


IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP HON. JUSTICE A. A. NWOBODO
ON FRIDAY 16TH DAY OF MARCH 2018

BETWEEN:

SUIT NO. E/140C/2011

FEDERAL REPUBLIC OF NIGERIA
VS.
FESTUS OZONWANJI

JUDGMENT

 31/5/18

The Accused person is charged before this court on a 5-count charge, all of them bordering on the violation of Section 19 of the Corrupt Practices and Other Related Offences Act 2000

The Accused person pleaded not guilty to all the counts.

P.W.1 Ozoude Titus, a staff of Ezeagu Local Government. He told the court in his evidence that Ezeagu Local Government is the mother Local Government, while Ezeagu Central Development Centre was created out of Ezeagu Local Government Area and is under Ezeagu Local Government.

His work as cashier extends to the Development Centres. When it is time to pay salaries, the main Local Government raises Cheques for the Development Centres, for them to pay salaries. The cheques are usually given to the Treasurers of the Development Centres. The Cheques for the Ezeagu Central Development Centre is usually given to one Ozowanji F. N. (The Accused) The cheque is issued in the name of Ezeagu Central Development Centre. He is supposed to lodge the cheque in the account of Ezeagu Central Development Centre.

When they receive fund allocation, they pay it into the main account of Ezeagu Local Government. They write salary cheque and withdraw from the main account and pay into the respective salary accounts of the staff. And the staff go to their respective accounts to withdraw their

salaries. Once there was a misunderstanding and the chairman directed him to pay the salaries direct to the staff of the Ezeagu Central Development Centre. In the instances that he had paid the salaries of the staff of Ezeagu Central Development centre directly, the procedure followed "is that the cheque is raised in my name and the staff of Ezeagu Central Development Centre were directed to follow me to the Bank and get their salaries. I withdrew the cash and paid them cash. I paid them with their vouchers.

I pay imprest to Ezeagu Central Development Centre. I also pay first 28 days allowance. If some one comes on transfer and the first 28 days is approved for the person, I pay. I remember paying Mr. F. N. Ozonwanji first 28 days in the year 2009. The first 28 days is for the personal benefit of Mr. Ozonwanji. He signed a document for me on the payment of the money to him. It is not proper for anybody to pay staff salaries through his personal account. It is not proper in the Local Government System for anybody to pay himself allowances that have not been approved. If I see one of the vouchers used to pay salaries to Ezeagu Central Development Centre, I will recognize it. This is the voucher used to pay salaries for Ezeagu Central Development Centre. It is dated 18th May 2009. If I see the voucher with which I paid Mr. Ozonwanji his first 28 days, I will recognize it".

P.W.2 Rev. Ejike Chibuike Eze says I am an assistant Chief Accountant with the Local Government Service Commission, Enugu, and also the pay roll officer, and the salary verification officer.

My duty as regards the Local Government Service Commission as a payroll officer is to prepare the personnel emoluments of the staff of the commission. As a salary verification officer, I verify what the individual Local Governments Councils prepare concerning their staff. We do come across personnel emoluments vouchers from the Ezeagu Central Development Centre on a monthly basis, and any allowance approved to be paid and which is to be included in the personnel emolument vouchers.

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The individual Local Governments have their individual statutory officers who are to approve, but we are to look into their books to ensure that what they have written is proper.

Mr. Ozonwanji was the Treasurer for Ezeagu Central Development Centre between 2008 and 2009. The said Mr. Ozonwanji is in the court room. In January 2009, he presented a claim of first 28 days allowance, and we brought it to his notice, that he had presented the claim earlier in November 2008. That his response was that it was not paid in 2008, that is why he applied for it to be included January 2009.

I do not know if it was paid because we do not normally monitor payments in the Local Government. What we do is to verify it for payment. This is the statement I made to I.C.P.C it is admitted as Exhibit 'A'.

P.W.3 Nnenna Angela Nwankwo gave evidence as follows:

I have in the course of my duty as account opening officer come across the name Ozonwanji Festus. He is an account holder in the branch. He has two types of accounts with the branch, a savings and current accounts.

Festus Ozonwanji filled the mandate card when he opened the accounts. We have received instructions to pay out to third parties. We have also received instructions through payment schedule. He had made some deposits using deposit slips. If I see the mandate cards for his saving and current accounts, I will recognize them.

The schedules normally comes in the headed paper of Ezeagu Central Local Government. A deposit slip will still have ECO Bank printed on it, and a deposit slip printed on it to show that it is a deposit slip. To withdraw money from a current account, you need to issue a cheque, authorizing the bank to debit your account.

You can give instruction using a schedule of payment or electronic transfer. For savings account, the person will have to come to the bank himself.

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I can identify the mandate card of the accused person, it has his passport photograph on it. This is his mandate card. The card is tendered in evidence as Exhibit 'B'. This is the salary schedule sent to the bank by the accused person, tendered as Exhibit 'C'. These are the accused person's bank statements. They are tendered as Exhibits 'D', 'E' and 'F'.

P.W.4 Temitayo Fasade, a relationship manager with First Bank testified as follows:

The account of Ezeagu Central Development Area was opened on 26th November, 2008. And the last activity on the account happened on the 12th January 2012. As at the time the account was opened there were three signatories to the account, according to the mandate:

- (1) Nebo Chukwuemeka
- (2) Onoh Emmanuel
- (3) Chukwuemeka Nweke

We received a letter from I.C.P.C requesting for the statement of the account from inception to date, and the mandate for the account. We obliged them, by it being duly signed and endorsed by the Bank officials in a covering letter. These are the statements of accounts marked as Exhibits 'H' and 'H1'. This is the covering letter marked as Exhibit 'J'.

P.W.5 Mbang Esu, a financial investigator with I.C.P.C told the court I have in the course of my duty met the accused. I met him in the course of carrying out investigation in a petition that was assigned to my team by my unit head. The petition was dated June 2009 and signed by one Hon. G. O. Udeh.

On receipt of the petition, the team commenced investigation, during which relevant documents from Ezeagu Central Local Government Development Area were retrieved. We also retrieved relevant documents from First bank and Eco Bank Plc. Parties mentioned in the petition were invited to the commission for interview, and others not expressly mentioned, but were discovered in the course of the investigation were also

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invited for interview, and they all volunteered their statements after the interaction we had with them.

The investigation revealed that the accused person Mr. Festus Ozonwanji who was then the Treasurer of Ezeagu Central Development Area used his position as the Treasurer to convert the some of N186,000 (One hundred and eighty six thousand) Naira Development Area fund into his personal use.

Document analysis revealed that the accused person made application for the said sum to the Executive Secretary Local Government Service Commission Enugu State in November 2008. The said sum in accordance with the application was kilometer allowance for the months of October, November and December 2008.

The Application was endorsed and recommended for approval by the then Administrator of the Development Area. However this application was not approved, but curiously the accused person raised a payment voucher using his position as the Treasurer of the Development Area and effected this payment to himself.

Sometime in January 2009, the accused photocopied the same unapproved application with the description of kilometer allowance claim for the months of January, February and March, 2009, and equally effected another payment to himself.

When the accused person was confronted with this evidence, he admitted in the statement volunteered to the team by him that he effected the two payments of N186,000 each without due authorization.

Our investigation also revealed that the accused person collected the sum of N392,000 (Three hundred and ninety two thousand naira), twice as first twenty eight days in lieu of hotel accommodation on his posting to the Development Area.

The documents retrieved in respect of the first 28 days payment revealed that the first sum of N392,000 was paid to him in November 2008, by the Development Area in which he was the treasurer, while the

second payment was made in January 2009 by the cashier of the Ezeagu Local Government Council, Mr. Titus Ozude. This second payment was also confirmed by the officer in charge of payroll verification in the Local government Service Commission, Enugu Reverend Ejike Eze. Rev. Ejike Eze in the statement he volunteered to us told us that the accused told him that he was not paid in November 2008, because of lack of fund in the Development Area, but the documents before us show that he was paid twice – in November 2008, and in January 2009.

Investigation also revealed that he used his position as the treasurer of the Development Area to convert the sum of N281,846 (Two hundred and eighty one thousand, eight hundred and forty six naira). This is the difference between actual allocation from Ezeagu Local Council meant for Salary payment of Development Area Staff for the months of April, May, and June 2009. This allocation were paid into the Development Area Bank account Domiciled in First Bank of Nigeria Plc. However the accused person withdrew these sums and lodged part of them in his personal current and savings accounts Domiciled in ECOBank Plc.

The allocation for April 2009 which he withdrew from the Development Area account was N1,119,997 (One million, one hundred and nineteen thousand, nine hundred and ninety seven naira). Out of this sum withdrawn from the Development Area account, he lodged N1,000,000 into his personal account with ECO Bank. That was April 2009 salary.

He also withdrew N1,119,997 (One Million, one hundred and nineteen thousand, nine hundred and ninety seven naira). He lodged N1,000,000 into his personal account with ECO Bank. This was for May 2009 salary.

For June 2009 salary, the accused withdrew the sum of N841,852 (Eight hundred and forty-one thousand, eight hundred and fifty two naira) from the Development Area account, and lodged N800,000 into his personal account with ECO Bank.

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The difference between the money withdrawn from the Development Area account and the actual money paid into the personal account of the accused is the sum of N281,846.

The accused person after lodging the money into his personal current and savings accounts, raised payment schedules for the stated months salaries – April, May and June 2009. He then instructed his Bankers to effect the payments accordingly.

The balance remaining in his personal accounts after the payments of the salary for the three months amounted to N156,513. That is balance from the salary paid, and he converted same for his personal used.

For April salary 2009, he lodged the sum of N1,000,000. The actual salary for that month according to the schedule he sent to the Bank was N886,761.

For May 2009, he lodged N1,000,000 the actual salary for May 2009 was N945,662.

For June 2009 he lodged N800,000 the actual salary paid was N811,064.

The difference is the sum of N156,513.

This is the petition which was received against the accused person. It is tendered in evidence as Exhibit 'K'. the statement made by the accused is Exhibit 'L'. This is the payment voucher for the payment of N186,000 made in November 2008 Exhibit 'M'. This is the second payment of N186,000 made in January 2009 with same unapproved application – Exhibit 'N'. This is the voucher for the payment of the first twenty eight days for the second time, made in January 2009 – Exhibit 'P' Exhibit. 'H1' is the First Bank Statement of account of the Development Area.

In Exhibit 'F' page 11, the lodgment of the first one million in his personal account was on 3/6/2009. The second lodgment was on 29/6/2009 page 13, it was the sum of N1 Million. In Exhibit 'E', the sum of N800,000 was lodged on 29/7/2009, page 2 of Exhibit 'E'.

D.W.1 Festus Ozonwanji gave evidence in his defence as follows:


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When I was in service as an Accountant/Treasurer at the Ezeagu Central Local Government Development Centre, Ogodome in Ezeagu Local Government Area, my employers were the Local Government Service Commission, Enugu.

My schedule of duties as treasurer in the Development Centre include keeping custody of Government money meant for the staff of the Development Centre, paying salaries and entitlements to workers of the Development Centre.

Raising vouchers for statutory payments made to workers in respect of leave allowances, kilometer allowances, duty tour allowances and imprest disbursements received from Local Government Service Commission for the benefit of workers.

There was no petition of any kind written against me as a treasurer or at all until I retired from service. There were no queries ever issued to me by my employers in respect of the performance of my duties as a treasurer. I was invited through phone call, and text message to I.C.P.C. Abuja. I went there as invited with all the documents they asked me to come with. On arrival, the I.C.P.C officials received all the documents from me, acknowledged the receipt of the documents in duplicates, and thereafter they grilled or interrogated me. They subjected me to answering already prepared questions from them. And they compelled me to write down answers to their questions as my statement.

My demand to know if there was a petition against me to enable me respond to same was not responded to. Curiously while I was being interrogated in one of the rooms, the Administrator of Ezeagu Central Development Centre Mr. N. C. Igboekwu and the Chairman of Ezeagu Local Government Council Barrister Julius Ogbuke came into the room, gave me a mischievous smile and left, while I was still with the I.C.P.C officials.

When I finished writing down my dictated statement by I.C.P.C officials, they seized my handset and detained me. I filed an action for the

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enforcement for my fundamental right against I.C.P.C. Judgement was given in my favour in the Suit No. FHC/EN/M/29/2010. The judgement is admitted as Exhibit 'Q'. One of the I.C.P.C officials Esu Mbang told me that I had the guts to sue I.C.P.C. That they are charging me to court now. I make bold to say that I was not investigated by I.C.P.C officials. All the charges against me are frame ups, and are false.

I was having an issue with the Administrator of the Development Centre, and the Chairman of the Local Government Council, Igboekwu and Ogbuke respectively. The problem was that the Administrator of the Development Centre was not following accounting due process in the receipt and payment of money received from the Government for workers. I advised them orally, but he refused to heed my advise until it became disturbing to me, and I had to write to my employers, so as not to be a party to the abuse of due process and reckless spending of money belonging to the centre.

I did not convert any money belonging to the Development Centre to my personal use. The said N186,000 was my statutory entitlement in respect of kilometer claims allowance paid by the commission to all the Treasurers and Heads of Personnel Management in all the Local Government Councils and Development Centres in Enugu State.

The second kilometer claims are paid to those entitled to it every quarter. The H.P.M. who worked with me Mrs. Onyema A. U received this same equal payment and also other treasurers and H.P.M's in other Local Government Councils and Development Centres in Enugu State. It is paid to those who use their personal cars to run official assignments.

I am entitled to Duty tour allowance of first 28 days. The said first 28 days allowance was an allowance and is still an allowance paid to treasurers and HPM's for any transfer. That enables them to stay in a Hotel with their families for the first 28 days of their transfer. For my cadre, my entitlement was N392,000 for each transfer I was transferred from Enugu Central Development Centre, Aguowo to Amayi Local

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Development Centre in Isiuzo Local Government Area. I and other Treasurers in that transfer letter were not paid our entitlement of first 28 days then, due to paucity of funds. Then in October, 2008, I was transferred again from Amayi to Ezeagu Central Development Centre. I became entitled to another first 28 days allowance. By this period, funds became available to the Local Government System. And the Commission told those of us owed first 28 days and kilometer allowances to come for it. The commission paid the two outstanding first 28 days through the Ezeagu Local Government Council. I did not pay any irregular payment to myself. It was genuine claim and entitlements.

There was no money left after the payment of salaries. Salaries are pay rolled according to everybody's salaries, deductions are made, and workers paid net as balance. Salaries cheques are written based on gross salary in the emolument vouchers by the local Government Service Commission accountants. These gross salaries cheques are given to us to cash the gross from the bank and remove deductions. The deductions are, Union dues, and payee tax. It is the net salary that the worker is entitled to. The deductions are paid to the Union Chairman at the commission's Head Quarters, and the payee tax deductions are paid to the Board of Internal Revenue Enugu. The deductions are paid to the respective bodies every month. It is these deductions that I.C.P.C claims to be balance left. They did not investigate the matter, otherwise I would have explained everything to them.

The sum of N281,846 said to be the difference in the salaries of April, May and June 2009, are the deductions which I have talked about. I am now retired. Retirement letter is Exhibit 'R'.

At the conclusion of evidence, learned counsel for the parties exchanged written addresses.

The defence counsel submitted the following issues for the determination of the court:

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- i) Whether the prosecution has proved their charge against the accused person from their evidence.
- ii) Whether the accused person is entitled to an order of discharge and acquittal from his evidence.

The prosecuting counsel submitted the following issues for the determination of the court:

- i) Whether the prosecution has proved each of the counts against the accused person”?
- ii) Whether from the evidence before this Honourable court, the accused person can be convicted?

For ease of reference, I shall reproduce hereunder, the 5 count charges preferred against the accused person.

Count No. 1: Statement of Offence

Using position as public officer to confer corrupt advantage on self contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

Particulars of the Offence

Festus Ozonwanji (m) in November 2008 or thereabout, used his position as the Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt advantage of the sum of N186,000 (One hundred and eighty six thousand naira) on himself. Vide Treasury payment voucher No. 26 dated 19/11/2008 as kilometer allowance for the months of October-December 2008 without approval.

Count No. 2: Statement of Offence.

Using position as public officer to confer corrupt advantage on self contrary to and punishable under section 19 of the Corrupt Practices and Other Related Offences Act, 2000

Particulars of The Offence

Festus Ozonwanji(m) in January 2009 or thereabout, used his position as the Treasurer of Ezeagu Central Local Government

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Development Area Council to confer a corrupt advantage of the sum of 186,000 (one hundred and eighty six thousand naira) on himself vide Treasury voucher No. 36 dated 16/1/09 as kilometer allowance for the months of January-March 2009 without approval.

Count No. 3: Statement of Offence.

Using position as public officer to confer corrupt advantage on self contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000

Particulars of Offence.

Festus Ozonwanji (m) sometime in January 2009 or thereabout, used his position to confer a corrupt advantage of the sum of N392,000 (Three hundred and ninety two thousand naira) on himself as first 28 days allowance in lieu of hotel accommodation for a second time after having received an earlier payment of N392, 000 in November, 2008 from coffers of Ezeagu Central Development Area Council in November, 2008.

Count No. 4: Statement of Offence

Using position as public officer to confer corrupt advantage on self contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

Particulars of Offence.

Festus Ozonwanji (m) Sometime between the months of April-August 2009 or thereabout, used his position as Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt advantage of the sum of N281,846 (Two hundred and eighty one thousand, eight hundred and forty six naira) on himself by diverting funds meant for the payment of April, May and June 2009 salaries of staff of Ezeagu Central Development Area Council.

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Count No. 5 – Statement of Offence.

Using position as public officer to confer corrupt advantage on self contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

Particulars of offence

Festus Ozonwanji (m) Sometime between the months of April-August 2009 or thereabout used his position as Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt advantage of the sum of N156,513 (one hundred and fifty six thousand, five hundred and thirteen naira) on himself by retaining in his personal Eco bank Account No. 1191060160063601, the remnant of moneys meant to be disbursed as salaries for staff of Ezeagu Central Development Area Council for the months of April, May and June 2009.

Now Section 19 of the Corrupt Practices and Other Related Offences Act under which this accused person is charged provides as follows:

“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 particulars of the offence alleged in count No. 1, are that the accused person in November, 2008 or thereabout, used his position as the Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt and advantage of the sum of N186,000 (One hundred and eighty six thousand Naira) on himself vide Treasury payment voucher No. 26 dated 19/11/08 as kilometer allowance for the months of October-December 2008 without approval.

While the particulars of the offence alleged in count 2 are that the accused used his position as Treasurer of Ezeagu Central Local

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Government Development Area Council to confer a corrupt advantage of the sum of N186,000 (One hundred and eighty six thousand Naira) on himself vide Treasurer payment voucher No. 36 dated 16/1/09 as kilometer allowance for the months of January-March 2009 without approval.

The evidence of the prosecution is that the accused used his position as the Treasurer of Ezeagu Central Development Area to Convert the sum of N186,000 (one hundred and eighty six thousand naira) of the Development Area's fund to his personal use. That the accused made application to the executive Secretary Local Government Service Commission Enugu State in November 2008. That the said sum was for kilometer allowance for the months of October, November and December 2008. The application was endorsed and recommended for approval by the then Administrator of the Development Area. However this application was not approved, but curiously the accused person raised a payment voucher using his position as the treasury of the Development Area and effected this payment to himself.

That sometime in January 2009, the accused photocopied the same unapproved application with the description of kilometer allowance claim for the months of January, February and March 2009, and equally effected another payment to himself.

When the accused person was confronted with this evidence, he admitted in the statement volunteered to the team by him that he effected the two payments without due authorization.

The accused person's defence to these allegations is that he did not convert any money belonging to the Development Centre to his personal use. That the said N186,000 was his statutory entitlement in respect of Kilometer allowance claims paid by the commission to all the Treasurers and Heads of Personal Management in all the Local Government Councils and Development Centres in Enugu State.

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The second kilometer allowance are paid to those entitled to it every quarter. The HPM who worked with him one Mrs. Onyema A. U. received this same equal payment and also other treasurers and HPM's in other local Government Councils and Development Centres in Enugu State. It is paid to those who use their personal cars to run official assignment.

The prosecution tendered Exhibits M and N in support of their evidence. The two exhibits clearly show that there was an application by the accused person to the Executive Secretary of the Local Government Service Commission. The applications were endorsed and recommended for approval by the Administrator of the Development Centre, but the Executive Secretary did not approve the application.

The claim of the accused person is that the kilometer allowance is his entitlement. And that it was paid to other Treasurers and HPM's who used their personal vehicle for official assignment and that it is paid quarterly. This piece of evidence was never denied nor contradicted. The evidence of the accused shows that one Mrs. Onyema A. U. the H.PM in the Development Centre was paid the kilometer allowance for the period January-March 2009. And the P.W.5 indeed confirmed this fact.

The accused put up application to the Executive Secretary of the Local Government Service Commission for the payment of his entitlements. The applications were neither approved nor rejected by the officer, despite the fact they were recommended for approval. It seems to me that the executive secretary was bound to approve or reject the application.

I find as a fact that the accused person is entitled to the payment of these sums of money. That is to say the sum of N186,000 for the months of October-December 2008, and the further sum of N186,000 for the months of January-March 2009.

The payment of this kilometer allowance to all the other persons, particularly Mrs. Onyema A. U, was not queried why should the payment to the accused be made an issue. Furthermore I do not see how the

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payment of the accused person's entitlement will amount to corrupt conversion or conferring on himself corrupt advantage. The prosecution has harped on the fact that the payment of the accused person's entitlements were not approved. Permit me to ask the question. If the accused was not entitled to those payments, would the approval by the Executive Secretary cure the fact that he was not entitled to the payment? I do not think so. In the same vain, the non-approval or rejection by the Executive Secretary of the Local Government Service Commission does not detract from the fact that it is the accused person's entitlement. Even the Holy Writ acknowledges the fact that a Labourer deserves his wages.

In the circumstance of this case, I hold that the prosecution has failed to prove counts 1 and 2 beyond reasonable doubt. I therefore find the accused person not guilty of counts 1 and 2.

The particulars of the offence alleged in count No. 3 are that sometime in January 2009 or thereabout the accused used his position as the Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt advantage of the sum of N392,000 (Three hundred and ninety two thousand naira) on himself as first 28 days allowance in lieu of hotel accommodation for a second time after having received an earlier payment of N392,000 in November 2008 from the coffers of Ezeagu Central Development Area council in November, 2008.

P.W.1 told the court that he pays imprest to Ezeagu Central Development Centre. He also pays the first 28 days allowance.

According to him, if some one comes on transfer and the first 28 days is approved for the person, he pays. That he paid the accused Mr. Ozonwanji the first 28 days in the year 2009. That the first 28 days payment is for the personal benefit of Mr. Ozonwanji.

P.W.2 told the court in his evidence that the accused, Mr. Ozonwanji was the Treasurer for Ezeagu Central Development Centre between 2008 and 2009. That Mr. Ozonwanji presented a claim for first 28 days allowance, in January 2009, and he brought it to his notice, that he had

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presented the claim earlier in November 2008. That Mr. Ozonwanji's response was that it was not paid in 2008, that is why he applied for it to be included in January 2009. And he did not know if it was paid to Mr. Ozonwanji in 2008.

P.W.5 told the court that their investigation revealed that the accused collected the sum of N392,000 twice as first 28 days allowance in lieu of hotel accommodation on his posting to the Development Area. The documents retrieved in respect of the first 28 days payment revealed that the first sum of N392,000 was paid to the accused in November 2008, by the Development Area in which he was the treasurer, while the second payment was made in January 2009 by the cashier of Ezeagu Local Government Council. That documents show that he was paid the sum twice – In November 2008, and January 2009. He referred to Exhibits O and P.

D.W.1 the accused in his defence stated that he is entitled to duty tour allowance of first 28 days. The said first 28 days allowance is an allowance paid to Treasurers and HPM's for any transfer. It enable them stay in on hotel with their families for the first 28 days of their transfer. For his cadre, his entitlement is N392,000 for each transfer. That he was transferred from Enugu Central Development Centre, Aguowo to Amanyi Local Development Centre in Isiuzo Local Government Area. That he and other treasurers in that transfer letter were not paid their entitlement of first 28 days due to paucity of fund. Then in October 2008, he was transferred again from Amanyi to Ezeagu Central Local Development Centre. That he became entitled to another first 28 days allowance. By this time, funds became available to the local government system and the commission told those owed first 28 days and kilometer allowances should come for it. The commission paid the two outstanding first 28 days through the Ezeagu Local Government Council. That he did not make any irregular payments to himself.

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The allegation of the prosecution in this count is that he conferred a corrupt advantage on himself by paying himself the first 28 day allowance for the second time after having received an earlier payment.

The prosecution tendered in evidence Exhibit 'P' in support of the evidence that the accused received a second 28 days allowance in January 2009.

The prosecution indeed admitted that the accused is entitled to payment of first 28 days allowance. Their complaint however is that he received the payment twice for the same transfer.

As I said earlier, the prosecution tendered Exhibit 'P' in support of their case. Now exhibit 'P' is a bundle of three documents. It is trite that a party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. It is not the duty of the court to tie each bundle of documentary exhibits to specific aspects of the case for a party, when the party has not done so himself. See **INIAMA v. AKPABIO (2008) 17 NWLR (PT. 1116)**. Furthermore, in the case of **NDOMA-EGBA v. ACB PLC**, the Supreme Court observed as follows:

"The function of a court is to decide between the parties on the basis of what has been so demonstrated. What was demonstrated in court at the trial failed to support the prosecution's case and this Magistrate should have dismissed the case. It was not part of his duty to do cloistered justice by making an inquiry into case outside court – not even by the examination of documents which were in evidence, when the documents had not been examined in court and the magistrate's examination disclosed things that had not been brought out in court, or were not things that at least must have been noticed in court".

In view of the foregoing, I am precluded from examining the bundle of documents marked as Exhibit 'P', as they were not examined in open court and tied to specific aspect of the prosecution's case.

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Now the defence of the accused is that for an officer of his cadre, he is entitled to the sum of N392,000 for each transfer, as first 28 days allowance.

That he was transferred from Enugu Central Development Centre Aguowo to Amanyi Local Development Centre in Isiuzo Local Government Area. That he and other treasurers in that transfer letter were not paid their entitlement of first 28 days due to paucity of fund. Then in October 2008, he was transferred again from Amanyi Development Centre to Ezeagu Central Local Development Centre. That he became entitled to another first 28 days allowance.

This piece of evidence by the accused person has not been discredited, or contradicted by the prosecution. I therefore believe the evidence of the accused person.

On the whole, I have come to the conclusion that the prosecution has failed to prove count 3 against the accused person.

Count 4: Particulars of Offence

The accused sometime between the months of April-August 2009 or thereabout, used his position as Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt advantage of the sum of N281,846 (Two hundred and eighty one thousand, eight hundred and forty six naira) on himself by diverting funds meant for the payment of April, May and June 2009 salaries of staff of Ezeagu Central Development Area council.

P.W.1 gave evidence that in the instance when he had paid the salaries of the staff of Ezeagu Central Development Centre, the procedure followed was "The Cheque is raised in my name and the staff of Ezeagu Central Development Centre were directed to follow me to the bank and get their salaries. I withdrew the cash and paid them cash. I paid them with vouchers".

P.W.3 told the court that the accused opened two accounts with Ecobank Plc. She tendered the mandate card of the accused as Exhibit 'B'.

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the salary schedule sent to the bank by the accused is tendered in evidence as Exhibit 'C'. The accused person's bank statements are tendered as Exhibits D, E, and F.

P.W.4 told the court that the account of Ezeagu Central Development Area was opened on 26th November 2008 and the last activity in the account happened on 12th January 2012. As at the time the account was opened, there were three signatories to the account according to the mandate. They are:

- (1) Nebo Chukwuemeka
- (2) Onoh Emmanuel
- (3) Chukwuemeka Nweke

They received a letter from I.C.P.C to provide them with the statement of the account from inception, and the mandate form. The statements of account were tendered as Exhibits H and H1 while the covering letter was tendered as Exhibit 'J'.

P.W.5 told the court that in the course of their investigation, relevant documents from Ezeagu Central Local Government Development Area were retrieved. They also retrieved relevant documents from First bank and Ecobank Plc.

That investigation also revealed that the accused used his position as treasurer of the Development area to convert the sum of N281,846. This is the difference between actual allocation from Ezeagu Local Council meant for salary payment of Development Area Staff for the months of April, May and June 2009. The allocation were paid into the Development Area bank account domiciled in First bank of Nigeria Plc. However the accused withdrew these sums and lodged part of them in his personal current and savings accounts domiciled in Ecobank Plc.

The accused in April 2009 withdrew from the account of the Ezeagu Central Development Area the sum of N1,119,997 (One million, one hundred and nineteen thousand, nine hundred and ninety seven naira) for

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staff salary. Out of this sum withdrawn, he lodged the sum of N1,000,000 (one million naira) into his personal account with Eco bank.

In May 2009, the accused withdrew N1,119,997 (one million, one hundred and nineteen thousand, nine hundred and ninety seven naira). He lodged N1,000,000 (One million into his personal account with Ecobank Plc.

For June salary 2009, the accused withdrew the sum of N841, 852 (eight hundred and forty one thousand, eight hundred and fifty two naira) from the Development Area account, and lodged N800,000 (eight hundred thousand naira) into his personal account with Ecobank.

The difference between the money withdrawn from the Development Area Account and the actual money paid into the personal account of the accused is the sum of 281,846.

The evidence of the accused is that there was no money left after the payment of salaries. That salaries are payrolled according to everybody's salaries. Deductions are made, and workers paid the net as salaries. That salary cheques are written based on gross salary in the emolument vouchers by the Local Government Service Commission Accountants. The gross salaries cheques are given to him to cash from the bank, and remove the deductions. The deductions are Union dues, and payee tax. It is the net salary that the worker is entitled to. The tax deductions are paid to the Board of Internal Revenue Enugu, while the Union Dues are paid to the Union Chairman at the Commission's Head quarters. The sum of N281,846 said to be the difference in the salaries of April May and June 2009, are the deductions which he had explained.

Now Exhibit 'C' is a bundle of documents tendered by the P.W.3 as the salary schedule sent to Ecobank by the accused person. Exhibits 'E' and 'F' were also tendered by the P.W.3 as the statements of account of the accused person.

P.W.4 tendered in evidence Exhibits H and H1 as the statements of accounts of the Ezeagu Central Development Centre.

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Apart from tendering these documents in evidence, that is Exhibits C, E, F, H and H1, no effort was made to analyse them in open court in order to specifically relate each such document to that part of the prosecution's case in which the documents are being tendered. It is not the duty of this court to tie each bundle of documentary exhibits to the specific aspect of the case for the prosecution. See **INIAMA v. AKPABIO** (Supra) see also **NDOMA-EGBA v. A.C.B PLC** (supra).

In the circumstance, there are no documents supporting the allegation against the accused person. There are no cheques showing that the accused was issued cheques for the payment of the salaries of the staff of the Development Centre. There is no evidence showing that the accused withdrew money from the account of the Development Centre, and paid same into his personal account. On the whole, I hold that the prosecution has failed to prove this allegation against the accused person. I therefore find him not guilty.

Count 5: Particulars of Offence.

That the accused sometime between the months April-August 2009 or thereabout, used his position as the Treasurer of Ezeagu Central Local Government Development Area Council to confer a corrupt advantage of the sum of N156,513 (one hundred and fifty six thousand, five hundred and thirteen naira) on himself by retaining in his personal Eco bank Account No. 1191060160063601, the remnant of moneys meant to be disbursed as salaries for staff of Ezeagu Central Development Area Council for the months of April, May and June 2009.

The prosecution gave evidence that the accused person, after lodging the money into his personal current and savings accounts, raised payment schedules for the payment of salaries for the months of April, May and June 2009. He then instructed his bankers to effect payments accordingly.

The balance remaining in his personal accounts after the payment of salary for the three months amounted to N156,513. That is the balance remaining from the salary paid, and he converted same for his personal use.

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The defence of the accused is that no money was left after the payment of salaries, as salaries are payrolled according to everybody's salaries. Deductions are made and workers are paid net salaries. Cheques are written based on gross salary in the emolument vouchers by the Local Government Service Commission accountants.

The prosecution did tender Exhibit 'C' which is said to be the salary payment schedule sent to the Ecobank for the payment of staff salaries for the months April, May and June, 2009.

This bundle of documents collectively marked as Exhibit 'C' were not analysed in open court to show how much was paid as salaries to each worker each for month April, May and June, and how the balance of N156,513 came about. Infact there is no evidence that the accused withdrew any money from the account of Ezeagu Central Development Centre. This is because Exhibits H and H1 were not analysed in open court. Furthermore exhibits E and F were not analysed in court to show that there was a balance after the payment of staff salaries which the accused person converted to his own use.

In the circumstance, I am of the view that this court has not been proved against the accused person.

On the whole, I hold that the prosecution has failed to prove the guilt of this accused person in any of the 5 count charges. Consequently, this accused person is hereby discharged and acquitted.

Ephraim C. Otti (Esq.) }
 Dennis N. Okoro (Esq.) } - Prosecution Counsels
 Agbanyim Nwamaka Joy (Esq.) Counsel for the Accused.

Hon. Justice A. A. Nwobodo
 Judge

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