"

A: No.

Q: Did he give you any form, the Defendant?"

A: No, Alhaji Luqman give me.

Q: You claimed you are being duped; being defrauded by the Defendant?"

A: Yes.

Q: Did he collect any money from you?"

A: Police investigation showed that.

Q: How much did he dupe from investigation report?"

A: Police investigation. I'm not deal with Sharafa Irurun direct but through the investigation that police did, Sharafa is the real man that get the -do this fraudness.

Q: You don't deal with Sharafa direct?"

A: Yes.

Q: The money you claimed you gave the Defendant, you are not the owner?"

A: The money that I paid for Alhaji Luqman?"

Q: Yes, that you claimed you paid to the Defendant.

A: I paid to Alhaji Luqman.

Court: He is asking if you are the owner of the money.

Q: Are you the owner of the money?

A: It's not mine. That is why I'm telling my Lord the person took this matter to EFCC.

Q: You collected people's money?

A: No, the person that get the money has taken this matter to EFCC

Q: That means you should be a defendant be a Defendant in this matter.

Counsel: My Lord, I'm objecting to that line, that's very rude.

Court: Go and prosecute that one, this is the one I'm doing.

Q: You claim you were given forms, do you verify the forms whether it is real or not.

A: Alhaji Luqman gave me the form; this question is you can ask Alhaji Luqman.

Court: So, you did not; Alhaji Luqman gave you the form?

A: Yes, because Alhaji Luqman is the one that deal with them.

Q: Do you know one Musa Ashimiu?

A: I don't know him.

Q: Are you aware that the Defendant is falling a victim?

A: No, this Defendant is not a victim. Because during our investigation at Zone 2, he told us like that. After investigation gone, they get him; he is the leader. Even there is a dayd Sharafa Irorun, he testified Sharafa is the leader of the gang because he is trying to say that he is the victim, after they know he is the leader.

Q: When you reported to the police, how many of them were arrested?

A: I think Sharafa Irorun, Kasali Yussuf, Tunde Bada.

Court: How many?

A: I think they are almost 5, about 4 to 5."

PW2 whose evidence in-chief can be found at pages 249 to 252 of the record of appeal testified thus:

"My name is Abdul Fatai Abdul Kareem. I sell building materials and I'm a cleric in my organisation. Yes, I recognise him very well. In May 2014, I was with Nigerian Armed Forces and I'm one of their agents for Hajj, so they allow us to bring people for Hajj. So 2014, the number of be people we have is more than the slot we were given, there is a friend called Luqman, Alhaji Luqman Abdul Kareem, he was also with the Armed Forces, we work together. That year, I have 8 outstanding pilgrims, so I was now thinking of how I'm going to do it. I went to meet Luqman, Luqman now told me he has some slots, that some people gave him some slots, so I now told him I have money for 8 people with me; it was 800,000 per person. Luqman told me thereroblem (sic) and I gave him the money for the 8 people; he now gave me the forms, the forms were



for Lagos Alhaji Luqman. We now started preparations, I handed over to him their passports. Preparations were ongoing with the Armed Forces, the 8 people were now pestering me as to when their own preparations will start. I now called Alhaji Luqman, Alhaji Luqman now told me we are going to have a seminar. Around Ifako Ijaye or something. I now told the 8 pilgrims that we will have seminar on a particular day. On that date, we went to the venue. While the program was ongoing, we saw that after the program, our own pilgrims were not mentioned. The Hajj items that were usually given out were not given to my own people. Immediate started asking me what happened; have you duped y, I went to meet Alhaji Luqman, because he was there that day; I asked him what is going on. We went back home that day. Alhaji Luqman called their phones were switched off, we went back home that day. On getting home, my clients started fighting with me. After then, we have been looking for Alhaji Luqman, but we didn't meet him. All those while, I didn't know he had been at the hospital. I now called on my official, he was the one that told me Alhaji Luqman I'm looking for was at Zone 2, that was how I went to Zone 2 with few of the pilgrims. Then, has been locked up, he was now called out, the policemen asked if he knows me, he said he knows me. That was how we started looking for the people that duped us. When I got there, I met Alhaji Kabiru too at Zoing for them. They got all of them arrested. I don't usually follow them when they are going to arrest them, Kabiru is the one that follows them. The Police will request for a certain amount of money, and I anthem arrested, there is none of them didn't see.....".



Upon cross-examination by the Appellant counsel, PW2 gave the following answers as contained at page 252 of the record of appeal thus:

"Q: Did you pay any money to the Defendant?"

A: I didn't pay any money to him, I paid to Alhaji Luqman.

Q: Did you ever deal with him?"

A: I don't have any transaction with him."

On the 6th of October, 2022, PW3 testified in chief as contained at page 253 to 266 and page 270 to 274 of the record of appeal thus:

"My name is Luqman Abdul Kareem..... I work an Armed Forces, Bonny Camp, Ikoyi, Lagos. Since about 20 years. I started in the year 2002, I do give the like four, five, six clients; over time the number increa every year until 2014. There are so many of them; I can't remember. In 2014, an incident happened, Saudi Arabia authorities said they don't want a lot of people for the pilgrimage; it was during the outbreak of Ebola in Nigeria. We had a lot of intending pilgrims, but the Nigerian Armed Forces reduced our passengers into half. The way I operatrian Armed Forces; I do refund their money back to them before I travel, but that year, there were 2 particular people that were on my neck that I should put them in any available slot. Because it's my job, those of us that have client with no slot will giwcalled someone in Oyo State that is into the same business probably he can get a slot for 2 people it was the first time; but we do meet at Mekkah everyo his office in Oyo State where he works; he said he has two slots for Lagos State. Who is Alhaji Mukaila



Salau? He is the one I contacted in Oyo State. He said he told the person that he doesn't deal with Lagos State; that he deals with Oyo or Osun State. He said the person left his number with him in ive me the person's number. I asked him how well dis an indigene of Saki. I told him to speak to him on my behalf and revert back me, so I can speak wween Irorun to me. That's the Defendant. Yes, the defendant. I called him and explained to him that I'm calling from Alhaji Mukaila Salau. He told me they had discussed, the Defendant told me that Alhaji Mukaila Salau had spoken with him, he said if I need it, I should pay on time. I refused to pay unless I see him; if he comes to Lagos or I come over to his place, he promised me that he will come to Lagos..... When we entered the eatery, he explained to me; he said him; his mum and wife will use two, but the remaining two, the people that are supposed to use them said they don't need them anymore. He said he had paid on the form already. He said I should pay and fill the form..... I withdrew 40, 000 and gave it to him.and we parted ways. d 1.5million to him. He called me the following day to say he saw the money transferred to him, but on getting to Alausa; he met someone there, that the person that usually gives him slots is the same person that gives him slots; if I need more slots, it is available. That's how we started, from 2 till it gets to 9. He collected 770 thousand Naira fo slot, we bought the slots from him because we were desperate, Lagos State sold for 700 thousand. Whenever he brings the forms, I meet him at Iyana Ipaja garage, that's where we fill the forms, he has never been to my office and if I tell him, he will tell



*me there is no need; he can never dupe me.....
Before the 9th one, he told me that the money he
made on the deal was just spending money on
transport, that even live him, and I gave him a
hundred thousand Naira, I transferred it to him.
Whenever he brings the forms to me. I make a
photocopy of the form and take it to my office and
I'll There is a mallam amongst the people that do
bring clients to me, he was the one that took the
form I gave him, a copy of the form I gave him for
his clients; to Alausa to go and
verify..... . 770 000
each for 9 people which the total amount is 6, 000,
900 and 30 thousand and I gave him an additional
100, 000 Naira to make it 7, 000, 30,000 Naira. Yes,
it is inclusive because when I wanted to give him the
hundred thousand, I told him I had given him 40,
000 Naira before, I now balanced 60, 000.00 plus
another 27,000. 3, 000 on each passport. If we are
going submit form and international passport, it's
with 3,000, that makes it 27, 000 Naira..... Yes, I
testified that I went to Sikiru's house and I
explained things to him. At Sikiru's house, I asked
him how come the forms was fake, he explained to
me that the original is with him. That the one we
were given and filled, would be refilled into the
original so that there won't be mistake. He went
inside and brought the original form not
filled.....".*

Under cross-examination PW3 gave the following answers as contained at page 275 and 276 of the record of appeal.

"..... I am a Mecca Pilgrimage Agent. I am 52 years..... Yes, I am a Hajj Travel agent. Yes, I have



been doing that for over 10/15 years. When I have a person who wishes to go for Hajj, the procedure is that when they pay to us, we pay the money to Nigerian Army where everyone will be airlifted. I know the Defendant through the business between us. No, it is not true that the business that brought us together show he is an agent..... In totality, there were 45 forms paid for. From the Defendant, I paid N770, 000 each for 9 forms. I paid N700,000 for the others. I can't calculate the total for 9 forms off-head. Yes, I know Mallam Takushi, he is one of my customers that purchased form through me..... Yes, that was why I continued to deal with Sikiru since he had shown me an original form. Yes, in my evidence of November, Sikiru introduced someone they work together who would be bringing forms to me. Sikiru told me that he would be giving me different accounts to pay money. I don't know who the owners of the accounts Sikiru gave me. I have not gone to Sikiru's -I went to his house before we started business. I went to his house to know who I was dealing with probably know his family and the area which he lives..... The first time the defendant sold forms to me was 2 forms. Mukaila Salau introduced him to me initially that he had slots. He said that he was agent for Oyo State but for Lagos State, this would be his first dealing as an agent".

Having reproduced necessary parts to the charges as contained in the amended information, and to avoid repetition of PW1 to PW3 evidence, the finding of the trial court that the Appellant made a false representation has no iota of evidence to stand on in respect of count 1 and 5. More so,

PW1 and PW2 made it clear that they never dealt or interacted with the Appellant. This violates the elements of obtaining by false pretence.

Count 2 and 6 of the amended charge bothers on stealing. The Respondent counsel relied on **Section 279 of the Criminal Law, 2011** which provides that:

"280 – (1) Any person who dishonestly;

a) Takes the property of another person; or

b) Converts the property of another person for his own use or to the use of any other person, is guilty of the offence of stealing."

The Respondent counsel also the case of **ADEJOBI & ANOR VS. THE STATE (supra)**, highlighting the elements of stealing thus:

"A person who fraudulently takes anything capable of being stolen or fraudulently converts to his own use or to the use of any other person anything capable of being stolen is said to steal that thing. The ingredients of the offence of stealing are as follows namely:

- 1. The ownership of the thing stolen.***
- 2. That the thing stolen is capable of being stolen.***
- 3. The fraudulent taking or conversion".***

See also: **OSHINYE VS. COMMISSIONER OF POLICE (supra); CHIANUGO VS. THE STATE (supra)**, amongst others cited by the Respondent counsel.

PW1 as earlier stated said he never dealt with the Appellant and never testified in relation to any ₦7, 500, 000.00. PW1 claimed to have paid PW3 the sum of ₦11, 000, 950.00 for 16 Hajj pilgrims. I

align with the Appellant counsel that a court of law is bound to give reasons for his decision as held by the Apex court in **OBOH & ANOR VS. NFL LTD & ORS. (2020) LPELR-55520 (SC)**

"In Attorney-General, Oyo State v. Fairlakes Hotel Ltd (1988) LPELR-42926 (SC) at p. 22; Agbaje, JSC, observed, citing Ex P. Chinery (1884) 12 QBD 342 that the judgment is the sentence of the law pronounced upon the matter contained in the record and that the reasons for the judgment are not themselves the judgment though they may furnish the Court's reasons for judgment and thus form a precedent."

See also: **SPEAKER, K.S.H.A. VS. ADEGBE (supra)**.

The Supreme court in **JUBRIN VS. THE STATE (2021) LPELR-56233 (SC)** defined what a charge is thus:

"A charge is a formal accusation of an offence as preliminary step to prosecution".

See also: **OKIKE VS. LPDC (2005) LPELR- 2450 (SC)**.

The charge against the Appellant is an aberration of the Appellant's fundamental human right to fair hearing particularly **Section 36 (6) (a) (b) of the 1999 Constitution (supra)** thusly:

"6) Every person who is charged with a criminal offence shall be entitled to –

a) be informed promptly in the language that he understands and in detail of the nature of the offence;

b) be given adequate time and facilities for the preparation of his defence."

In this instant criminal charge, the evidence was clearly at variance with amended charge. The Apex court in **IBRAHIM VS. THE STATE (2015) LPELR-40833 (SC)** on evidence at variance with the charge preferred held thus:

"The law is that where the charge laid is at variance with the evidence tendered, the conviction of the appellant will not stand".

The PW1 and PW2 never testified that the Appellant stole the sum ₦870, 000.00 from PW2. PW2 testified that he paid ₦800, 000.00 to PW3 for eight persons. There was no evidence led in respect of count 6. The Admission by PW1 and PW2 that they had no dealings with the Appellant and paid no money to him stands strongly against them. The importance of admission was held in **ENEBELI VS. THE STATE (supra)** cited by the Appellant counsel thus:

"It is trite in law, that there is no evidence stronger that a person's own admission or confession".

The Appellant in his evidence in-chief at page 282 to 283 of the record of appeal said:

"The amended charge of 14/4/22. Yes, there are 7 complainants. I don't know them. I heard of them whilst in court.

Alhaji Kabiru Abdullahi-defrauded him of ₦7.5million- I don't know anything about this.

Alhaji Adebayo Salami-₦11, 950,000. I don't know him

Alhaji Fatai Kareem -N870,000. I don't know him.

Abdul Rasheed Abubakar- N2, 700, 000. I don't know him before.

Alhaji Muyideen Abdul-Hammed-N800,000 I don't know these people.

Mr. Akeem. O.- N870, 000. I don't know him.

Yes, I bought 4 forms from Mr. Sikiru and discovered the forms are not genuine.....I don't know any Lukman Abdul Kareem. I did not collect money from him".

Even under cross examination, the Appellant his position and stated that he met them when he was arrested by Police from Zone 2.

The court below misconstrued that meaning of direct evidence when it held that the evidence of PW3 was direct instead of being treated as hearsay evidence which is clearly obvious. The importance of direct evidence was duly acknowledged by the apex court in **ILOUNO VS. THE STATE (2023) LPELR-59882(SC)** as follows:

"Direct evidence proves or disproves a fact directly. It establishes a fact without making any inference to connect the evidence to the fact. In fact, it is one of the best evidences required in law to prove the commission of a crime."

From the testimonies of the PW3, as against direct evidence which was so lacking and created so much doubt that the evidence of PW1 and PW2 suffered the effect of same. What a lengthy, conflicting, confusing and doubtful testimony by PW3 which ended up establishing nothing. While I adopt the Respondent argument that a single witness can establish a

case beyond reasonable doubt. Sadly, it is not so in this case despite calling three witnesses. There were contradictions on material elements in the prosecution witnesses canvassed by the Appellant's counsel, the principle of law as stated by the Supreme court in **DOGO VS. C.O.P (2024) LPLER-62504 (SC)** held thusly:

"The settled position of the law on the issue of contradictions in the evidence of witnesses that testify in Court is well-settled, it is not every minor contradiction in the evidence of witnesses that matters or has the effect of rendering the evidence unbelievable, incongruous, and preposterous. Before a trial Court disbelieves a witness for reasons of contradiction, it must be shown that the contradiction is on a material point. The contradiction must be substantial and sufficient to render the evidence doubtful".

See also **THE STATE VS. MUSA (2019) LPELR-47541 (SC)**.

At this juncture, I cannot but submit to the Supreme court decision in **SANI VS. THE STATE (supra)** thus:

"The lacunas and doubts that existed at the trial court were sufficient reasons why the trial court should have considered the well-established principle of law, that it is better that a guilty person should go free than for an innocent person to be convicted".

PW1, PW2 and PW3 testified on making bank transfers especially PW3 to the Appellant, yet none of the bank transactions were tendered in evidence. The court works with evidence not on speculations and assumption of facts put forward by parties and their witnesses. The apex



court in **IVIENAGBOR VS. BAZUAYE & ANOR (1999) LPELR-1562 (SC)** held thus:

"A court cannot decide issues on speculation, no matter how close what it relies on may seem to be on the facts. Speculation is not an aspect of inference that may be drawn from facts that are laid before the court. Inference is a reasonable deduction from facts whereas speculation is a mere variant of imaginative guess which, even when it appears plausible, should never be allowed by a court of law to fill any hiatus in the evidence before it".

See also: **MAGAJI VS. LADO & ORS. (2023) LPELR-60463 (SC)**.

Why does the Respondent want the court to speculate on what the Appellant took? Obviously, there is nothing before the court to complete the element of stealing that the Appellant took something from anyone let alone PW1, PW2 and PW3. More so, the mens rea and actus reus were clearly not established in line with the decision of **ABEKE VS. STATE (2007) LPELR-31 (SC)** thus:

"It is the submission of learned counsel for the appellant that the prosecution did not prove the mens rea and the actus reus of the Section 1(1)(b) of Dishonoured Cheques (Offences) Act, 1990. Let me quickly read the subsection: "Any person who obtains credit for himself or any other person by means of a cheque that when presented for payment not later than three months after the date of the cheque is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn shall be guilty of an offence." I

entirely agree with the appellant that to convict on the above subsection, the prosecution must prove that the accused had mens rea and actus reus. Put in common simple parlance, mens rea means a guilty mind. And actus reus means a guilty act. In cases of strict liability, mens rea comes before actus reus. In other words, the accused develops the guilty mind before guilty act. Put in another language, the guilty mind instigates the guilty act or flows into the guilty act. The period of time between the two cannot be determined in vacuo but in relation to the factual situation in each case dictated by the state of criminality of the accused at the material time. There are instances where the mens rea is automatically followed by the actus reus. The above element of proximity apart, there could be instances of spontaneity too."

See also: **NJOKU & ORS. VS. THE STATE (2012) LPELR-20608 (SC).**

More troubling is the finding of the trial court in respect of the PW3 thus:

"The information before the court to the dismay of the court however indicates that there is no amended count with respect of monies in relation to PW3".

Having found that, the court cannot approbate and reprobate on its findings. A court of law must be consistent in its finding as founded by the Supreme court in **FRN VS. IWEKA (2011) LPELR-9350 (SC)** thus:

"...Exhibit 2A having been admitted is not now admissible simple because it was belatedly retracted



for no good cause. This is in tandem with the settled principle of law that a court cannot approbate and reprobate at the same time."

The Respondent counsel argued that the evidence of PW1, PW2 and PW3 were uncontroverted and unchallenged. I pause to wonder whether counsel understands the importance of cross examination and its relevant in establishing a case. The three prosecution witnesses (PW1, PW2 and PW3) were thoroughly cross examined in relation to the charge at the trial court, and their answers forms part of evidence which cannot be discarded and would also be considered in decision making. In **GAJI & ORS. VS. PAYE (2003) LPELR-1300 (SC)**, the Supreme court reemphasised the potency of cross examination thus:

"It is new learning to me that evidence procured from cross examination is inadmissible. Evidence procured from cross examination is as valid and authentic as evidence procured from examination-in-chief. Both have the potency of relevancy and relevancy is the heart of admission in the law of Evidence. Where evidence is relevant, it is admissible and admitted whether it is procured from examination-in-chief or cross-examination."

The answers elicited from the prosecution witnesses that they had no dealings with the Appellant and have never paid monies to him are as potent as the evidence in-chief.

The Appellant counsel alluded to the fact that by virtue of Section 287 of the Criminal Law of Lagos State which says that:

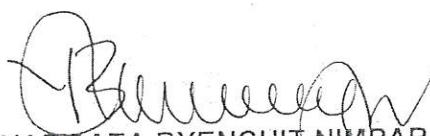
"Any person who steals any property commits a felony and is liable on conviction, if no other punishment is provided, to imprisonment of three (3) years".

The trial court failed to take into consideration the above provision of the law, if at all, there was a conviction in the first place. Clearly, the judgment of the trial court was perverse, in the circumstance, this court is bound to interfere and correct the miscarriage of justice suffered by the Appellant. Though there is no particular mode, style or method of judgment writing, same should not be devoid of reasons which this judgment appealed against suffers.

The Respondent failed to discharge their burden of proof in establishing the elements of obtaining by false pretence and stealing against the Appellant. In view of the fact that all the issues raised by the Appellant's counsel for determination are resolved in favour of the Appellant, this appeal is meritorious and is hereby allowed.

Consequently, the judgment of the High Court of Lagos State, sitting at Ikeja Judicial Division and delivered by **HON. JUSTICE O.A. OGALA** on the 29th of April, 2024 in **Suit No: ID/4605^C/2017**, is hereby set aside. The Appellant is accordingly discharged and acquitted on Count 1, 2, 5 and 6.

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY
SIGN.....
DATE.....


YARGATA BYENCHIT NIMPAR
Presiding Justice, Court of Appeal



APPEAL NO:CA/L/CR/881/2024

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APPEARANCES

Emeke Ananyi with Mercy Ewa and O. Ogunkeye for the Appellant.

Y.A. Sule Assistant Director, Ministry of Justice for the Respondent.

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY
SIGN.....
DATE.....

APPEAL NO: CA/L/CR/881/2024

DANLAMI ZAMA SENCHI, JCA

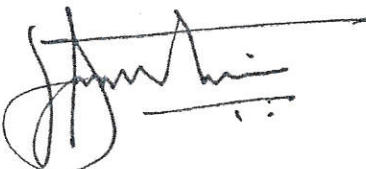
I was privilege to read before now the draft lead judgment of my learned brother **YARGATA BYENCHIT NIMPAR, JCA** just delivered and I agree with the conclusion reached therein. From the records leading to this appeal the Appellant was charged and convicted for the offense of obtaining by false pretense under counts 1, and 5. The elements or ingredients of the offense of obtaining by false pretense which the prosecution must prove are as stated in the recent case of **MADUAGWU vs. FRN (2024) LPELR-62582 (SC)** and **EZERIKE vs. THE STATE, (2022) LPELR-59158 (SC)**. And for the elements of the offense of stealing, under counts 2 and 6 ,see the case of **ADEJOBI & ANR vs. THE STATE, (Supra)** These elements of the offense must be proved either by (a) direct eye witness (es);(b) admission or confession by the defendant that he or she committed the offense; (c) by circumstantial evidence. See **OKERE vs. IGP (2024) LPELR-62530 (SC)**.

Now a close scrutiny of the evidence of prosecution witnesses, these ingredients of the offenses in which the Appellant was convicted were not established beyond reasonable doubt. I therefore hold the view that this appeal is meritorious and the Appellant is discharged and acquitted on counts 1, 2, 5 and 6.

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL LAGOS
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SIGN.....

DATE.....


DANLAMI ZAMA SENCHI,
JUSTICE COURT OF APPEAL

CA/LAG/CR/881/2024

(ABDULAZEEZ M. ANKA, JCA)

I have read in advance the judgment of my lord, **YARGARA BYENCHIT NIMPAR, JCA** and I agree that the appeal succeeds while the decision of the trial court be set aside.

The Appellant is accordingly discharged and acquitted on counts 1, 2, 5 and 6 considering the manifest contradictions and doubts evident in the evidence of the prosecution witnesses.



ABDULAZEEZ M. ANKA
JUSTICE, COURT OF APPEAL

A. M. AYOADE

ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY

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DATE.....


28/1/26