

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA -ABUJA
ON TUESDAY THE 11TH DAY OF APRIL, 2018
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE I.U. BELLO
CHIEF JUDGE

SUIT NO: FCT/HC/CR/1/2003

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

MOHAMMED ALI BALOGUN.....ACCUSED

THE COURT : Appearances.

Accused in court. Speak English.

George Lawal prosecution for ICPC.

A.A. Mohammed with Hajarat Bolagade and E.S Brownson
for defendant.

JUDGMENT

The accused person was charged on two counts of
violation of section 8(a) (1) of the Corrupt
Practices And Other Related Offences Act 2000.

These two count charges are:

COUNT 1

That you Mohammed Ali Balogun sometime in the month of September 2003 at Abuja being a public officer in the discharge of your official duties as a chief magistrate did ask for the sum of N100,000.00K (One Hundred Thousand Naira only) as gratification from Dr. Isidore Nnadi in order to show favour in the judgment of the cases he has before your court and you thereby committed an offence contrary to and punishable under section 10(a) (ii) of the Corrupt Practices And Other Related Offences Act 2000.

COUNT II

That you Mohammed Ali Balogun on 21st of September 2003 at Abuja being a public officer in the discharge of your official duty as a chief magistrate received the sum of N50,000.00K(Fifty Thousand Naira only) as gratification from Dr. Isidore Nnadi in order to show favour in the judgment of the cases he has before your court and you thereby committed an offence contrary to and punishable under section 10(a)(ii) of the Corrupt Practices And Other Related Offences Act 2000.

The Accused person pleaded not guilty to the charges. In proving its case against the accused, the prosecution called six witnesses and tendered seven

exhibits. On the other hand the defence called two witnesses at the end of the prosecution case. Pw1 to the prosecution is one Hannatu Adamu also known as Hiradi Balami, a clerk in the court presided by the accused. The testimony of this witness is to the effect that she served as intermediary between the accused and the pw2 in relation to the cases he had before the accused. She further testified as to how she discussed with the accused who demanded the sum N100,000.00K (One Hundred Thousand Naira only) from PW2 (the nominal complainant) the amount was negotiated to N50,000.00K for the purpose of settling for the contempt charge being one of the two cases PW2 was standing for trial before the Accused person. PW1 further testified that she accompanied the PW2 to the residence of the Accused on 21/9/03 for the purpose of giving the Accused the said money and that PW2 did give the accused the said money as shown in her extra-judicial statement although she could not remember seeing the act of giving the said the money.

PW2 is one Dr. Isidore Nnadi who gave evidence on oath to the effect that the PW1 being a court clerk in the Accused court that she offered to speak with the Accused who, had earlier demanded the sum of N100,000.00K so as the PW2 could get a favourable

judgment over a contempt charge. The amount was later negotiated to the sum of N50,000.00K marked Naira notes to give to the Accused and that he (PW2) alongside the PW1 went to the Accused residence where after a brief discussion he gave the accused the N50,000.00K and the accused collected and saw them off. Thereafter the ICPC officials accosted them, searched the house and the N50, 000.00K was found on the floor behind a sofa chair in the Accused house. PW3 also gave evidence for the prosecution on oath, he is by name Umar Baba, he stated that he was the leader of the team of investigations that investigated the complaint against the accused. He testified as to how they (investigators) placed themselves in vantage positions by the Accused person's house and upon receiving the pre-arranged signal that the accused had collected the N50, 000.00K. His team accosted them asked everybody to go back into the house upon which a search warrant was endorsed and about to be executed when the accused docked behind a sofa in the sitting room and was frantically trying to hide something. PW3 further stated that the accused was asked to bring out what he was trying to hide and he did. It was discovered to be the N50,000.00K which accused had earlier collected from PW2. The said N50,000.00K was counted

and compared with the serial number entries earlier made as well as the photocopies and all have tallied. After the testimony of the PW3, comes that of PW4, one Bashir Momodu who gave evidence on oath for the prosecution. His evidence is on all fours with the testimony of PW3. I have no reason to reproduce same here.

Then, comes the PW5, one who testified on oath for the prosecution to the effect that he was exhibit keeper to ICPC and further stated how he recorded the serial number of the money and photocopied each currency prior to giving same to the investigators for the sting operation. He further stated that upon the return of the investigators from the sting operation the N50,000.00K notes were brought with the Accused and the serial numbers compared as well as the photocopies of the currency which all tallied, thereafter, according to PW5, he put the money in a brown envelope and seal it with red wax and gave it the exhibit number CER/6/2003.

The next and the last witness for the prosecution is PW6 one Mr. Ajayi Adeyanju, a member of the investigating team who gave evidence for the prosecution on oath. His testimony as to what transpired at the residence of the Accused is basically the same as the testimonies of PW3 and PW4.

Individually, the prosecution witnesses were subjected to cross-examination by the defence and re-examination thereafter, the defence opened its defence and for which there witnesses gave evidence. DW1 is one Kunle Kabir who gave evidence for the defence on oath. He testified that he was the one that the PW1 and PW2 met when they got to the Accused house and that when he told the accused person that he had visitors, the accused declined to see them on the ground that he was not expecting any visitor(s) on that day but later decided to see them when he told him that it was his clerk. He further told the court that he witnessed the discussion between the accused person and the PW2 and that no money was received by the accused person from the PW2. Thereafter is DW2, a staff in the court of the Accused who also gave evidence on oath to the effect that the accused person sat in court on the 18/09/2003 being Friday but ordered her to adjourn all the cases for that day due to absence of the parties and their counsel. She further stated that the Accused was around the court the following day to look for the files of some cases he had handled but had no access to the court but left instructions for her to send those files to his house whenever she has access to the court. DW3 and the last witness to the

defence is the Accused himself, by name Mohammed Ali Balogun. He testified to the effect that he was in court on 20/9'03 to look for the files of case which he had decided in order to submit same to the office of the Chief Registrar but could not have access to the court. He then left instruction that any of his staff can bring same to his house. He further stated that he was coerced and forced to make a confessional statement against his will because he had made a voluntary statement which was rejected before he was forced to make a confessional statement. After cross examination of the defence witnesses by the prosecution, the matter proceeded to filing and adoption of final address by parties.

The prosecution formulated a lone issue for the determination by this court and that is:

- (1) Whether the prosecution has proved beyond reasonable doubt while the defence submitted the following issues:
 - (a) Whether the prosecution, through the testimonies of their witnesses have established the ingredient of the offences of demanding and receiving gratification.
 - (b) Whether the prosecution has proved its case beyond reasonable doubt.

In the light of the evidence as led by the parties and indeed their submissions as contained in their written arguments, I shall now consider whether or not the prosecution has proved beyond reasonable doubts the two count charge against the Accused person through the testimonies of the witnesses so that the ingredients of the alleged crime contained in the two count charge could be seen to have been so established.

For the count 1 of the charge, the following ingredients are required for the offence charged

- (1) Any person
- (2) Corruptly
- (3) Ask
- (4) Property
- (5) For Himself
- (6) Any favour to be afterwards shown
- (7) By a public officer
- (8) In the discharging of his official duties.

It was the submissions by the prosecution relying on the evidence of PW1 and PW2 that the Accused being a person, a public officer being chief Magistrate did demand for the sum of N100, 000.00K which later was reduced to N50, 000.00K and corruptly so, for himself while in the discharge of his official duty in order to show favour in his

judgment in one of the cases for the PW2. And that the visitation of Accused person in his house by PW1 and PW2 was meant to consummate the demand and that the Accused actually took a step in furtherance of the demand by adjourning the matter slated for judgment as promised PW2. The Accused's confessional statement exhibit 6 before the court is equally being relied upon by the prosecution in proof of their case and accordingly urged the court to convict the Accused on count 1 as charged. However, the defence submitted contending otherwise, and further stated that none of the six prosecution witnesses testified to the fact that the Accused made any demand of N100, 000.00K any other sum from Dr. Isidore Nnadi (PW2). That there is nothing in the evidence to show that Accused met with the PW2 (nominal Complainant) the communication was only between PW1 and PW2 and it was submitted for the defence that PW1 was never appointed by the Accused as a-go between for the purpose of any such money demand. This is piece of submission by the defence is less than impressive, taking into account the comments of the defence witness DW1 when he stated referring to the coming down to sitting room to receive visitors;

"I told the lady that the Accused would not see her for reasons that he was busy, she insisted and requested that I should tell him that her name is Hiradi, a worker from Gwagwalada. On hearing that, the Accused said he was coming down to see her and when he came, he asked the lady the where about of the case file he was expecting. The lady suggested that they should first get into the sitting room which they did and then sat down. The Accused sighted a man already sitting and then asked the "...I thought you are the only one?, the lady said I came with the man". It's obvious that the statement "I came with the man as made by PW1, shows positively that the Accused has been in the picture of the fact that PW1 was negotiating for the money so demanded. Indeed, the subsequent discovering of the marked N50, 000.00K notes under a sofa in the Accused's sitting room and considering how the Accused made frantic effort to hide the said amount constitute cogent facts and circumstances that obviously explained a way by the defence considering the totality of the evidence led by defence. I am therefore to hold and in fact hold the view that the evidence of PW1, PW2 especially that the evidence of PW3 the team leader of the investigators as well as the PW5, the

exhibit keeper clearly show legally admissible evidence which I hold as strongly supportive of the prosecution case. The shouting by PW2 is certainly an indication that the money had been given to the accused for those operatives in vantage positions to know and to act hence when the Accused was seeing them off the operatives jumped into action, moved them back into the house, conducted search and indeed, behold!! The said N50, 000.00K as marked were found in the house beneath a sofa. With the foregoing I found count one of the charges as proved beyond reasonable doubt by the prosecution and against the accused. The cases on hearsay evidence that's *Osuoha vs State* (2010) 16 NWLR (Pt 1219) 365 at 402 paragraph G-H and *Ekpo vs State* (2001) 7 NWLR (PT 712) 292 at 304-C.A are of no assistance to the defence.

In count II of the charge the required ingredients are as follows:

- (1) Any person
- (2) Corruptly
- (3) Receives
- (4) Property
- (5) For Himself
- (6) Any favour to be afterwards shown
- (7) By a public officer

(8) In the discharge of his official duties.

It is not in dispute that the Accused is a natural person, Mohammed Ali Balogun, A chief Magistrate - meaning a public officer and the allegation in the charge is in relation to the discharge of his official duties.

I have already resolved count 1 of the charge in relation to demand for gratification as having been proved. And within evidence it's clear that the was received of the sum of N50, 000.00K and marked money for sting operation by the ICPC. The evidence of PW1, PW2, PW3 and PW5 all point to the fact that the Accused did receive the marked N50,000.00K and same was found beneath a sofa in his sitting room. It is worth recalling that it is part of the testimony of the prosecution that it was while Accused was frantically trying to hide something underneath the sofa that the operatives directed him (Accused) to reveal what he was trying to hide, and it turned out to the said marked money, same having been received by the Accused and indeed trying to hide same upon realising that the ICPC operatives were there. This confirm receipt of the money in very corrupt manner by a public officer, in order to confer unjust advantage on to himself.

It's needless to say; same conduct was consummated while discharging his official duties.

Relying on the decisions in *Basseyy vs The State* (2012) 12 NWLR (PT 1314) 209 at 239 paragraphs B-C, this court was urged to disregard the prosecution's evidence on grounds of contradictions where the Supreme Court stated thus:

"Contradiction has been defined as a lack of agreement between facts related by two persons. It is clear to me that there is lack of agreement between facts related by PW1 and PW2. It is not a minor contradiction which can be given a wave of the back hand. It is not trivial at all as it relates to a crucial determination of point. See *ANKWA VS The State* (1969) 1 All NLR 133(1969) 1 SCNLR 237. In that wise, the defence urged the court to discountenance the evidence of PW2 same being contradictory. Indeed the defence appears to generally rely on the contradictory nature of the evidence of the prosecution; I am unable to see such any contradictions that go to the root of proving this count charge, if any, they are within the Dimini mis and deserving any of jettisoning with the back of the hand. In any event the Accused person by exhibit 6, which of course is his confessional statement, has admitted the offence

though made effort to retract same by alleging duress and coercion leading to Trial within Trial by which this court took the view that the statement was voluntarily made. Such ruling as handed down as Appealed against to the court of Appeal by the Accused. The Court of Appeal in its judgment on the issue and to which I am bound, not only confirmed the admission into evidence the said statement of the Accused as admissible in evidence but equally a voluntary confessional statement as well as the fact that a Certified True Copy of such confessional statement is admissible in evidence. Referring to page 21 of the records of Appeal regarding the testimony of the Accused/Appellant. It stated thus:

"It is not true that I made a voluntary statement. Two other statements were dictated to me and I was forced to sign. My voluntary statement which was the 1st statement which was never tendered before this court. I started writing my voluntary statement at 1.00pm on 21st September 2003 and it was PW6 Bashir Mamoodu who took away the statement from me.

On the foregoing, the Court of Appeal stated that"...Because the Appellant had agreed that the first part of the statement sought to be tendered

voluntarily, and the other parts are mere continuation of it, the evidence of the prosecution that the statement was made without any threat in particular or inducement or promise to the Appellant was not in any way controverted by the Appellant. This is because by the provisions of section 94(2) of the Evidence Act, where a document has been executed in several parts, each part shall be primary evidence of the document. Similarly, under section the provision of section 115(b) of the Evidence Act, the court is required to presume that any statement as the circumstances in which all the parts of the single statement made and signed by the Appellant are true. The Appellant had stated in the 2nd and 3rd parts of the statement that each was made voluntarily. Hearing on the 2nd part, at page 11 of the record.

“This statement is perfectly voluntary”

Then on the 3rd part at page 12.

“I write this statement in my own volition as a perfectly voluntary statement from me”

In resolving the issue for the Respondent the Court of Appeal concluded thus:

“....The presumption that the above circumstances stated by the Appellant himself are true has not been rebutted any part of his evidence at the trial

within trial. In fact his admission that he made the first part voluntary reinforced that presumption that the 2nd and 3rd parts were made in the same circumstances as indicated therein. Prosecution has therefore proved beyond reasonable doubt that the said statement was made voluntarily by the Appellant and so it is relevant and admissible in evidence..."

The foregoing represent the position of the court of Appeal in relation to the voluntariness of the statement of the Accused, the Court of Appeal believing and rightly so held the view that this court in overruling the objection against admissibility of the Accused no reasons was advanced or then this court was of the belief without showing reasons for the belief and basis for overruling the objection and proceeded to admit the statement as voluntary statement of the Accused. The Appeal went to analyze the evidence led by parties in the Trial within Trial and came to the analysis and by which, the admission of the statement of the Accused by this court was affirmed not only as voluntarily made but a certified copy of such statement is equally admissible and of course affirming also the earlier admission in evidence by this court. I am bound by the in-depth

analysis from the Court of Appeal on the evidence led during the Trial within Trial. On the authority of the decision in the case of Nwachukwu vs The state (2008)6 ACLR 343 paragraph 15 where the Supreme Court held that an Accused can be convicted on the confessional statement made by him provided it is direct, positive and un-equivocal about his commission of the crime, subsequent attempt to retract notwithstanding, this court was thus to convict him on his voluntary confessional statement. The retraction by the accused, was submitted as of no moment on the authority of the decision in the case of Akpan vs The state (2001) of SCNJ 567 at 580 where the Supreme Court held that retraction of confessional statement by the accused cannot invalidate it but only goes to the weight to be attached to it vis-avis other pieces of evidence.

The defence contended otherwise and relying on the case of Lt. Commander Steve vs Chief of Naval Staff (2002) 19 WRN 26 to submit that confessional statement must be weighed against other existing evidence that establishes the authenticity of the confession. Further to that, it was submitted on behalf of the Accused that “..No statement by an accused person is admissible in evidence against

him unless is shown by the prosecution that it was a voluntary statement. I think this last submission must be discountenanced on the ground that it is deliberate design to relitigate an issue that was earlier overruled in a Trial within Trial. It is accordingly discountenanced. I however agree with the defence that in considering the use of a confessional statement of the accused, the following parameters should be considered as shown in the case involved by the learned counsel to the accused, that is Demo Oseni vs The state (2012) All 7WLR (pt 619) 1010

1. Whether there is anything outside the confession to show that it is true.
2. Whether it is corroborated
3. Whether the prisoner was one who had the opportunity of committing the offence
4. Whether it is the relevant statements made in it of facts are true as far as they can be tested
5. Whether his confession is possible with other facts which has been ascertained and have been proved.
6. Whether it is consistent with other facts which has been ascertained and have been proved.

Considering the evidence led by the prosecution, it is not difficult to see clearly that aside the

confession there are other items of evidence such as the marked currency notes of N50,000.00K found in the sitting room of the Accused which as by evidence he was frantically trying to hide. Indeed as chief Magistrate presiding over cases, he had no business engaging in any transaction ex parte with a litigant, the mere presence of the litigant PW2 in his house releases a state of impropriety and without doubt it is only in furtherance of the endeavour to have fulfilled the demand for the said money. There cannot be any doubt as a public servant who has the power to decide the fate of the litigant had ample opportunity and indeed misuse such power, the facts in his statement are very much consistent with his actions and his confession was indeed voluntary, who else could have known better than him. The impart of what he deposed particularly as there is nothing to show any impairment of rational thinking on the side of the Accused. I am satisfied the exhibit 6, meaning the confessional statement of the Accused is well corroborated by the items of other evidence led by the prosecution in particular the recovery of the marked Naira currency of N50,000.00K by the operatives of the ICPC particularly in the manner the recovery was made as clearly stated herein.

I cannot go beyond this stage without concluding that the prosecution had proved beyond reasonable doubt the guilt of the Accused on the two counts charge, accordingly, I hereby convict him as charged.

SIGNED:

11/4/2018

PROSECUTION COUNSEL: There is no known previous record of conviction.

DEFENCE COUNSEL: We are urging this court to be lenient in sentencing, he is a first offender. The convict is psychologically distressed, his family has deserted him, we sincerely urge for leniency.

THE COURT:

SENTENCE

I have considered the plea for leniency by the defence on the ground that the convict is a first offender whose family have since deserted him and he psychologically in distress. It is difficult to say out rightly that the convict is deserving of any leniency particularly considering the fact he was a person entrusted with mantle of authority as Magistrate and one so as Chief Magistrate to do justice to all manner of people without fear, favour, affection or ill will. What he did is in outright abuse and disregard of such oath of office and this

is not a conduct expected of judicial officer. It is a very weighty situation. I have no doubt acknowledge the position of the prosecution that the convict is a first offender nevertheless, I hereby sentenced the convict to a three year period of imprisonment or to pay a fine of Five Hundred Thousand Naira only(500,000.00k).

SIGNED:

HON. JUSTICE I.U. BELLO

HON. CHIEF JUDGE

11/04/2018.