IN THE COURT OF APPEAL
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON FRIDAY THE 12TH DAY OF FEBRUARY, 2016
BEFORE THEIR LORDSHIPS:

ALI ABUBAKAR BABANDI GUMEL - JUSTICE, COURT OF APPEAL
HARUNA SIMON TSAMMANI- JUSTICE, COURT OF APPEAL
OBIETONBARA DANIEL-KALIO - JUSTICE, COURT OF APPEAL

APPEAL NO.CA/I/333C/2014

BETWEEN:

GBOYEGA BAKARE ..... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

JUDGMENT

(DELIVERED BY OBIETONBARA DANIEL-KALIO, J.C.A)

This appeal is over a criminal matter involving corruption. The Appellant **Gboyega Bakare** who was the Chairman of Ogun Waterside Local Government of Ogun State and one **Mohammed Adeyemi Oke** a Senior Administrative Officer in the said Local Government, were charged before the High Court of Ogun State. The offences for which they were

charged were (1) conspiracy to confer corrupt advantage on a public officer contrary to Section 26 (1) (c) and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act 2000 and (2) conferring corrupt advantage upon oneself contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act 2000. The charge against the Appellant and his co-accused were on 15 counts. In summary, the Appellant was accused of having collected the sum of ₦250,000 on a weekly basis in September, October, November and December of 2005 as well as in January and February 2006 purportedly for the feeding of 50 mobile policemen drafted to the Local Government Area on a peace keeping mission.

After hearing the case, the learned trial judge came to the conclusion that the Appellant was guilty of the offences with which he was charged. He therefore sentenced him to a term of 6 months imprisonment on each of the counts against him and ordered that the sentences should run concurrently. Judgment was delivered on 24/7/2013. The Appellant was dissatisfied with the judgment and consequently filed a Notice of Appeal on 11/9/2013. The following are the grounds of his appeal.

1. **The Learned Trial judge erred in Law by holding that the Corrupt Practices and Other Related Offences Act 2000 is the valid existing Law when there was no Law repealing the Corrupt Practices and Other Related Offences Act 2003.**

2. **The Learned Trial judge erred in Law by holding that the letter dated September 28th, 2009 written by the Independent Corrupt Practices and Other Related Offences Commission signed by Peace Osimiry is sufficient satisfaction of the requirement of consent to prefer criminal charges against the accused person.**

3. **The Learned Trial judge erred in Law by holding that there is no record to show that the accused person raised objection to the charge at the earliest opportunity and that no application was brought by either of them to quash the charges and as such the charges are competent.**

4. **The Learned Trial judge erred in Law when he returned the verdict of guilty on the Appellant herein when such decision was not supported by the weight of evidence.**

5. **The decision of the High Court is unreasonable and cannot be supported having regard to the weight of evidence.**

All the Grounds of Appeal except the 5th were supported by particulars. I decided to include the particulars because of their prolixity.

The Appellant's Brief of Argument was filed on 4/5/2015 but deemed properly filed and served on 15/9/2015. The Respondent's Brief of Argument was filed on 28/9/2015. **Chief Lukman Abdullahi** and **Mrs. K. F. Adeoluwa** respectively argued the appeal on behalf of the Appellant and the Respondents respectively. The Appeal was heard on 16/11/2015.

From the five grounds of appeal, the Appellant distilled the following four issues for determination, viz:

1. **Whether the failure of the prosecution to seek leave to prefer criminal charge for indictable offence against the Appellant before the charges were preferred in accordance with Section 340 of the Criminal Procedure Law of Ogun State does not render the charges void.**

2. **Whether the letter dated September 28th, 2009 written pursuant to Section 174 (1) of the 1999 Constitution was in compliance and or satisfied the requirement of Section 340 of the Criminal Procedure Law of Ogun State, 2006.**

3. **Whether the guilt of the Appellant was proved beyond reasonable doubt; and**

4. **Whether the filing of the charges and conviction of the Appellant was not based on a dead Law.**

On its part, the Respondent distilled the following three issues for determination, namely;-

1. **Whether the Respondent before filing the information in the Ogun State High Court got the consent of the Chief Judge of Ogun State.**

2. **Whether the Appellant was properly charged for violating some of the provisions of the corrupt practices and other Related Offences Act, 2000.**

3. **Whether from the totality of evidence adduced by the Respondent, the Respondent was able to prove its case beyond reasonable doubt against the Appellant.**

Save for issue 4 formulated by the Appellant, the issues identified by both parties are not dissimilar. I will proceed to consider the appeal based on the issues formulated by the appellant in the light of the fact that being the aggrieved, he knows best how to state what grieves him.

Appellant's Learned Counsel argued issues 1 and 2 together. Issue 1 of the Appellant as will be recalled has to do with whether the failure of the prosecution to seek leave to prefer a criminal charge for an indictable offence against the Appellant in accordance with the Criminal Procedure Law of Ogun State did not render the charge void while issue 2 has to do with whether the prosecution's letter that set to initiate the charge satisfied

the requirement of the Criminal Procedure Law of Ogun State. In addressing both issues, appellant's Learned Counsel drew our attention to the provisions of Section 340 of the Criminal Procedural Law of Ogun state, 2006 and submitted that the Section ought to have been complied with since the Appellant was being charged with an indictable offence. By the Section he argued, no information charging a person with an indictable offence can be preferred unless by the direction or the consent of a judge.

It was submitted that the use of the word "shall" in the Section connotes a command. Learned Counsel referred to the case of ***Bamaiyi vs. AG of the Federation &Ors. (2001)7 NSCQR 598 at 617*** in support of his contention. Learned Counsel argued that any information preferred otherwise than in accordance with the provisions of Section 340 of the Criminal Procedure Law of Ogun State is liable to be quashed under Section 340 (3) of the said Law. We were also referred to the dictum of **Idigbe JSC** in ***Okafor Vs. The State (1976)10 NSCC p. 259 at p. 261.*** Also cited is the case of ***AG of the Federation Vs. Isong (1986)12 LRN p. 75.*** It was submitted that the failure to comply with Section 340 (2) of the Criminal Procedure Law of Ogun State rendered the Information filed against the Appellant incompetent and robbed the court of jurisdiction to entertain the change. It was submitted that the Learned trial Judge was wrong to have held that there was no application to quash the charge and that the Appellant was not embarrassed or prejudiced by the charge. It was submitted that although the objection was raised at the address stage, it was nonetheless properly raised. We were urged to quash the charge and set aside the conviction of the Appellant.

With regard to the letter of the prosecution dated 28th September, 2009, it was contended that the letter was written pursuant to section 174 (1) of the 1999 Constitution of the Federal Republic of Nigeria and that the letter did not seek the leave or consent of a judge to prefer a charge as envisaged by Section 340 (2) of the Criminal Procedure Law of Ogun State. Learned Counsel submitted that where a Law specifically prescribes a way to do a thing, the way prescribed by the Law must be obeyed. The letter of 28th September, 2009 it was urged, only relates to the powers of the Attorney General of the Federation to prosecute and does not in any way relate to the consent required under Section 340 (2) of the Criminal Procedure Law of Ogun State. We were urged to resolve issues 1 and 2 in the Appellant's favour.

In his argument in response, the Respondent's Learned Counsel submitted on the question of the letter of 28th September, 2009, that before the Respondent filed the Information in the Ogun State High Court, it got the consent of the Chief Judge of that State and that it was consequent on that consent that the Chief Judge assigned the matter to the trial Judge. The letter of 28th September, 2009 he submitted, substantially complied with the provisions of Section 340 (1), (2) and (3) of the Ogun State Criminal Procedure Law. It was contended that Section 61 (3) of the Corrupt Practices and Other Related Offences Act 2000 under which the Appellant was charged, included a provision authorizing the Chief Judge of a State to designate a court or Judges to hear and determine all cases of bribery, corruption, fraud or other related offences

arising under the Act or any other Law which prohibits fraud, bribery or corruption.

Learned Counsel contended that when the Chief Judge of Ogun State assigned the matter to the trial Judge, there was a presumption that the formal requisites for a valid consent of the Chief Judge had been complied with. Learned Counsel referred us to Section 168 of the Evidence Act and the case of **OyakhireVs. State (2006)15NWLR pt. 1001 p. 157 at*172.***

Section 340 of the Criminal Procedure Law of Ogun State requires that an Information charging any person with an indictable offence before the High Court may be preferred must be by the direction or with the consent of a Judge. Part 1 of Chapter 1 of the Criminal Procedure Law of Ogun State contains the Interpretation Section. In that Section, an indictable offence was defined as 'any offence'. It follows therefore that Section 340 of the Criminal Procedure Law of Ogun State is a "jack of all trades" when it comes to offences. That is not the case with the Corrupt Practices and Other Related Offences Act, 2000. That Act does not deal with just any offence, it deals with specific offences. For example, Section 8 of the Act deals with the offence of gratification by an official, Section 9 deals with the offence of corrupt offers to public officers, Section 10 deals with the offence of corrupt demand by persons, Section 11 deals with counseling offences relating to corruption, etc. It is the Law that where there are two enactments, one making specific provisions and the other general provisions, the specific provisions are impliedly excluded from the general provisions. See ***Attorney General of the Federation vs.***

Abubakar (2007)10 NWLR pt. 1041 p. 1. Since the Corrupt Practices and Other Related Offences Act, 2000 has made specific provisions on offences, the provisions of the Criminal Procedure Act which more or less deal with any and every offence are impliedly excluded. In other words, Section 340 of the Criminal Procedure Law of Ogun State is not the governing Section for initiating the prosecution of an offender under the Corrupt Practices and Other Related Offences Act, 2000. The Relevant provision for such offences is Section 26 (1) of the Corrupt Practices and Other Related Offences Act, 2000. That Section provides:

> **(2) Prosecution for an offence under this Act shall be initiated by the Attorney General of the Federation or any person or authority to whom he shall delegate his authority, in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja under section 60 (3) of this Act and every prosecution for an offence under the Act or any other Law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney General of the Federation.**

In this case, The Independent Corrupt Practices and Other Related Offences Commission by its letter dated 28th September, 2009 and addressed to the Honorable Chief Judge of Ogun State applied to the said Chief Judge to file charges against the Appellant and one Mohammed Adeyemi Oke. The letter clearly stated that the application was being made pursuant to Section 26 (2) of the Corrupt Practices and Other Related Offences Act, 2000 as well as under Section 174 (1) of the Constitution of the Federal Republic of Nigeria.

Considering the procedure followed in the prosecution of the Appellant, the submission of the Appellant's Learned Counsel that Section 340 of the Criminal Procedure Law must be complied with for the charge to be valid, cannot be tenable. Issues 1 and 2 are resolved against the Appellant.

Issue 3 as will be recalled, is whether the guilt of the Appellant was proved beyond reasonable doubt. Appellant's Learned Counsel submitted that the case against the Appellant was not proved beyond reasonable doubt. It was argued that there were material contradictions in the case of the prosecution. It was submitted that the evidence of PW1 that he went to supervise the policemen on the peace keeping work weekly contradicted his evidence that he went to visit them on more than eight occasions. It was contended therefore that the learned trial Judge was wrong in his finding that the period that the policemen served on their peace keeping mission was only three weeks.

Learned Counsel submitted that it was wrong of the learned trial Judge to have relied on Exhibit P2, a letter purportedly written by the

Commissioner of Police of Ogun State, when neither the Commissioner of Police nor his Deputy who signed the letter were called as witnesses. It was contented that Exhibit P2 is hearsay and inadmissible in evidence. Counsel referred to the case of ***Odogun vs. The State (2013) 12 SCM pt.3;*** also reported in **(2014) ALL FWLR part 719 pg. 997 at 1019.** Learned Counsel also urged that the evidence of PW2 was predominantly hearsay.

In his argument in response, Respondents Learned Counsel with regard to the Appellant's counsel's submissions on the evidence of PW1, contended that PW1 did not contradict himself on the duration of the peace keeping mission of the policemen. Learned Counsel submitted that Exhibit P2 is not hearsay as same is a properly certified public document which was rightly admitted in evidence. Since Exhibit P2 is a public document, learned counsel submitted that the maker of the document need not have been called to testify. Counsel cited ***Nwabuoku vs. Nwordi (2006) 26 NSCQR p.1161 at 1166, 1179 – 1180*** and Sections 87, 89 102, 104 and105 of the Evidence Act 2011. The evidence of PW1 he submitted, was about what he discovered in the course of his investigation and was therefore not hearsay. Learned Counsel cited ***Ajiboye vs. State (1994) 8 NWLR part 364 p.587 at 593.***

I have considered the argument of the appellant's learned counsel in which he tried to make the case that the evidence of PW1 on the number of occasions that he visited the policemen was contradictory. The argument is not well founded. There is nothing contradictory in the statement ***"I went there weekly"*** and the statement "***I went to the***

scene on more than 8 occasions". That one pays a weekly visit does not mean that one pays a visit once a week. The word *'occasion'* according to the *Chambers Concise Dictionary* means *inter-alia,* "particular event or happening or the time at which it occurs". It follows therefore that one can for example visit a place on many occasions in a day or in a week as the case may be. That PW1 said that he visited the policemen on duty on more than eight occasions did not contradict his evidence that he visited them weekly.

With regard to Exhibit P2, it is a public document. It is admissible and can be relied upon even when the maker is not called. Documentary evidence can be admitted in the absence of the maker (see ***Igbodin vs. Obianke (1976) 9 – 10 SC 179.*** Relevance is the key to admissibility. See ***Arabo Wuyah vs. Jamara Local Government, Kafanchan (2011) LPELR – 9078 (CA).***

As for the evidence of PW2, it cannot be any stretch of imagination be described as hearsay. PW2 was one of those who carried out an investigation of the matter now on appeal and he gave evidence of what he discovered in the course of his investigation. What amounts to hearsay is settled. See ***Subramanian Vs. Public Prosecution (1956) 1 WLR p.965 at 969; Arogundade vs. The State (2009) 1 – 2 SC 6.*** See also Section 37 of the Evidence Act. The evidence of PW2 was not something said to him that he wanted to pass on as the truth of that thing said to him. His evidence as earlier mentioned, was what he himself discovered in the course of his investigation. Issue 3 is also resolved against the appellant.

Issue 4 as will be recalled is whether the filing of the charge and conviction of the appellant was not based on a dead law. On this issue, appellant's learned counsel submitted that on the 11th of November 2009 the 2000 Act was repealed by the Corrupt Practices and Other Related Offences Act, 2003. It was contended that the law that was in operation in 2009 when the appellant was arraigned was the 2003 Act and therefore at the time the appellant was arraigned, the 2000 Act was a dead law. The charges against the appellant he maintained were brought under a dead law.

On this issue, the respondent's Learned Counsel submitted that the appellant was properly charged under Section 26 (1) (c) of the Corrupt Practices and Other Related Offences Act, 2000. It was contended that the Corrupt Practices and Other Related Offences Act 2000 is the only valid and material law in existence and that the same was re-affirmed in the case of ***Attorney-General of Ondo State vs. Attorney-General of the Federation and 35 Ors. (2002) 9 NWLR part 772 p.222 at 263 – 264 and 305 – 310***.

Respondent's Learned Counsel submitted that in 2003 the National Assembly attempted to amend the Corrupt Practices and Other Related Offences Act, 2000 but that some members of the National Assembly challenged the move to do so in court. The outcome of the challenge in court he submitted, is in the unreported case of ***Hon. Bala Kaoje & 4 Ors. vs. The National Assembly of the Federal Republic of Nigeria & 13 Ors (Suit No.FHC/ABJ/CS/93/2003*** *decided by the* **Hon. Justice S.W. Egbo-Egbo**. The court in that case he contended, held that

the Corrupt Practices and Other Related Offences Act, 2000 is the valid law. He argued that there was no appeal against the judgment. Learned Counsel referred us also to an unreported decision of this court in ***Appeal No.CA/MK/200c/2012 Ayuba Bitrus Bukkat vs. Federal Republic of Nigeria*** delivered on the 9th of March 2012. In that case he submitted, this court held that the Corrupt Practices and other Related Offences Act 2000 was yet to be repealed. We were also referred to the decision of this court in ***Yahaya vs. Federal Republic of Nigeria (2007) WRN 127 at 146.***

It seems to me that the arguments of learned counsel on both sides on issue 4 area mere rehash of their submissions at the lower court. After hearing similar submissions, the lower court had the following to say. (See at page 201 of the Record of Appeal).

> **"Having listened to all counsel, I am now able to hold that the decisions in *FHC. ABJ /CS /225 /2003* and *FHC/ABJ/CS/93/2003* are authentic. I have seen the Certified True Copies thereof. I also hold that in the absence of the decision of the Court of Appeal or Supreme Court (I am not aware of any**

and no counsel has cited any) setting aside these two decisions of the Federal High Court, they remain valid and subsisting notwithstanding the fact that there is no indication that they have been reported. That is the law. I am persuaded by those decisions".

The above decision of the lower court cannot be faulted by merely repeating or re-cycling in this court the arguments made in that court. The decision of the Federal High Court which is a court of competent jurisdiction has not been set aside. No decision of either the Court of Appeal or the Supreme Court has been cited to show us that it has. In the absence of any such decision of this Court or the Supreme Court, there can be no basis to accept the view of the appellant's learned counsel that the 2000 Act under which the appellant was charged has been repealed. Let me add here that this court in 2007 stated that the Corrupt Practices and Other Related Offences Act 2000 is an existing law. See per **Bode Rhodes-Vivour JCA** (as he then was) in the case of ***Musa Aliyu Yahaya vs. Federal Republic of Nigeria (2007) LPELR – 4563 (CA)***. Issue 4 is also resolved against the appellant.

It seems to me that the appellant is like a man in deep water who in a bid to escape is looking at any available straw to hold. Such, is a vain attempt. The appellant helped himself without compunction to public funds. Such rapaciousness deserves punishment. He deserved the conviction and sentence that he received. The appeal lacks merit and is dismissed. The judgment of the lower court is affirmed.

HON. JUSTICE OBIETONBARA DANIEL-KALIO
JUSTICE, COURT OF APPEAL

COUNSEL

CHIEF LUKMAN ABDULLAHI appears for the **Appellant**

K.F. ADEOLUWA (MRS) appears with **B. A. BALOGUN (MISS)** for the Respondent

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ALI ABUBAKAR BABANDI GUMEL, JCA

I have had the privilege of a preview of the lead judgment delivered by my learned brother, ***Daniel-Kalio, JCA***. I fully agree with his reasonings and conclusions. I adopt them as mine to also dismiss this appeal. I abide by all the consequential orders of my learned brother.

ALI ABUBAKAR BABANDI GUMEL
JUSTICE, COURT OF APPEAL.

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HARUNA SIMON TSAMMANI, JCA.

Having read before now the judgment just delivered by my learned brother **OBIETONBARA DANIEL-KALIO, JCA**; I agree that this appeal is without merit. It is accordingly dismissed.

HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL