IN THE COURT OF APPEAL
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON THURSDAY THE 4TH 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**

CA/I/335C/2014

BETWEEN:

MOHAMMED ADEYEMI OKE .... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA .... RESPONDENT

JUDGMENT
(DELIVERED BY HARUNA SIMON TSAMMANI, J.C.A.)

This appeal is against the judgment of the Ogun State High Court, sitting at Ijebu-Igbo in Charge No. AB/ICPC/01/2009 delivered by A. O. Jibodu; J on the 24th day of July, 2013..

The Appellant in this case, was arraigned along with one Gboyega Bakre on a 15 counts charge of conspiracy to confer corrupt advantage on a public officer and conferring corrupt advantage on oneself, and which acts are offences contrary to Sections 26(1)(c) and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000. Aside the counts of conspiracy, the Appellant was charged alone on counts

At the trial, the prosecution called two (2) witnesses, while the Appellant and his co-accused testified in their own defence, and called a total of seven (7) witnesses. Several documents were tendered and admitted in evidence by the prosecution, and marked as Exhibits P – P24 respectively, while the defence tendered two documents which were marked as Exhibits D and D1 respectively. At the close of evidence, Written Addresses were filed and served by respective counsel, and in a considered judgment delivered on the 24th day of July, 2013, the learned trial Judge found the Appellant and his co-accused guilty on all counts and convicted them accordingly. The Appellant being aggrieved by that decision has now filed this appeal.

The Notice of Appeal which is at pages 214 – 216 of the Record of Appeal was undated but filed on the 05/8/2013 but deemed filed on the 15/9/2015. It consists of Three Grounds of Appeal, which without their particulars, are hereby reproduced below:-

1. The learned trial Judge erred in law when he held that the Appellant was properly charged under the provisions of the Corrupt Practices and Other Related Offences Act, 2000 and thereby wrongly assumed jurisdiction and convicted the Appellant under a non-existent law and thereby occasioned miscarriage of justice.

2. The learned trial Judge erred in law when he held that the mandatory consent of the Chief Judge of Ogun State required to prosecute the appellant, was obtained by the prosecution when the said consent was never obtained, thereby wrongly assumed

jurisdiction and thereby occasioned miscarriage of justice.

3. The learned trial Judge erred in law when he returned a verdict of guilty on the Appellant which decision is quite against the weight of evidence.

In obedience to the Rules of this Court, the parties filed and exchanged Briefs of Arguments. The Appellant's Brief of Arguments settled by M. B. Ganiyu; Esq was dated the 24/4/2015 and filed on the 29/4/2015 but deemed filed on the 15/9/2015. Therein, three (3) issues were raised for determination as follows:

1. Whether there was a live charge before the court below for which the Appellant can properly be tried?
[Ground 1].

2. Whether the mandatory consent of the Judge of Ogun State was obtained to prosecute the Appellant in line with the provisions of Law?
[Ground 2].

3. Whether the verdict of guilty returned on the Appellant is supportable by the evidence on record?
[Ground 3].

The Respondent's Brief of Arguments which is dated the 22/9/2015 was filed on the 28/9/2015. Therein, three issues were also raised for determination as follows:

(1). Whether the Respondent before filing the Information in the Ogun State High Court got

the consent of the Chief Justice (sic) 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.

It would be seen that the issues formulated by the parties are similar. That being so, I shall determine this appeal on the issues formulated by the Appellant. They shall be taken seriatim.

On issue one (1), it was argued by learned counsel for the Appellant that, as at the date the Appellant was arraigned for the offences on the 11/11/2009, the Independent Corrupt Practices Commission Act, 2000 (I.C.P.C. Act, 2000) had been repealed by Section 55 of the Corrupt Practices and Other Related Offences Act, 2003. It was thus submitted that, in the face of the existence and subsistence of the subsequent I.C.P.C. Act, 2003, the I.C.P.C. Act, 2000 has become dead law and therefore a non-existing Law and the Appellant cannot be validly and legally be prosecuted thereunder. The case of **Aoko v. Fagbemi (1961) All N.L.R. p.400** and Section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria were relied on to further submit that, a person can only be tried for a crime created by a valid and subsisting law. We were accordingly urged to hold that the entire trial and conviction of the Appellant under a non-existing law is a nullity.

Learned Counsel for the Respondent argued this issue as his issue two (2). Therein, it was argued that, the I.C.P.C. Act, 2000 is a valid and subsisting Law which was validated by the Supreme Court in the case of **A. G; Ondo v. A. G; Federation & 35 Ors (2002) 9 NWLR (pt.772) p.222 at pp.263, 264, 305 and 310**. That, in the year 2003, the National Assembly attempted to amend the I.C.P.C. Act, 2000, but same was met with stiff opposition whereby some members of the National Assembly challenged such attempt by the case of **Hon. Bala Kaoje & 4 Ors v. The National Assembly of the Federal Republic of Nigeria & 13 Ors**; Unreported Suit No. FHC/ABJ/CS/93/2003 which was decided on the 21st day of May, 2003, wherein it was held that, the Corrupt Practices and Other Related Offences Act, 2000 is a valid Law. That this is a decision of a competent Court of Law which has not been appealed against. The cases of **Ayuba Bitrus Bakkat v. Federal Republic of Nigeria Unreported Appeal No. CA/MK/200C/2012**, delivered on the 9th March, 2012 per **Omoleye, JCA** and **Yahaya v. F.R.N. (2007) 23 W.R.N. p.127 at 146 lines 30 – 35** were cited to urge us to discountenance the arguments of the Appellant, and to hold that the I.C.P.C. Act is a valid Law.

Now, in the Unreported case of **Ruth Adehwe Aweto v. Federal Republic of Nigerian; Appeal No. CA/I/414C/2014** decided on the 14th day of July, 2015, in the Ibadan Division of this Court, I cited and relied on the decision of this court in **Bitrus Bakkat v. F.R.N. (No.2) (2014) 2 I.C.P.C. L.R. p.455 at 472 paragraphs A – E**, where **Omoleye, JCA** held that:

> "..., the bone of contention in this issue is, whether or not the Corrupt Practices and Other Related Offences Act, 2000 has been repealed. The answer is so very simple and straight forward and it is that the Corrupt Practices and Other Related Offences Act 2000 is solidly in existence, it is yet to be repealed... I am not aware of any decision of either the Supreme Court or this court declaring the Act of 2000 invalid. This is the reason I am one with the submissions of the learned counsel for the Respondent that the Act of 2000 is subsisting and therefore the Appellant was validly tried, convicted and sentenced under it."

It is therefore easy to see that, contrary to the assertion of the Appellant, the Corrupt Practices and Other Related Offences Act, 2000 has not been repealed. It is a valid and subsisting Law. I am fortified in this view by the decision of this court in **Yahaya v. F.R.N. (2007) 23 W.R.N. p.127 at 146 line 35** where it was restated that, the Corrupt Practices and Other Related Offences Act, 2000 is an existing Law promulgated by the National Assembly. It therefore remains settled that the Corrupt Practices and Other Related Offences Act, 2000 has remained a valid and subsisting Law. This issue is accordingly resolved in favour of the Respondents.

The next issue is whether the mandatory consent of the Chief Judge of Ogun State was obtained to prosecute the Appellant in line with the provisions of the Law? In arguing this issue, learned counsel for the Appellant referred to Section 340(1), (2) and (3) of the Criminal Procedure Law of Ogun State to submit that, the prosecution ought to have obtained the consent of a Judge before preferring the charges against the Appellant,

the offences alleged being indictable offences. That the requirements of Section 340 of the Criminal Procedure Law (supra) are mandatory, and therefore, failure to comply with those provisions was fatal to the proceedings leading to the conviction of the Appellant. The cases of **Bamaiyi v. A. G; Federation & Ors (2001) 7 N.S.C.Q.R. p.598 at 617**; **A. G; Federation Isong (1986) QLRN 75** and **Madukolu v. Nkemdilim (1962) 2 NSCC 374 at 370 – 380** were then cited to submit that, the consequence of non-compliance with the provisions of Section 340(2) of the Criminal Procedure Law (C.P.L) of Ogun State, as was done in this case, has rendered the information or charges incompetent and thereby robbing the court of jurisdiction to try same.

It was further submitted on the authority of **Okafor v. The State (1976) 10 NSCC 259 at 261** that objection to the competency of the charge could be raised at any time in the proceedings, and even for the first time on appeal. Furthermore that the letter dated the 28/9/09 only relates to the powers of the Attorney-General to prosecute, and that it does not in any way relate to the issue of the consent as required by Section 340(2) of the C.P. Law (supra). We were urge to hold that the said letter did not seek leave or consent of a Judge to prefer the charges on the information in the manner stipulated by Section 340(2) of the C.P. Law (supra).

Learned Counsel for the Respondent contended that, as shown in paragraph 1 line 3 of the letter dated the 28/9/2009, the prosecution clearly got the consent of the Chief Judge of Ogun State before the matter was assigned to the trial Judge. It was further submitted that, the consent

letter dated 28/9/2009 substantially complied with the provisions of Section 340(1), (2) and (3) of the C.P. Law (supra).

The answer to the above issue can be found in the Record of Appeal. Before then, it is necessary to point out that, Section 340(2) C. P. Law, Ogun State specifically stipulates that, no information charging any person with an indictable offence shall be preferred unless either:-

(a) The person charged has been committed for trial; or

(b) The information is preferred by the direction or with the consent of a Judge or pursuant to an order made under part 31 to prosecute the person charged for perjury;

The Record of Appeal discloses that the Appellant's trial was initiated on an Information exhibited by the Attorney-General of the Federation acting through the I.C.P.C. pursuant to Section 61(1) of the I.C.P.C. Act, 2000. The said Information was communicated to the Chief Judge of Ogun State vide letter dated the 28th day of September, 2009. The information consisted of the charges and other proofs of evidence, such as the list of witnesses, the statements of the accused persons and those of the witnesses, etc. The Chief Judge of Ogun State exercised the power granted him by Section 61(2) of the I.C.P.C, Act, and assigned the case to the trial Judge for prosecution. It cannot therefore be argued that the consent of the Chief Judge of Ogun State or of a Judge of Ogun State High Court was not obtained before the charges were preferred against the Appellant. This issue is therefore resolved also against the Appellant.

This now brings me to issue three (3), which is; whether the verdict of guilty returned on the Appellant is supportable by the evidence on record? In determining this issue, I find it necessary to point out that the Appellant was tried and convicted for the commission of the offences of conspiracy to confer corrupt advantage on oneself (Appellant), conferring corrupt advantage upon himself and knowingly furnishing false return in respect of money received by him. These are offences punishable under Sections 26(1)(c), 19 and 16 of the Corrupt Practices and other Related Offences Act, 2000.

The charge(s) of conspiracy against the Appellant covered Counts 1, 3, 5, 7, 9 and 11. The Appellant was therefore charged with conspiring with his co-accused, to confer corrupt advantage on the Appellant when he (Appellant) collected various sums of money which totaled to the sum of four million, two hundred and fifty thousand naira (₦4,250,000.00) only, between the months of September 2005 – February, 2006 for the purpose of welfare of policemen drafted to Ayetumara in Ogun Waterside Local Government Area of Ogun State, on a peace keeping mission. That after collecting such sums of money, he failed to apply same for the purposes for which the monies were given.

In arguing against the conviction of the Appellant on the charges of conspiracy therefore, learned counsel for the Appellant contended that, there are no material facts placed before the court upon which any inference of conspiracy between the Appellant and the Chairman of Ijebu Waterside Local Government Area could be made. That the evidence only show that the Appellant as schedule officer was instructed by his superior

officer, one Mr. Jimoh Olukorede Sefiriyu (DW3) to put up a proposal for approval of money for the weekly upkeep of about 50 mobile policemen. That, the directive was sequel to the decision of the Chairman of the Local Government Area (1st Accused), and that there was also a memo to that effect which was approved by the Finance and General Purpose Committee of the Local Government, to the tune of ₦250,000.00 per week. Furthermore, that there was evidence that Vouchers for such payments were usually raised in the name of the Schedule Officer; and that there is evidence that issues, such as upkeep of policemen was a security issue, which is directly under the office of the Chairman. That, there was also evidence that, the Appellant collected such monies and handed same to the Chairman of the Local Government.

Upon such facts, learned counsel for the Appellant submitted that, the Appellant therefore acted officially under instruction of his superior officers. That, in such circumstance, there can be no reasonable inference of conspiracy to corruptly confer advantage on himself (Appellant). It was therefore submitted that, evidence in proof of conspiracy, must be cogent, consistent, impregnable, unequivocal and irresistibly lead to the guilt of the conspirators. That, in the instant case, the prosecution did not establish by evidence, the circumstances from which the court could reasonable infer conspiracy, as there is no evidence that the Appellant benefited personally in all the transactions that led to the charges against him. We were accordingly urged to hold that the charge of conspiracy against the Appellant was not proved.

Learned Counsel for the Respondent contended that, to succeed on a charge of conspiracy under Section 26(1)(c) of the I.C.P.C. Act, 2000, the prosecution must prove the following ingredients beyond reasonable doubt:-

(a) That the accused is any person; and

(b) That the accused must abet or be engaged in a Criminal conspiracy to commit any offence under the Act.

Learned Counsel for the Respondent then contended that, the prosecution proved its case through the two (2) witnesses called by them. That, the PW1 led evidence to show, ***inter alia***, that there was a boundary dispute between Ayetumara Community in Ogun Waterside Local Government Area and Adewo Community in Ondo State, whereof some policemen were drafted to Ayetumara to restore peace. That the peace keeping operation lasted for three (3) weeks in October, 2005. That, at the time of the operation, he (PW1) was the Divisional Police Officer (D.P.O) for the Local Government, and that in such position, he supervised the policemen. That, it was also the testimony of the PW1 that, throughout the three weeks the operation lasted no money was paid to the policemen by the Appellant nor by the co-accused.

It was further contended that, the PW2, who investigated the case, and corroborated the testimony of PW1 further testified to the effect that, the co-accused to the Appellant, approved the sum of ₦250,000.00 as weekly upkeep allowance for mobile policemen drafted to Ayetumara for peace keeping operation. That the Appellant who was 2nd accused at the

trial court, applied for and collected the sum of ₦250,000.00 instalmentally, totaling the sum of (Four million, two hundred and fifty thousand naira) only, between September, 2005 to February, 2006 from the Ogun Waterside Local Government Treasury for the upkeep of the policemen. That, the investigation further reveals that the monies collected was not spent on the policemen. That the above facts were supported by Exhibits P1, P2 and P3 – P19, which are copies of the petition written to the I.C.P.C, letter written to the Ogun State Police Command by the I.C.P.C. about the upkeep allowances; the response of the Ogun State Police Command to the I.C.P.C. about the non-payment of the upkeep and feeding allowances to the policemen sent to restore peace at Ayetumara and the payment vouchers and memos for the release of those documents established the fact that the Appellant submitted memos for the release of such sums of money, the co-accused person (Chairman of Ogun Waterside Local Government) approved such payments and the Appellant collected the said sums of money and never spent the monies for the purposes for which he collected them. That, it is not in dispute that the Appellant was a public officer at the time the offence was committed.

It was further submitted by learned counsel for the Respondent that, Exhibits P, P1, P2 and P3 – P19 and other annextures thereto and the testimonies of PW1 and PW2 proved beyond reasonable doubt that the co-accused, being the Chief Security Officer at the Local Government approved the memos i.e, Exhibits P3 – P19 and the Appellant collected the monies but did not apply same for the purposes for which he collected them. That, the evidence therefore proved beyond reasonable doubt that,

the Appellant conspired with the Chairman of Ogun Waterside Local Government to breach the provisions of Section 19 of the Corrupt Practices and Other Related Offences Act, 2000. In other words, that the prosecution was able to prove beyond reasonable doubt that there was an agreement between the Appellant and the Chairman of the Local Government aforementioned, to corruptly confer advantage on the Appellant. Furthermore, that the co-accused admitted that, as Chief Security Officer of the Local Government, he approved the sum of ₦250,000.00 as weekly upkeep allowance based on the memos written by the Appellant; and that the Appellant admitted that the said sums of money were released to him which he also admitted to collecting same. The case of **David Omotola v. The State (2009) All FWLR (pt.464) p.1490 at 1600 – 1601 paragraphs H – B** was cited to finally submit that the ingredients of conspiracy as charged in Counts 1, 3, 5, 7, 9 and 11 of the Information were proved beyond reasonable doubt.

Now, Section 26 of the Corrupt Practices and Other Related Offences Act, 2000 stipulates that:

"26(1). Any person who –

(a) .....

(b) .....

(c) Abets or is engaged in criminal conspiracy to commit any offence under this At;

(d) Shall be guilty of an offence and shall on conviction, be liable to the punishment provided for such offence."

Now, the I.C.P.C. Act does not define what conspiracy is. I am of the view that, the answer in such a circumstances, can only be found in case law. Thus, in the case of **Patrick Njovens & Ors v. The State (1973) 5 S.C. 12; (1973) All N.L.R. 371**, the Supreme Court, per **Coker; JSC** defined conspiracy in the following words:

> "... The gist of the offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties concerned, done in pursuance of an apparent criminal purpose in common between them and in proof of conspiracy. The acts or omissions of any of the conspirators in furtherance of the common design may be and very often are given in evidence against any other or others of the conspirators."

The Supreme Court then stated that, the overt act or omission which evidence conspiracy is the ***actus reus*** and the ***actus reus*** of each and every conspirator must be referable, and in most case, is the only proof of the criminal agreement between the parties. Thus, **Achike; JSC** also held in the case of **Dr. Segun Oduneye v. The State (2001) PLELR – 224 (SC); (2001) 2 NWLR (pt.697) p.311** as follows:

> "The offence of conspiracy to be established there must exist a common criminal design or agreement by two or more persons to do or not to do an act criminally. Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties it is rarely capable of direct proof; it is invariably an offence that is inferentially

> deduced from the acts of the parties thereto which are focused towards the realization of their common or mutual criminal purpose."

It would be seen from the above cited authorities that, conspiracy is a crime which in most times is always hatched in utmost secrecy. In other words, the fact of conspiracy is always difficult to prove, as it is always not possible to lay hands on something and say; "this is conspiracy". Its proof is therefore almost always one of inference to be drawn from proved facts. The Supreme Court has therefore settled it as the law, in a plethora of cases that, to proof conspiracy, inferences can be validly drawn from the overt acts or omissions of each and every of the conspirators, done or omitted to be done in the execution of their common intention. See **The State v. Olashenu Salami (2011) LPELR – 8252 (SC)**; **Wahabi Adejobi & Anor v. The State (2011) LPELR – 97 (SC)** and **Lawson & Ors v. The State (1975) 4 S.C. (Reprint) p.84**. The position of the law has been given statutory flavor by Section 8 of the Evidence Act, 2011 which stipulates that:

> "8.(1) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in execution or furtherance of their common intention, after the time when such intention was first entertained by one of them, is a relevant fact as against each of the persons believed to be so conspiring, for the purpose of proving the existence of the conspiracy as well as for the purpose of showing that any such person was a party to it."

It therefore means that, to determine whether or not a conspiracy exists, the court would draw inferences from the circumstances of the case, including the acts or omissions of each of the parties said to be involved in the conspiracy. Where the acts or omissions of each of the parties point to no other conclusion, but that such acts or omissions were committed towards the execution of the conspiracy, the conspiracy would be said to have been proved.

It should however be noted that, the mere fact of agreement between two or more persons to do a certain act, does not mean that the crime of conspiracy has been committed. In other words, a mere agreement between persons is not sufficient to attract sanction or punishment for conspiracy. To amount to the offence of conspiracy, the agreement must be to do an unlawful act or to do a lawful act by unlawful means. The acts of the parties to the agreement must be such that is capable of being sanctioned or punished by the Penal Law of the land. To amount to the crime of conspiracy therefore, the court would consider the evidence led, and draw inferences thereon, and if the inferences drawn show that the acts or omissions attributable to the persons accused establish conspiracy to commit an offence, the fact of conspiracy has been proved. See **David Omotola & Ors. v. The State (2009) 7 NWLR (pt.1139) p.148**; **Sule v. The State (2009) 17 NWLR (pt.1169) p.33** and **Wahabi Adejobi & Anor v. The State (2011) LPELR – 97 (SC)**.

In the instant case, the Appellant and one other person were tried and convicted on six (6) Counts of conspiracy, which charged that, as public officers they conspired to corruptly confer advantage upon the

Appellant. These charges are contained in Counts 1, 3, 5, 7, 9 and 11 of the information or charge sheet. The evidence as led at the trial disclose that, there was a communal clash between the Ayetumara Community which is in the Ogun Waterside Local Government Area of Ogun State and one other community in Ondo State. That as a result of the disturbance, about fifty (50) Mobile Policemen were drafted to protect lives and property in the crisis area. In such a circumstance, the Chairman of the Ogun Waterside Local Government Area, being the Chief Security Officer in the Local Government, proposed that certain sums of money be set aside from the coffers of the Local Government for the upkeep and welfare of the policemen drafted to the area. The sum of two hundred and fifty thousand naira (₦250,000=00) per week was proposed and approved by the Finance and General Purpose Committee of the Local Government. Consequent upon that approval, the Appellant submitted various memos to the Chairman of the Local Government, [who was the 1st accused at the trial] and the Chairman approved that such sums of money be released to the Appellant.

The undisputed facts on record further disclose that, the Appellant consistently submitted such memos, which the Chairman approved and the Appellant collected such monies from September, 2005 to February, 2006. A total sum of four million, two hundred and fifty thousand naira (₦4,250,000.00) only was approved by the Chairman and collected by the Appellant. There is also undisputed evidence that the Appellant never applied the monies collected for the purposes for which they were approved and released. For example, Exhibit P2, which is the response of

the Commissioner of Police, Ogun State, reveals that, the Peace Keeping Operation lasted for only three weeks involving a total of 26 policemen, while the sum approved was to carter for fifty (50) policemen. Again, the monies continued to be approved by the Chairman of the Local Government for a period of six (6) months, far beyond the three (3) weeks the operation lasted. The Chairman who gave evidence as the D.W.4 admitted that he was the Chairman of the Finance and General Purposes Committee and that he approved release of the funds to the Appellant. Those facts were also admitted by the Appellant when he admitted in his evidence at page 121 of the records that:

> "I acted on instructions of the Director, General Services and Admin. (D.G.S.A.). His name is Mr. Jimoh Olukorede Safiriyu. He instructed that there was a communal crises reported at the office between Mayitedo people of Ondo State and Ayetumara Community in Waterside and there is need to keep peace in that Community. He said the Area Commander had drafted 50 policemen to maintain peace. He then instructed me to put up a memo to upkeep them on weekly basis which I did. The memo was routed through the DGSA to the Chairman for approval before it was later presented to the Finance and General Purpose Committee. Approval was therefore granted for ₦250,000.00 weekly upkeep. Sometimes the money was released on weekly basis or monthly. But it was released. The money was released to me because the voucher was raised in my name. It is normal to prepare the voucher in the names of career officers.
>
> I collected the money and handed same over to the then Chairman as the Chief Security Officer. That person is the 1st Accused."

However, the Chairman of the Local Government would appear to have denied receiving such money from the Appellant. In his testimony at page 119 lines 4 – 6 of the Records he (Chairman and Co-accused) who testified as D.W.4, denied that the money collected by the Appellant was handed over to him. He had earlier stated that the Appellant utilized the money for the purposes it was released, but the Appellant testified that he never visited Ayetumara where the crisis occurred nor did he do any other thing or perform any other act in respect of the matter. The import of the testimony of the Appellant is that, apart from raising the memos, collecting the monies and handing over same to the Local Government Chairman, he did not do any other thing. Nowhere in the entire testimony of the Appellant did he say that he utilized the money for the purpose it was released. Furthermore, the P.W.3, who is the Director, General Service and Administration and the immediate boss of the Appellant corroborated the Appellant, when he stated under cross-examination at page 116 of the Records that he knows as a fact that the Appellant collected the monies and handed same to the Chairman of the Local Government who was the 1st accused at the trial.

From the above stated scenario, I am of the view that the fact of conspiracy as charged in Counts 1, 3, 5, 7, 9 and 11 of the information has been proved beyond reasonable doubt. I think the learned trial Judge was on firm ground when he held at page 205 lines 3 – 22 as follows:

> "I am of the view, and so hold in agreement with the Prosecution that there is sufficient inference to be deduced from the acts and inactions of the Accused persons to show and prove beyond reasonable doubt that there was agreement

between them to commit the crime they are accused of in the relevant counts relating to conspiracy. Otherwise, why did the 2nd Accused not do the right thing inspite of his knowledge of same? He rather chose to follow the instructions of the 1st Accused to do the wrong and illegal thing in line with their agreement which constitutes conspiracy. Again, if truly it was the 2nd Accused who expended the money as claimed by the 1st Accused, it is expected that he (1st Accused), having created time to visit the crisis area once or twice a week, would do so in company with the 2nd Accused, his officer who took the approved money to perform certain duties relating to the crisis. Why did he not take him along? Why does (sic) he not have a reason for leaving him behind? Why did he (1st Accused) not bother to know whether he (2nd Accused) even know the crisis area? In my view, all these did not matter to or bother the 1st Accused because both himself and the 2nd Accused were in prior agreement that the money would be handed over to the 1st Accused and it would be used otherwise than for the purpose it was meant and approved. That is the inference to be drawn from these scenarios."

The above inferences drawn by the learned trial Judge from the conduct of the Appellant and his co-accused are clearly supported by the evidence on record. I see no reason to interfere with such findings as they are supported by the evidence on record. In that respect, I find that the charges of conspiracy against the Appellant were proved beyond reasonable doubt.

Now, the evidence on record also show that the Appellant was charged alone on counts 2, 4, 6, 8, 10 and 12 for offences contrary to

Section 19 of the Corrupt Practices and Other Related Offences Act, 2000. The charges allege that, as a public officer, the Appellant used his office to confer corrupt advantage upon himself when he collected various sums of money, totaling four million, two hundred and fifty thousand naira (₦4,250.000.00) from the coffers of Ogun Waterside Local Government for the weekly upkeep of 50 Mobile Policemen on Peace Keeping Mission at Ayetumara but failed to utilize such monies for that purpose.

On the conviction of the Appellant on those counts, i.e counts 2, 4, 6, 8, 10 and 12, learned counsel for the Appellant contended that, the Appellant cannot rightly be held to have conferred corrupt advantage on himself. That, even the trial court agreed that the Appellant merely collected the various sums indicated in the charges and handed them over to the Chairman of the Local Government (1st Accused); and therefore there is no evidence that he benefited or profited in any way from the transaction. That, there is evidence that by virtue of his office, the Appellant can be directed to receive money in his name and hand same over to the appropriate officer, who is Local Government Chairman. That, the Appellant was directed by his superior officer to collect the monies meant for the upkeep of the policemen on peace keeping mission and further directed to hand same over to the Executive Chairman of the Local Government. It was therefore submitted that, the finding of the trial court ignored the civil service command structure that operate in the Local Government Administration as the Appellant tried to establish in evidence as his defense. Furthermore, that, the Appellant had consistently maintained in his statement during investigation (Exhibits P23 and P24) as

well as in his testimony in court that there was no way he could have disbursed the monies directly because the issue involved was a security issue within the exclusive preserve of the Executive Chairman (1st Accused).

In response, learned counsel for the Respondent contended that to establish the commission of an offence under Section 19 of the Corrupt Practices and Other Related Offences Act (supra), the following ingredients have to be proved beyond reasonable doubt:

(1) That the accused is a public officer.

(2) That the accused person used his office or position to confer corrupt advantage upon himself or any relation or associate of the public officer or any other public officer.

On the first element of the offence, it was submitted that, it is not in dispute that the Appellant is a public officer by virtue of Section 2 of the I.C.P.C. Act, 2000.

On the second element, learned counsel for the Respondent contended that, by Exhibits P. P1, P2 and P3 to P19, it was established that the policemen sent for the peace keeping operation in Ayetumara stayed in the crisis area for three weeks and that no upkeep allowance was paid or expended on them by the Appellant. That by Exhibits P3 – P19 and their annexures, it was proved that, a weekly sum of ₦250,000.00 upkeep allowance was paid to the Appellant but such money was never expended by the Appellant for that purposes. It was therefore submitted that, the prosecution was able to prove that the Appellant conferred corrupt advantage upon himself when he collected such sums of money from the

Local Government from October, 2005 to February, 2006 but did not spend same for the purpose for which he collected the monies.

It was further submitted by learned counsel for the Respondent that, DW3 confirmed that the monies approved were released to the Appellant for the upkeep of the policemen, and that the Appellant who testified as D.W.5 admitted collecting such monies but stated that he did not expend the monies on the policemen but gave same to the Chairman. That, the Appellant did not produce any evidence to establish the fact that he gave the monies to the Chairman. Furthermore, that the Chairman denied that the Appellant gave him such monies. Learned Counsel thus submitted that, those facts proved that the Appellant corruptly conferred advantage upon himself. That, in any case, Exhibits P23 and P24 amount to Confessional Statements, as the Appellant admitted therein that, he collected the various sums of money from September, 2005 to February, 2006, and that he did not spend same on the Mobile Policemen. The case of **Nwachukwu v. The State (2007) 31 NSCQLR 312 at 343** was relied on to submit that, from the totality of evidence adduced at the trial, it has been proved beyond reasonable doubt that Appellant committed the offences charged on counts 2, 4, 6, 8, 10 and 12. We were therefore urged to uphold the conviction of the Appellant thereon.

Now, the offence of conferring corrupt advantage upon oneself is created by Section 19 of the Corrupt Practices and Other Related Offences Act, 2000 which stipulates thus:

> "19 Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the

public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine."

The ingredients to be proved in an offence under this section, have been adequately set out by learned counsel for the Respondent in the Respondent's Brief of Arguments. It has been established that the Appellant was a public officer by virtue of Section 2 of the Corrupt Practices and Other Related Offences Act, 2000.

Now Counts 2, 4, 6, 8, 10 and 12 all charged the Appellant for conferring corrupt advantage upon himself. The charges did not allege that the Appellant conferred corrupt advantage upon any other person. The learned trial Judge, upon the evidence adduced before him at the trial, found and held at page 208 lines 29 – 209 line 15 as follows:

"The 2nd Accused tried to justify his action of giving the money to the 1st Accused by saying that he was instructed by his superior officers, one of whom was the 1st Accused and according to him no officer of the Local Government could dare the 1st Accused being the Chairman thereon. In other words, he could not dare to go against the Chairman's instruction (albeit illegal and criminal), he would rather please the Chairman by obeying his instruction to act wrongly. In other words, the 2nd Accused used his position or office to gratify the 1st Accused, that is, in line with the definition of "gratify", to make him feel pleased and satisfied. That, to my mind is sufficient proof of the relevant ingredient of the offence. He also gained favour by pleasing the Chairman. Again, by using his office or position to apply for and collect government fund; and not spending same rightly, but giving it to the

> 1st Accused amounts to conferring corrupt or unfair advantage on another public officer, that is the 1st Accused person. Whichever way one looks at it, the 2nd Accused is guilty as charged in Counts 2, 4, 6, 8, 10 and 12 of the charge; and I so find. It is immaterial that there is no direct evidence that he kept the money or part thereof for himself. It is sufficient that the 2nd Accused sought to please the 1st Accused and he gave him the money in question."

It is my view that from the above findings, the learned trial Judge missed the point. It should be noted that the charges in Counts 2, 4, 6, 8, 10 and 12 specifically alleged that the Appellant conferred corrupt advantage on himself. Those charges never alleged that Appellant used his office to gratify the Chairman of the Local Government or confer corrupt advantage on the said Chairman, who was tried along with him (Appellant) for conspiracy to confer corrupt advantage upon the Appellant. Furthermore, the facts of this case cannot amount to gratification within the meaning of "gratification" in Section 2 of the Corrupt Practices and Other Related Offences Act, 2000 as the money said to have been collected by the Appellant and given to his co-accused, who was Chairman of Ogun Waterside Local Government, cannot be said to have been given with intent to influence the Chairman in the performance or non-performance of his duties. The learned trial Judge was therefore wrong when he imported that element into the facts of this case in order to convict the Appellant.

I am also of the view that, the findings and conclusion of the learned trial Judge reproduced above, rather support the contention of the Appellant that, there is no evidence on record to show that the Appellant

kept the money he collected or part thereof for himself. Rather, the un-contradicted evidence from the testimony of the Appellant and the D.W3 show that the Appellant collected the money and gave same to the Local Government Chairman. In such a circumstances, it cannot be rightly said that the Appellant conferred any corrupt advantage upon himself. While it could be said that the Appellant conferred an unfair advantage on the Local Government Chairman, that is not the charge against him. The charges, i.e. counts 2, 4, 6, 8, 10 and 12 all accused the Appellant of conferring corrupt advantage upon himself. It is therefore my view that, the second essential element of the offences under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000 has not been proved. It therefore means that the counts 2, 4, 6, 8, 10 and 12 in the charge have not been proved beyond reasonable doubt. On that score, it is my finding that the learned trial Judge erred when he convicted the Appellant on counts 2, 4, 6, 8, 10 and 12 of the charge. I accordingly set aside the conviction and sentence passed on the Appellant in respect of counts 2, 4, 6, 8, 10 and 12 of the charge.

In respect of the conviction under counts 13, 14 and 15 of the charge, learned counsel for the Appellant contended that, the court below fell unto error of evaluation of the evidence before him in finding the Appellant guilty thereof. That the learned trial Judge based his findings on Exhibit 23 in order to convict the Appellant. It was then submitted that the evidence against the Appellant on those counts are grossly inadequate to ground conviction. That, it is the duty of the prosecution to prove that the receipts evidencing the returns made in respect of the monies released to

the Appellant are fake and that the Appellant had knowledge that the receipts are fake. Furthermore, that it was the Appellant who had the duty of retiring the said receipt. Learned Counsel then submitted that, the prosecution did not give evidence to show that the items stated in those receipts are fake and that the items stated therein were never procured.

Learned Counsel for the Appellant went on to submit that, the prosecution gave the Appellant the opportunity to explain what he meant by the last 4 lines of his statement in Exhibit 23, which he perfectly did. That the learned trial Judge merely clang to the Appellant's use of the word "fake" in coming to a verdict of guilt against the Appellant.

Learned Counsel for the Respondent then contended that, the ingredients to be proved for an offence contrary to Section 16 of the Corrupt Practices and Other Related Offences Act, 2000 are as follows:

(a) That the accused is a person

(b) That the accused person is an officer charged with receipt, custody, use or management of any part of public revenue or property.

(c) That the accused must knowingly furnish any false statement or return in respect of any money or property received by him or entrusted in his care, or of any balance of money or property in his control. The case of **Chidiebere Ude v. F.R.N. (2013) 8 N.C.C. p.348** was cited in support.

It was accordingly submitted that, the evidence of PW2, Exhibits P3 – P19, P23, P24 and the evidence of D.W.5 (Appellant) have all proved that the Appellant is a public officer. The case of **Ajisegiri v. F.R.N. (2013) 8**

N.C.C. p.408 at 410 – 411 was then cited on the meaning of "a public officer" within the context of the Corrupt Practices Act, 2000.

On the 2nd element of the offence, learned counsel submitted that, the prosecution led evidence to the effect that the Appellant applied for and collected the sum of ₦250,000.00 on a weekly basis, totaling ₦4,250,000.00 between September, 2005 to February, 2006 from the coffers of the Local Government for the upkeep of Mobile Policemen at Ayetumara who were on peace keeping operation. That, such payments to the Appellant were evidenced by Exhibits P3 – P19, which proved that the Appellant as a public officer in Ogun Waterside Local Government was in custody of the funds from the coffers of the Local Government.

In respect of the 3rd element, it was submitted by learned counsel for the Respondent that, investigation into the matter as testified to by the P.W.2 revealed that, the Appellant retired the monies received by him using false receipts. That the Appellant himself admitted that the receipts are false as the monies paid to the Appellant was not spent on the Policemen, and that the receipts were gummed to the vouchers to the extent that it was not possible to determine the source of the receipts. Furthermore, that two (2) original payment vouchers, receipts and memos were tendered for purpose of identification only. Learned Counsel then submitted that, the prosecution tendered material documentary evidence to prove its case, and which was corroborated by exhibit P2 which is a letter from the Ogun State Police Command stating that, no money was paid to or spent on the Policemen sent to the Local Government to restore peace. That, the evidence of false returns made by the Appellant was

when he retired with false receipts, how he spent the sum of ₦250,000.00 weekly upkeep for the policemen he collected, knowing fully well that he did not spend the monies for the purpose for which he collected the money.

It was further submitted by learned counsel for the Respondent that, the Appellant himself, confessed to the fact that he collected the sum of ₦250,000.00 as weekly upkeep for the Policemen on peace keeping mission from the coffers of the Local Government between September, 2005 to February, 2006 but did not spend the money on the Policemen, but gave same to the Chairman of the Local Government. That the Appellant also confessed that the receipts attached to the payment vouchers as evidence of how the monies were spent were not genuine. Learned Counsel then relied on the statement of the Appellant at page 42 of the record of appeal, which statement the learned trial Judge considered as confessional, to urge us to hold that the prosecution proved the ingredients of the offences on Counts 13, 14 and 15 beyond reasonable doubt; and to uphold the conviction of the Appellant on those counts. Learned Counsel for the Appellant cited the cases of **Dickson Moses v. The State (2006) 26 NSCQR (pt.2) p.895 at 935**; **State v. Usman (2005) 1 NWLR (pt.906) p.80 at 125 paragraphs D – H** and **Shugaba Umar Gana v. F.R.N. (2013) 8 N.C.C. p.135 at 140** in support of his submission.

Now, Section 16 of the Corrupt Practices and Other Related Offences Act, 2000 stipulates as follows:

> "Any person who, being an officer charged with the receipt, custody, use or management of any part of

> the public revenue or property, knowingly furnishes any false statement or return in respect of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of an offence, and shall on conviction be liable for seven (7) years imprisonment."

As rightly stated by learned counsel for the Respondent, for the prosecution to secure a conviction under this provision, credible evidence must be led to prove beyond reasonable doubt that:

(a) That the accused was a public officer;

(b) That he was charged with the receipt, custody, use or management of any part of the public revenue or property;

(c) That he knowingly furnished false statement or return in respect of any money or property received by him or entrusted to his care, or any balance of money or property in his possession or under his control.

It has been found and thus established when resolving the issues on Counts 1 – 12 of the charge that, the Appellant in this case, being an Administrative Officer with the Ogun Waterside Local Government, is a public officer within the context of Section 2 of the Corrupt Practices and Other Related Offences Act, 2000. The evidence led by the prosecution which is admitted by the Appellant is that he collected or received from the coffers of the Local Government, the sum of four million, two hundred and fifty thousand naira (₦4,250,000.00) at various times, from the month of September, 2005 – February, 2006 for the upkeep of Mobile Policemen on

peace keeping mission at Ayetumara within the Local Government Area. It is however the case of the Respondents that the Appellant received the monies for the upkeep of the policemen but did not spend same for the purposes the monies was received. That the Appellant instead submitted false or fake receipts as evidence of how the monies were expended, thereby making or furnishing false returns in respect of the monies he received.

In the determination of those charges against the Appellant, the learned trial Judge found and held at page 210 lines 16 – 27 of the Record of Appeal as follows:

> "Evidence abound, particularly as given by PW1, PW2, PW3 and 2nd Accused (as DW5) that he (2nd Accused) did not use the money in question for the purpose for which is meant. He did not spend it at all but gave same to the 1st Accused, yet he said he rendered returns on the money. It follows, and I so hold that any receipt furnished by the 2nd Accused as return in respect of the money must be false and that fact is known to the 2nd Accused himself. Indeed, he wrote in his statement to I.C.P.C. (Exhibit P23) boldly and clearly that the receipts returned are fake. Exhibit P23 is a confessional statement by any standard. It is direct, free and voluntary. It was admitted as exhibit without any objection from the 2nd Accused on ground of duress or any such ground which could have called for a trial within trial."

It is obvious therefore, that the learned trial Judge based his conviction of the Appellant on Counts 13, 14 and 15 on the statement of the Appellant Exhibit (P23), which statement the learned trial Judge

qualified as confessional. I have carefully read Exhibit P23. Surely by the said Exhibit P23, the Appellant admitted to receiving or collecting the various sums of money to be used for upkeep of policemen deployed for peace keeping at Ayetumara within the Local Government. He also stated that, when he collected the various sums of money, he gave same to the Chairman in cash. He then stated at page B32 of Exhibit P23 that:

> ".. I don't know anything about the receipts that are attached to the payment vouchers. I met the Chairman on various different occasions to give me evidence of payment documents on the monies that I gave to him for the motoring committee, but which he failed to do."

The Appellant further stated at page B33 – B34 of the said Exhibit P23 as follows:

> "That I was instructed to collect the money for the upkeep of the MOPOL deployed to the area. I collected the sum of N250,000.00 weekly upkeep and handed it over to the Chairman who solely disbursed the money. The issue of Police is a security issue and it is the Chairman that handled security matters in the Local Government. Therefore, been (sic) a security issue, it was the Chairman that handled it and I was not involve (sic) in the spending of the money. The money was expended by the Chairman."

The Appellant then went on to state in the same page B34 of the said Exhibit P23 that:

> "I don't know the exact period when the police left the place until when the Chairman asked me to stop collection of the money. Moreso, since I did not see them and I don't have relationship with them being

a security matter which is handled by the Chairman solely. Any receipts that are attached to the vouchers are fake, because the Chairman failed to give me any receipt for the monies collected."

I wish to state that, in giving meaning or evaluation to a statement made by an accused person to the police, a Court of Law is enjoined to give the statement a wholistic construction. The court should not pick a portion of the statement and give it a construction which has the effect of damnifying the accused. In the instant case, it is my view that, if the learned trial Judge had carefully read the entire Exhibit P23, he would have seen that it cannot by any stretch of construction be regarded as a confessional statement. The construction which can reasonably be given to it is that, the Appellant informed the prosecution that he collected the monies and gave same to the Chairman in cash. That, the Chairman was in control of how the money was expended. He also denied that he made any returns in respect of the monies he collected, as the Chairman did not give him any evidence, either by way of receipt or otherwise, as to how he (Chairman) expended the money. It is on those facts that, the Appellant asserted that any receipt attached to the payment vouchers are fake, because the Chairman failed to give him any receipt for the monies collected, with which to make any return. A wholistic reading of Exhibit P23 therefore show clearly that the Appellant denied making any returns. It is worthy to note that, the Appellant was not charged for "failure to make returns of the monies he collected" but for "knowingly making or furnishing false return" by issuing false receipts.

There is also no evidence from the prosecution to show that the Appellant made or furnished false returns. The PW1 who is an Assistant Commissioner of Police (ACP) only testified that he supervised the policemen deployed for peace keeping at Ayetumara when he was the Divisional police officer in the Waterside Local Government at the time of the incident. The PW2, who is an officer at the I.C.P.C. only testified of the role he played in the investigation of the case and of the result of the investigation. Several documents including payment vouchers and the statements of the Appellant were tendered through him and admitted in evidence. In respect of the charge of furnishing false returns by submitting fake receipts, P.W.2 did not say that the fake receipts were attached to the payment vouchers by the Appellant. In any case, there is no evidence to show that the payment vouchers were made or prepared by the Appellant. No other witness, apart from the Chairman of the Local Government, who was also the 1st Accused at the trial, and who also testified as the DW4, testified that the Appellant submitted any fake or false receipts for the purpose of making returns on the monies collected by him from the coffers of the Local Government.

It is therefore clear that the learned trial did not base the conviction of the Appellant on any credible evidence tendered or adduced before him. The finding of guilt against the Appellant on Counts 13, 14 and 15 was based solely on the statement of the Appellant in Exhibit P23 and not on any other credible evidence tendered before the court. It has been found in this judgment that, the statement of the Appellant (Exhibit P23) no matter how construed, cannot amount to an admission such as to elevate

such statement to the status of a confession under Section 28 of the Evidence Act, 2011. It is therefore my finding that there was no evidence to prove that the Appellant furnished false return or statement in respect of the money received by him as upkeep of the policemen drafted to Ayetumara in Ogun Waterside Local Government of Ogun State. His conviction on Counts 13, 14 and 15 of the information are hereby set aside.

Having found as above, it is my view, which I hold that the conviction of the Appellant on the various counts of conspiracy under Section 26(1) of the Corrupt Practices and Other Related Offences Act, 2000 are hereby affirmed. However his conviction for offences on the Counts 2, 4, 6, 8, 10 12, 13, 14 and 15 for offences contrary to Sections 19 and 16 of the Corrupt Practices and Other Related Offences Act, 2000 are hereby set aside. The sentences passed on the Appellant on those counts, i.e. Counts 2, 4, 6, 8, 10, 12, 13, 14 and 15 are also set aside. The Appellant is accordingly discharged and acquitted on those counts.

HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL.

COUNSEL:

Chief Lukman Abdullahi; Esq (holds the brief of M. B. Ganiyu; Esq) for the Appellant.

Mrs. K. F. Adeoluwa with **Mrs. B. A. Balogun** (hold the brief of **Mrs. Peace Arocha**) for the Respondent.

CA/I/M. 335^{C}/2014

ALI ABUBAKAR BABANDI GUMEL, JCA

I have had the privilege of a preview of the lead judgment prepared and delivered by my learned brother, ***Tsammani, JCA.*** I fully agree with his reasonings and conclusions. For want of better words I adopt them as mine to allow this appeal in part. I also abide by all the consequential orders in the lead judgment.

ALI ABUBAKAR BABANDI GUMEL
JUSTICE, COURT OF APPEAL.

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OBIETONBARA DANIEL-KALIO, J.C.A

I have had the privilege of a preview of the judgment of my learned brother ***Haruna Simon Tsammani J.C.A***. I agree with my lord that the appellant was rightly convicted on the counts of conspiracy. I wish to make a little contribution with regard to the conviction of the appellant on counts 2, 4, 6, 8, 10 and 12 of the charge which counts state that the appellant conferred corrupt advantage on himself. It is perhaps helpful to reproduce here a sample of the statement of offence in respect of the counts just mentioned. The statement of offence of count 2 reads:

> " **COUNT 2**
>
> ***STATEMENT OF OFFENCE***
>
> Conferring corrupt advantage upon oneself contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act. 2000.

It is clear from the above count that the charge was for conferring corrupt advantage upon oneself. Now the learned trial judge in his judgment found that the appellant ***"used his position or office to gratify the 1st accused"***. He also found that ***"by using his office or position to apply for and collect government fund and not spending same rightly, but giving it to the 1st accused amounts to conferring corrupt or unfair advantage on another public officer,***

that is the 1st accused person". See page 209 of the Record of Appeal. After making those findings, the learned trial judge concluded as follows:

> "Whichever way one looks at it, the 2nd accused is guilty as charged in counts 2, 4, 6, 8, 10 and 12 of the charge and I so hold. It is immaterial that there is no direct evidence that he kept the money or part thereof for himself. It is sufficient that the 2nd accused sought to please the 1st accused and he gave him the money in question".

It is clear from the above statement that the learned trial judge lost focus of the charge in counts 2, 4, 6, 8, 10 and 12 which I must repeat are on conferring corrupt advantage upon oneself. He expanded the scope of the charge in those counts beyond what they state. Section 19 of the Corrupt Practices and Other Related Offences Act 2000 from where the drafting of the counts were made deals with a variety of instances of conferring corrupt or unfair advantage. It states:

> "19 Any Public Officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself *or* any relation *or* associate of the public officer *or* any other public officer shall be guilty of an offence and shall on conviction be liable to

imprisonment for five (5) years without option of fine".
(underlined is supplied by me)

The word ***or*** used in the above provision is used disjunctively; it is used to indicate alternatives. In the drafting of the counts, the prosecution did not choose the alternative of conferring corrupt advantage on another public officer. Rather, the counts were with respect to ***"conferring corrupt advantage upon oneself"***. The conclusion that "***whichever way one looks at it, the 2nd accused is guilty as charged in Counts 2, 4, 6, 8, 10 and 12 of the charge and I so find***" made by the trial judge is clearly misconceived and perverse.

For the above reason and the fuller reasons given in the lead judgment, I also set aside the appellant's conviction on counts 2, 4, 6, 8, 10 and 12.

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