

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI
COURT CLERKS: T. P. SALLAH & ORS
COURT NUMBER: HIGH COURT NO. 19
DATE: 10/12/18**

FCT/HC/CR/43/12

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----

COMPLAINANT

AND

**1. PATRICK PILLAH }
2. LUGARD EDEGBE }**

DEFENDANTS

JUDGMENT

On the 19th November, 2015 this case commenced de novo and the 1st and 2nd Defendants pleaded not guilty to the 4th amended charge. The 4th amended charge reads as follows:-

COUNT ONE

That you Patrick Pillah(m) and Lugard Edegbe(m) on or about the month of July, 2000 while being Public Officer at Abuja Municipal Area Council Abuja as Secretary of Committee for Resolution of Disputes involving land and Zonal Land Manager respectively conspired to use your said positions to confer corrupt advantage upon relations and associates of Patrick Pillah by causing the title documents of Plot SS1 Jikwoyi Extension III to be made in favour of Pax Education Resource an unregistered company belonging to Patrick Pillah's relations and associates and you thereby committed an offence contrary to Section 26(1)(c) and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act 2000.

COUNT TWO

That you Patrick Pillah(m) and Lugard Edegbe(m) on or about the month of July, 2000 at Abuja while being public officers in Abuja Municipal Area Council Abuja as Secretary of Committee of Resolution of Disputes involving Land and Zonal Land Manager respectively used your said Office to confer corrupt

advantage upon relations and associates of Patrick Pillah by causing title documents of Plot SS1 Jikwoyi Extension III to be issued in favour of Pax Education Resource an unregistered company belonging to Patrick Pillah's relations and associates and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act 2000.

COUNT THREE

That you Patrick Pillah on or about the month of October 2005 forged the Application for land form of Fine Trust Academy in its Policy File Number 9764 from 1997 to read 2005 with intent to cause damage or injury to Effiong Nsungusi the promoter of Fine Trust Academy so as to support your claim of ownership to Plot SS1 Jikwoyi Extension III in favour of Pax Education Resource and you thereby committed an offence contrary to Section 363 and punishable under Section 364 of Penal Code Act.

On the 15th February, 2016 the prosecution opened its case for hearing. Four (4) witnesses testified for the prosecution. PW1 was Chimezie Aziwulu, a former staff of Federal Capital Territory Administration and a former Surveyor posted to Abuja Municipal Area Council (AMAC) while PW2 Michael Ola Charity a Surveyor and was the Zonal Land surveyor posted Abuja Municipal Area Council (AMAC). Kyauta Kuminyawo testified as PW3, an investigating officer with Independent Corrupt Practices and Other Related Offences Commission (ICPC) and PW4 is the Nominal Complainant, Nsungusi Effiong. Several exhibits were tendered and admitted in evidence through prosecution witnesses while one exhibit in the course of hearing was rejected in evidence and marked accordingly.

The brief facts and evidence of the prosecution's case in order to prove the facts contained in the 4th amended charge goes thus:- In his testimony, PW1 stated that he knows the 1st and 2nd Defendants and that they were all working together at Abuja Municipal Area Council (AMAC). He testified that the 1st Defendant was then the Zonal Land Manager of Abuja Municipal Area Council while the 2nd Defendant was in the Land's Unit of Abuja Municipal Area Council. According to PW1 that they were all working together in Abuja Municipal Area Council between

1997 – 2000 and that Plot SS1 Jikwoyi Extension III was a Plot applied for by Fine Trust Academy and Fine Trust Academy was allocated the Plot. PW1 concluded his evidence that he is not aware of the allocation of Plot SS1 Jikwoyi Extension III to Pax Education Resource Limited.

PW2 was the resident Surveyor in Abuja Municipal Area Council between 2004 to about February, 2011. In her testimony, she stated that she was the Surveyor in charge of all Surveys and mapping activities within Abuja Municipal Area Council at that time and that they were colleagues with the 1st and 2nd Defendants working in Abuja Municipal Area Council and that the 2nd Defendant was her Senior colleague. According to PW2 while in the office the 1st Defendant brought an application for processing of his title deed plan in respect of a Plot in Jikwoyi. According to PW2 the application was not processed because when the file was brought to them, they followed due process to ascertain if the name of the person is on the list and they also checked the Cartography Department whether the plot in the file has been charted. PW2 testified that on checking the file, she discovered that the plot was charted in 2005 in favour of Fine Trust Academy as at that time and that a Plot can only be charted once and therefore the file could not be charted for Pax Education Resources. PW2 testified further that she then wrote or minuted that the Plot has been charted for another allottee. The two policy files of Fine Trust Academy and Pax Education Resource were received in evidence through PW2 as exhibits 5 and 5(a) respectively.

Further, PW2 when shown exhibit 5(a), the policy file of Pax Education Resource Limited she testified that the application for allocation of the plot was made by P.T.A Nigeria Limited and the allocation letter was made in the name of Pax Education Resource. PW2 stated that the minutes in the last page of her colleague in exhibit 5(a) showed that the plot has been charted already in favour of Fine Trust Academy with File Number MISC 9764 and she identified the title deed on the last page of exhibit 5 being signed by her in 2005. She then testifies that when the title deed is signed it gives the allottee the right to the plot. PW2 then concluded her testimony by saying that it is not consistent for one person to apply for allocation and then the allocation of the Plot carry another person's name.

PW3, Kyauta Kumiyawo is a staff of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the investigating officer in this case. According to PW3, a petition written on behalf of Mr. Effiong Nsungusi against the 1st and 2nd Defendants was referred to him for investigation. PW3 states that the petition alleged that the land allocated to the petitioner in 1997 by Abuja Municipal Area Council was re-allocated to Pax Education Resource. PW3 then testified that in the course of their investigation, they visited Abuja Municipal Area Council and demanded for the two policy files of the companies and that the policy file of Pax Education Resource was released to them immediately while that of Fine Trust Academy was not found as at that time. However, PW3 testified that they studied the policy file of Pax Education Resource and they discovered that it was P.T.A Nigeria Limited that applied for the land to Abuja Municipal Area Council but the allocation came out in the name of Pax Education Resource. PW3 stated that they then conducted a search at the Corporate Affairs Commission (CAC) to ascertain who owns Pax Education Resource. PW3 testified that the search report indicated that P.T.A Nigeria Limited is a Director in Pax Education Resource and also that the 1st Defendant is a Director of P.T.A Nigeria Limited. PW3 further testified that they discovered in the course of their investigation a link between P.T.A Nigeria Limited and Pax Education Resource. It was at this junction, according to PW3 that they invited the 1st Defendant to throw more light on the two companies. PW3 testified that the 1st Defendant told them that the General Manager of Pax Education Resource is his relation. Further, PW3 testified that they further discovered that as at 2000 when the allocation was issued in favour of Pax Education Resource, the Company was not registered and not in existence. PW3 avers also that the policy file of Pax Education Resource revealed that the company processed the land (plot SS1 Jikwoyi Extension III) with Abuja Municipal Area Council and when the policy file got to Land Surveying Department, it was discovered that the land Plot SSI Jikwoyi Extension III had been charted in favour of Fine Trust Academy and a Technical Deed Plan (TDP) already drawn in favour of Fine Trust Academy and the Surveyor, PW2 cannot chart the land again for Pax Education Resource. PW3 testified that by the minutes of the Surveyor, PW2 they

ascertained as a fact that the policy file of Fine Trust Academy exist in Abuja Municipal Area Council.

PW3 then testified that they invited the Land Registry Staff of Abuja Municipal Area Council to brief them on the existence of the policy file of Fine Trust Academy. Thus, PW3 testified that in the course of interview with the Registry Staff, the policy file of Fine Trust Academy was produced. PW3 testified that when they studied the policy file of Fine Trust Academy, they discovered that some pages in the policy file were removed and missing. He stated also that they discovered that Fine Trust Academy applied for the land since 1997, three years before the allocation to Pax Education Resource. According to PW3 they further discovered that the application form for land allocation of Fine Trust Academy was altered by the 1st Defendant from 1997 to 2005. PW3 stated that they now called on the Nominal Complainant Mr. Effiong whether he is aware of the alteration and Mr. Effiong, PW4 said that he was able to make a photocopy of the application before he submitted the original copy to Abuja Municipal Area Council.

PW3 stated that in the course of their investigation, they discovered further that the application of Fine Trust Academy was processed and the land charted in favour of Fine Trust Academy. PW3 testified that when the 1st Defendant was confronted with the evidence, the 1st Defendant confessed to them that he was the person that processed the land in favour of Pax Education Resource, a company of his cousin and relation.

PW3 testified also that they invited the 2nd Defendant. And that the 2nd Defendant confessed that he was the signatory to the two allocation letters for Fine Trust Academy and Pax Education Resource. According to PW3 that the 2nd Defendant confessed that it was a human error for him to have signed Pax Education Resource allocation letter after he had earlier signed the allocation letter of Fine Trust Academy. Then exhibits 6, 6(a), 7, 7(a),(b) 9, 10, 11 and 11(a) were admitted in evidence through PW3. While the photocopy of the application form of Fine Trust Academy was rejected in evidence and marked as R8.

The Nominal Complainant, Effiong Nsungusi, PW4 is the Proprietor of Fine Trust Academy. He testified that he knows the 1st and 2nd Defendants. He specifically testified that he knows the 1st Defendant as a Land Officer in Abuja Municipal Area Council while the 2nd Defendant as Zonal Manager. PW4 then testified that sometimes in 1997, he obtained a land application on which he completed for allocation of land in favour of Fine Trust Academy. PW4 testified that he was allocated Plot SSI Jikwoyi and he paid all the necessary fees and he was issued with title deed plan of Plot SS1 Jikwoyi Extension III. According to PW4 he took possession of the land and indeed was farming on the land and had taken possession. He testified that sometimes in 2005 Mr. Patrick Pillah, the 1st Defendant met him in his school and said to him that he was informed that he was in possession of title documents of SS1 and PW4 said 'yes'. According to PW4 that the 1st Defendant told him that the land belongs to him and that he has all the title documents. PW4 testified that the 1st Defendant requested to see PW4's title documents and the 1st Defendant showed to him the photocopies of his own title documents over the land. PW4 testified that he told the 1st Defendant that he will not show him his title documents. PW4 testified further that the 1st Defendant told him that in his own interest he should return the land papers and he should not go to that land again.

PW4 testified that after about few weeks he was invited by the Divisional Police Officer Jikwoyi Police Station and PW4 reported at the Station. According to PW4, the Police told him that he had trespassed into somebody's land and PW4 told the Police it was not true. PW4 testified that the Investigation Police Officer asked him whether he has title documents of the land and PW4 answered 'yes'. PW4 then produced his title documents and the Police then told him that they cannot resolve this issue as both of them have title documents and advised them to go to the place that issued them with the title documents. PW4 testified that sometimes in 2008, the 1st Defendant went to the land with some people and dug a foundation round the land. PW4 testified that he wrote a letter of complaint to Abuja Municipal Area Council for illegal encroachment of the land. According to PW4, Abuja Municipal Area Council investigated the matter in 2008 and asked the 1st

Defendant to stop. PW4 testified that sometimes in 2010, he was invited again by the Jikwoyi Police Station. According to PW4, when he got to the Station it was a new Divisional Police Officer and another Investigation Police Officer assigned to investigate the allegation against him of destroying 10,000 Nine Inches Blocks and that he also burnt down a store stocked with building materials. PW4 stated that he told the Police that he did not know what they are talking about but he knows that he has a land in which himself and the 1st Defendant are contesting since 2005. Then the Police, according to PW4 asked them to go and sort out the problem with Abuja Municipal Area Council after he had shown to them the title documents. PW4 testified that later the new Investigating Police Officer told him that he was going to write to Abuja Municipal Area Council to ascertain who owns the land and that both of them should stay clear of the land. PW4 testified that for almost a year he did not go to the land but only to find out that within the period the 1st Defendant had fenced the land and put up a security post. PW4 testified that he then reported the matter to the Police and the Investigating Police Officer told him that they had received a letter from Abuja Municipal Area Council confirming that the land belonged to the 1st Defendant. PW4 stated that he expressed dissatisfaction with the Police and the Police told him that if he takes any step as regards to this matter, he will be charged to Court for arson. PW4 testified that he wrote a petition to the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) started inviting the parties. According to PW4, after one week, the then Investigating Police Officer came to his school and arrested him and he was charged to Court on the same date at about 3:00pm. PW4 stated that he pleaded not guilty to the information and he was remanded in prison custody for four days before he secured his release on bail.

After the testimonies of PWS 1, 2, 3 and 4, they were cross examined and discharged. Hence, at the conclusion of evidence by the prosecution, the Defendants opened their defence. The 1st Defendant called six witnesses that testified on his behalf. The witnesses are Reverend Terwase Ejiki who testified as

DW1. DW2 is Fayumiorbo while DW3 was Dom Richard Tor. The 1st Defendant testified as DW4, Lawal Galadima, a staff of Federal Capital Development Authority testified as DW5 while the last witness testified pursuant to a subpoena as DW7. He is one Sgt Sabo Yakubu with the Jikwoyi Police Station. The 2nd Defendant testified on his behalf as DW6. Exhibits 1, 2, 3, 4 and 4(a) were admitted in evidence through PW1 on behalf of the 1st Defendant while exhibit 13 was admitted in evidence on behalf of the 1st Defendant through PW4.

In his testimony, DW1 stated that he knows the 1st Defendant in 1984 while he was teaching in Makurdi. According to DW1 the Bishop of Abuja Diocese made him as Director of Lands Administration for purpose of obtaining lands for Parishes. He testified that when the road construction was to be done along Nyanya, their land in Jikwoyi was affected and many Churches were affected and they were re-allocated to Phase 3 of Jikwoyi, Abuja. According to DW1, he then applied for three (3) different plots – Church, Vocational Centre and School. DW1 testified that the applications were granted with different sizes. According to him, the size of the plot for the school was two (2) hectares and it is called Pax Education Resource with Plot No. 2209. DW1 testified that the land application form for Pax Education Resource was submitted by Mr. Joseph on his behalf in July, 2000. DW1 testified that he first applied for the land with the name of P.T.A meaning “Pius Terwase Ajike” and the land was allocated in the name of Pax Education Resource as he was advised by the Land Registry to submit an educational name. He testified that the 1st Defendant is not a Shareholder or a Director in either P.T.A or Pax Education Resource. DW1 testified that the 1st Defendant played no role in processing his land application. He however testified that when his operation Manager, Mr. Joseph Jande reported to him that he was having difficulty with the land as someone had come out to say the land belonged to him, DW1 asked Joseph Jande to meet the 1st Defendant for help being a Senior Officer in the Land Department. The allocation letters of Plots 2208 and 2209 were admitted in evidence as exhibits 15 and 15(a) respectively.

DW2 is a Civil Servant and works with the Department of Urban and Regional Planning of Federal Capital Development Authority and he was posted to Abuja Municipal Area Council in

2010. He testified that he knows the 1st Defendant when this case started and investigation were carried out in respect of Plot SS1 Jikwoyi Village Extension III Layout. According to him when the Police sent a letter of investigation wanting to know who is the allottee, the letter was handed over to them by his predecessor. DW2 testified that on checking the records, the names of Pax Education Resource and Fine Trust Academy were on the list. According to DW2 Pax Education Resource was on Plot SS1 while Fine Trust Academy was on Plot 1170 and that based on this information, they replied the Police. DW2 testified that there exists a layout design signed in 2000 of Plot SS1. He testified that a layout design is done first before allocation of land. DW2 testified that when the Independent Corrupt Practices and Other Related Offences Commission (ICPC) came in investigating the case, they supplied them with the same information they gave the Police. He stated that the Independent Corrupt Practices and Other Related Offences Commission (ICPC) requested for the policy files of Pax Education Resource and that of Fine Trust Academy but they could only avail the Independent Corrupt Practices and Other Related Offences Commission (ICPC) the policy file of Pax Education Resource.

DW3, Dom Richard Tor in his testimony stated that he knows the 1st Defendant. According to him, on the instructions of Reverend Father Pius Ejike he filled and signed the land application form for P.T.A Nigeria Limited.

DW4 is Patrick Pillah, the 1st Defendant. In his testimony, he stated that between 2000 – 2002 he was a Senior Administrative Officer deployed to Abuja Municipal Area Council. He testified that when he was invited by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) as to what he knows about the disputed land; DW4 testified that when he looked at the title documents presented by Fine Trust Academy, he pointed out to the Independent Corrupt Practices and Other Related Offences Commission (ICPC) that the title documents were false and forged. According to him that the layout was prepared by Chris Akinbote & Co in the year 2000 and it cannot therefore be allocated in 1997 because allocations are made based on layouts and approved by the Minister of Federal Capital

Territory. He testified also that the layout being paraded was designed principally for replacement purposes. DW4 also testified that he pointed out to the Independent Corrupt Practices and Other Related Offences Commission (ICPC) that the assessment and fees signed by Alhaji Lawal Galadima was done on a Saturday while the receipts signed on Sunday and that Abuja Municipal Area Council does not transact business on Saturdays and Sundays and therefore the documents ought not have come from Abuja Municipal Area Council. DW4 then testified that Plot SSI Jikwoyi was duly allocated to Pax Education Resource as a replacement approved for the Catholic Church, hospital and school. DW4 testified that he knows PW1 Reverend Father Pius Ejike and that DW1 used to come to his office in respect of the land and that Reverend Father Pius equally introduced to him DW2 whom he later discovered that they come from the same town. DW4 testified that he has no Shares or being a Director in P.T.A or Pax Education Resource but that he was only approached by Reverend Father Pius Ejike to follow up the three applications including the land in dispute. DW4 testified that as a worker in the Land Department, he appeal to the staff processing applications for allocation of land to process the applications. DW4 stated that he is aware of the dispute in land between Pax Education Resource and Fine Trust Academy and that sometimes in 2008, Joseph Jande came to him that while they were on site constructing one Effiong Nsungusi (PW4) came to the site claiming ownership. DW4 testified that he told Joseph Jande that he knows PW4 and DW4 then led Joseph Jande and other Directors of Pax Education Resource to PW4's School where PW4 is the Proprietor. DW4 testified that he then asked Joseph Jande to show to PW4 the original title documents of the Plot. DW4 stated that later the company continued with its construction until when Reverend Father Pius Ejiki called him that somebody had come and burnt down the batcher and also pulled down the construction. DW4 testified that when he contacted PW4, PW4 denied.

In conclusion the layout plan was admitted in evidence through DW4.

DW5, Lawal Galadima testified that he was also posted to Abuja Municipal Area Council between 2002 - 2005 in the

Zonal Land Office. DW5 identified exhibit 5 and testified that exhibit 5 was said to be purportedly signed by him. He testified that exhibit 5 did not carry the format used and that the characters are different and that the assessment did not carry any date. He further testified that they usually work on Mondays to Fridays and that exhibit 5 the assessment emanated from his office and that the document was signed by him. He testified however that exhibit 13 dated 13th November, 2005 falls on a Sunday. The 2005 Calendar Year was then received in evidence as exhibit 19.

The final witness called by the 1st Defendant pursuant to a subpoena was Sgt. Sabo Yakubu. He testified as DW7. According to DW7, he was the Investigating Police Officer in the case between C.O.P V Nsungusi Effiong. The certified true copy of the record of proceedings of Senior Magistrate Court Karu and the letter of Abuja Municipal Area Council were received in evidence through DW7 as exhibits 20 and 21 respectively.

The 2nd Defendant, Lugard Edigbe testified on his behalf as DW6. He testified that he was posted to Abuja Municipal Area Council in July, 1997 to head the Zonal Land Office. He also testified that the 1st Defendant was a staff under the Zonal Office and he worked under him. DW6 testified that he has no personal relationship with the 1st Defendant or his relations except purely official work. He stated that he did not conspire with the 1st Defendant to alter the allocation in favour of the 1st Defendant's relations, Pax Education Resource Limited. DW6 testified that as the Zonal Manager of Abuja Municipal Area Council he did not allocated or influenced the allocation of land to anybody and that as the Zonal Manager then, he has to obtain the approval of the Minister Federal Capital Territory first to create a lay-out and this was done by Surveyors before submitting to the Land Allocation Committee and then compiled list of Applicants considered by the Committee. DW6 testified that after the Committee's recommendation, the list of Applicants were sent to the Director Lands for onward submission to the Minister Federal Capital Territory for approval. According to DW6 he will then convey approval of grant to the Allottees.

DW6 testified that at the Independent Corrupt Practices and Other Related Offences Commission (ICPC) office he was shown the original allocation letter of Pax Education Resource Limited which he confirmed signing. In respect of the allocation of Fine Trust Academy, DW6 stated that the signature on the allocation letter of Fine Trust Academy looks like his signature but he cannot confirmed it because the allocation is laminated. He further stated that as the Zonal Manager in-charge of lands, he cannot know all the details of the Applicants that applied for land. He then testified that the application of Pax Education Resource Limited was a replacement. He then stated that he is not aware of the application form for land by P.T.A (Nigeria) Limited but only know of the allocation letter of Pax Education Resource Limited.

In conclusion, exhibit 22, the Abuja Municipal Area Council policy file of Fine Trust Academy was admitted in evidence through DW6 by the prosecution.

At the conclusion of cross examination and re-examination of DW6, the defence concluded its case and the case was adjourned for address.

On the 17th April, 2018 parties adopted their final written addresses and the case was adjourned for judgment. However judgment could not be delivered within the three months statutory period due to the official engagement of the trial Court both within and outside jurisdiction and the absence of the 1st Defendant on the ground of bereavement. Hence the case adjourned today for judgment.

Be it as it may, in the final written address of the prosecution, the learned prosecuting Counsel submits two issues for determination: -

- (1) Whether prosecution proved the alleged offence against the Defendants beyond reasonable doubt?
- (2) Whether from the available evidence before this Honourable Court a case of wrongful conversion of Plot SS1 Jikwoyi Extension III had been established and whether the Honourable Court can order restoration of same to the victim of the crime (the Nominal Complainant)?

ISSUE ONE

At paragraphs 3.08 – 3.18 of the final written address of the prosecution, learned prosecuting Counsel submitted to the effect that the Defendants are standing trial for the first two counts of the 4th amended charge for conspiracy conferring corrupt advantage upon the relations and associates of the 1st Defendant contrary to Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

He submitted that in line with Sections 135 and 139 of the Evidence Act, 2011 (as amended) and the case of **ADEGBENRO V THE STATE (2004) 1 SCNJ 65**, the burden of proof squarely rests with the prosecution and the burden does not shift. He stated that the proof is beyond reasonable doubt and relied on the cases of **AGBOOLA V THE STATE, (2013) 5 SC1 and IGABALE V STATE, (2006) 6 NWLR (pt 975) page 100**.

The learned prosecuting Counsel submitted that criminal conspiracy is not defined by the Corrupt Practices and Other Related Offences Act but he refers me to section 96 of the Penal Code and also relied on the cases of **BABARINDE V STATE, (2013) 12 SC (pt II) page 27 at 39 – 40** where the Apex Court defined Criminal Conspiracy as follows: -

"Criminal Conspiracy is when two or more persons agree to do or cause to be done:

- (a) An illegal act, or*
- (b) An act which is not illegal by illegal means such an agreement is called "Conspiracy".*

The prosecution submitted that offence of conspiracy as when two people are charged together, each of them is deemed to have committed the offence of conspiracy. He relied on the cases of **EBENEZE AJE V THE STATE, (2006) 8 NWLR (pt 982) page 345 pages 359 – 360, UBIERHO V THE STATE, (2014) 8 NWLR (pt 1408) page 111, ODUNEYE V STATE, (2001) 2 NWLR (pt 697) page 311 and NJOVENS V THE STATE, (1973) 5 SC 17**.

Thus, the prosecution submitted that in criminal trials, the guilt of the Accused or Defendant for the commission of an offence could be established by any of the following: -

- (a) The confessional statement of the Accused;
- (b) Circumstantial evidence;
- (c) Evidence of an eye witness.

He relied on the cases of ***AGBOOLA V THE STATE (Supra), MAIGARI V STATE, (2013) 17 NWLR (pt 1384) page 425, IGRIC V STATE, (2012) 16 NWLR (pt 1327) page 522 and ABIRIFOA V STATE, (2013) 13 NWLR (pt 1372) page 587.***

Then at paragraphs 3.19 – 3.43 of the prosecution’s final written address submitted that the ingredients of the offence at paragraphs 3.15 – 3.18 of his final written address, the prosecution has proved the ingredients by the prosecution witnesses, the exhibits tendered in evidence and the confessional statement of the 1st Defendant, exhibit 11. Learned Counsel then refer to me exhibits 4, 4(a), 5, 7, 7(a) and 22 supported by the evidence of PW1 that he was instrumental to processing of the plot in question in favour of Fine Trust Academy and paid all the statutory fees in respect of the plot allocated to Fine Trust Academy.

The learned prosecuting Counsel also referred me to the evidence of PW2, 3 and 4 to the effect that Plot SS1 Jikwoyi Extension III was allocated to Fine Trust Academy in 1997.

Then the learned prosecution contended that exhibit 6 dated 30th June, 2000 is an application for land by P.T.A Nigeria Limited that led to the offer/grant of plot to Pax Education Resources in the month of February, 2000. Learned Counsel further contended that this means there was an allocation of the plot to Pax Education Resources in the month of February, 2000 even before Pax Education Resource made an application for land allocation in the month of June, 2000.

The learned prosecuting Counsel submitted that by the two allocations, one in 1997 in favour of Fine Trust Academy and the other in February, 2000 in favour of Pax Education Resources and both duly signed by the 2nd Defendant is evidence of overt act of collusion by the Defendants to deprive

the nominal complainant of his title in the plot allocated to him in 1997.

In this regard therefore, the learned prosecuting Counsel submitted that the evidence of what is said or done by any of the conspirators is admissible against all the conspirators. He referred me to ***EBENEZER AJE V STATE, (Supra) and OKOSUN V A. G. BENDEL STATE, (1985) 3 NWLR (pt 12) page 283.***

The learned prosecuting Counsel then submitted that it cannot be said that the 2nd Defendant is not aware of the existence of interest of Fine Trust Academy on Plot SS1 Jikwoyi Extension III because by his testimony on the 26th October, 2017 and 17th January, 2018 to the effect that he used to give instructions to registry staff to compile the lists of Applicants to be forwarded to Honourable Minister for approval of allocation of available plots. Learned Counsel therefore submitted that the compilation of lists of Applicants and Allottees of plots of land emanated from the 2nd Defendant and that the Minister or Chairman of Abuja Municipal Area Council are only nominal approval.

The prosecution stated that on the 17th January, 2018, the 2nd Defendant under cross examination admitted that he used to include fictitious names and non-existing company for ministerial approval and thus this clearly established the point and fact that the 2nd Defendant determined who got what when he held sway as Zonal land Manager of Abuja Municipal Area Council. He then submitted that the 2nd Defendant knew of the interest of Fine Trust Academy from the compiled list but ignored the interest of Fine Trust Academy and re-allocated the same Plot to Pax Education Resources.

The prosecution therefore argued that the above evidence established collusion between the 1st and 2nd Defendants to re-allocate the same Plot SS1 Jikwoyi Extension III to Pax Education Resources, their cronies.

On the proof whether Pax Education Resources belongs to the Relative or Associates of the 1st Defendant' the learned prosecution referred me to Section 2 of the Act where "Associate" is defined in relation to a person includes any

person who is an employee, agent, nominee or representative, trustee, firm, or incorporated company known to act subject to the directives or influence of such person". Section 2 of the Act, according to the prosecution it also defined "Relation", as father, mother, child, brother, sister, uncle, aunt and cousins where applicable and their spouses."

Learned prosecution then submitted that by the statement of the 1st Defendant, exhibit 11 confessed to the relationship with Pax Education Resources. The prosecution also refers me to the evidence of PW2, Charity Michael Olla and PW4 showing the interest of the 1st Defendant in the land and that of his associates and relations.

Further, the learned prosecution refers me to exhibit 9 the Corporate Affairs Commission (CAC) Search Report of Pax Education Resources showing P.T.A Nigeria Limited as one of the Directors in Pax Education Resources. He then contended that by exhibit 10 P.T.A Nigeria Limited has the name of 1st Defendant, Tyodzer Pillah as one of the Directors of P.T.A Nigeria Limited. The prosecution also contended that the 1st Defendant acknowledged Joseph Jande as his Cousin and the Manager of Pax Education Resources Limited and this established the fact that the 1st Defendant dominated Pax Education Resources Limited with his associates and relations.

The prosecution submitted that conspiracy being an offence perpetrated in secret the only evidence prosecution can offer in this case is circumstantial which is direct, positive and unequivocal. He submitted that the interest of 1st Defendant is glaringly displayed in Pax Education Resources through P.T.A Nigeria Limited and from the prosecution witnesses' testimonies.

At paragraphs 3.49 – 3.83 of the final written address of the prosecution, learned Counsel submitted to the effect that the testimonies of witnesses of the 1st Defendant cannot avail the 1st Defendant of the offence alleged. He submitted that the evidence of DW1 when shown exhibits 9 and 10, the particulars of Directors of P.T.A (Nigeria) and Pax Education Resource Limited during cross examination, neither the DW1 or the Catholic Church are Directors and they have no trace of

interest in same. He submitted that DW1's testimony is full of contradiction and inconsistency and therefore cannot be relied upon. He submitted further that DWS 2, 3 and 4 testimonies have been discredited during cross examination and he urged me to hold that the prosecution proved the offence of conspiracy to confer corrupt advantage upon relations and associates of the 1st Defendant beyond reasonable doubt and to answer the first issue in the affirmative.

In respect of Count Two (2) for the offence of using their office as land officer to confer corrupt advantage upon relations and associates of the 1st Defendant contrary to Section 19 of the Act, at paragraphs 3.87 – 4.13 of the final written address of the Prosecution, the learned prosecuting Counsel adopted his arguments in respect of Count one for count two as it relates to the 1st and 2nd Defendants being public officers, that is land officer by conferring corrupt advantage to relations and associates of the 1st Defendant and submitted that the prosecution has proved his case beyond reasonable doubt in respect of count two(2).

The third count relates to the 1st Defendant only contrary to section 363 of the Penal Code.

At paragraphs 4.17- 4.31 of the final written address of the prosecution, learned Counsel set out the ingredients for the offence of forgery as follows:-

- (a) That the Accused made, signed, sealed or executed the document in question or any part thereof;
- (b) With intent to cause any person to part with property or with intent to commit fraud or that fraud may be committed.
- (c) That the Accused made the documents dishonestly.

Learned Counsel then referred me to the definitions of "forgery" in the cases of **IMAM V SHERRIFF, (2005) 4NWL (pt914) page 80 at 162 and BABALOLA V STATE, (1989)4 NWL (pt115) page 264.**

The learned prosecution relied and referred me to the evidence of PWS 3 and 4 and exhibits 7 and 22 to prove the ingredients of the offence. According to the learned prosecution, PWS3 and 4 testified that the 1st Defendant manipulated documents in exhibit 22, the policy of Fine Trust Academy in order to have an edge over Fine Trust Academy owed by PW4. He submitted that the 1st Defendant must be held responsible for changing the date of Fine Trust Academy application form for land from 1997 to 2005. The learned prosecution submitted that if the Honourable Court hold that the 1st Defendant has interest in Pax Education Resources Limited and that the entity is for relatives and associates of the 1st Defendant, then it is not difficult to hold the 1st Defendant responsible for forging of the said exhibit 7 in favour of Pax Education Resources Limited. He relied on the case of **CHUKWUEMEKA N. AGWUNA V ATT. GEN. OF FEDERATION, (1995) 5 NWLR (pt396) page 418 at 438.**

The learned prosecution submitted also that it need not present two documents that is, one forged and the other genuine and handwriting analyst. He contended that where the forgery or alteration are clear and glaring on the face of the document as in this case, there is no need for handwriting analysts and no need for presenting two documents.

He therefore urged me to hold that the prosecution has proved the ingredients of count three beyond reasonable doubt.

On whether the prosecution from available evidence before the Court has established a case of wrongful conversion of plot SS1 Jikwoyi Extension III and whether the Honourable Court can order restoration of same to the victim of the crime?

Firstly, learned prosecution submitted that on 26th September, 2017, this Honourable Court granted interim forfeiture order on Plot SS1 Jikwoyi Extension III, the subject matter of the commission of crime in favour of Independent Corrupt Practice

Commission (ICPC) pending the hearing and determination of the substantive case.

Then at paragraphs 4.35- 4.45 of the final written address of the prosecution, he submitted that the administration of Criminal Justice Act, 2015 made provisions for compensation and restitution to the victim of the crime i.e the nominal complainant. He relied and referred me to sections 321 and 328 of the Administration of Criminal Justice Act, 2015.

Learned prosecution submitted that the words in section 321 and 328 Administration of Criminal Justice Act, 2015 are clear and unambiguous and as such, where the Defendants are found liable, then an order of restitution of the property to the victim of crime be made as a consequential order. He relied on the case of ***AKINGBOLA V EFCC, (2012) 9 NWLR (pt1306) page 475 at 509.***

In conclusion, the learned prosecution urged me to convict the Defendants accordingly.

The 1st Defendant filed his final written address on the 7th February, 2018 and a reply on points of law on 26th March, 2018. The learned Counsel, on behalf of the 1st Defendant distilled the following issues for determination:-

- (1) Whether the prosecution has proved beyond reasonable doubt against the 1st Defendant, the allegation of conspiracy to confer corrupt advantage upon relations and associates of the 1st Defendant by causing the title documents of plot SS1 Jikwoyi extension III to be made in favour of Pax Education Resources an unregistered company belonging to Patrick Pillah's relations and associates?
- (2) Whether the prosecution has proved beyond reasonable doubt against the 1st Defendant, the allegation that the Defendant used their offices to confer unfair advantage upon relations and associates of the 1st Defendant by

causing the title documents of plot SS1, Jikwoyi Extension III to be made in favour of Pax Education Resources an unregistered company belonging to the 1st Defendant.

- (3) Whether the prosecution has proved beyond reasonable doubt against the 1st Defendant, the offence of forgery of an application form of Fine Trust Academy in its policy file No. 9764 from 1997 to read 2005 with intent to cause injury to Effiong Nsugunsi the promoter of Fine Trust Academy so as to support the claim of title to plot SS1 Jikwoyi Extension III in favour of Pax Education Resources.

ISSUE ONE

In his submission, learned Counsel for the 1st Defendant stated that it is a well settled principle of law that the burden of proof in a criminal case lies squarely on the prosecution and that this burden of proof remains on the prosecution throughout and does not shift. He relied on the case of ***OSUAGU V STATE, (2016)16 NWLR (pt 1537) page 31 at 67 paragraph B-E.***

At paragraphs 4.3 -4.8 of the address, learned Counsel for the 1st Defendant submitted that to prove conspiracy, the prosecution must prove the ingredients set out in the case of ***YAKUBU V STATE, (2014)8 NWLR (pt1408) page 111 at 124 paragraphs C-E.***

Further, Counsel submitted that to secure a conviction for the offence of conspiracy, the prosecution must establish some overt acts as held in the case of ***OMOTOLA V STATE (2007) 7 NWLR (pt 1139) page 148 at 192-193 paragraphs H-A.***

He stated that it is settled law that the circumstantial evidence that will warrant a convictions for the offence of conspiracy must be of such quality that irresistibly compels the Court to make an inference as to the guilt of the Accused/Defendant and leave no reasonable grounds for speculation that some other person other than the Accused/Defendant committed the

offence. Counsel relied on the cases of **STATE V AJAYI, (2016) 14 NWLR (pt 1532) page 196 at pages 231 – 232 paragraphs H – A and YAKUBU V STATE, (2014) 8 NWLR (pt 1408) page 111 at 124 paragraphs C – E.**

In the instant case the learned Counsel stated that a review of the evidence of all four prosecution witnesses (PWs 1 – 4), none of the witnesses even alleged conspiracy against either the 1st or the 2nd Defendant and no cogent evidence was led whatsoever to establish the three ingredients of conspiracy as laid down in law. According to Counsel, that PW1 in his evidence asserted that the relationship between the Defendants was purely professional and was not aware of any meeting between them for the purpose of conferring corrupt advantage on 1st Defendant's relations. He also submitted that PW2 denied knowledge of any meeting between the 1st and 2nd Defendants for the purpose of allocating land to 1st Defendant's relations. PW3, according to Counsel, in his testimony could not equally confirm any non-professional relationship between the Defendants and could not say from his investigation if there is any personal relationship between them while PW4, throughout his testimony could not establish any agreement between the Defendants to commit the offence of conspiracy alleged against them.

Learned Counsel therefore submitted that the prosecution failed woefully to establish the ingredients of conspiracy and he urged me to resolve issue one in favour of the 1st Defendant.

ISSUE TWO

At paragraphs 4.11 – 4.17 of the final written address of the 1st Defendant, learned Counsel submitted to the effect that by the 3rd amended charge, the prosecution must lead cogent evidence that the 1st Defendant was land officer on or absent the month of July, 2000. Secondly, the prosecution must prove that the 1st Defendant used his position as land officer to confer unfair advantage on a company belonging to himself; thirdly, the prosecution has the duty to prove that the 1st Defendant caused title documents of Plot SS1 Jikwoyi Extension III to be issued to a company belonging to him and lastly that Pax Education Resources is a company belonging to the 1st

Defendant or a company in which he has interest. He relied on the case of ***DELE FAGORIOLA V FRN, (2013) LPELR 20896 (SC)***.

Counsel submitted on behalf of the 1st Defendant that the prosecution failed to lead cogent evidence to prove that the 1st Defendant was a land officer. Learned Counsel submitted that the 1st Defendant in proof of his assertion that he was never a land officer at Abuja Municipal Area Council tendered his letter of appointment into the Civil Service of the Federation, Exhibit 16, to establish the fact that he was an Administrative Officer and never a land officer.

On the second ingredient, learned Counsel submitted that the 1st Defendant not being a land officer as at 2000, it was not practicable for him to have acted in the capacity of that office, used that office to confer unfair advantage on a company belonging to himself. On the third ingredient, he submitted that the prosecution failed to lead evidence on how or method used by the 1st Defendant to cause title documents of Plot SS1 Jikwoyi Extension III to be issued to a company belonging to himself. And finally, learned Counsel stated that the prosecution in an attempt to link the 1st Defendant and Pax Education Resources. According to learned Counsel when PW3 was confronted with exhibits 9 and 10, he was unable to show that the 1st Defendant was either a shareholder or a director in any of the two entities.

Hence, learned Counsel submitted that the totality of the prosecution's evidence against the 1st Defendant on the commission of the offence charged was based on suspicion as there was neither direct or circumstantial evidence linking him to the offence charged. He submitted that suspicion no matter how strong does not take the place of evidence to warrant a conviction. He relied on the case of ***KAYODE IDOWU V THE STATE, (1998) 11 NWLR (pt 574) page 354 at 370 para D***.

The learned Counsel then referred me to the testimonies of DWs 1, 2, 3, 5 and 7 and submitted to the effect that the testimonies of the witnesses is consistent with the 1st Defendant's innocence and could be true and is not proved to

be untrue and therefore the 1st Defendant is entitled to be discharged and acquitted in the instant case.

ISSUE THREE

At paragraphs 4.19 – 4.26 of the written address of the 1st Defendant, learned Counsel submitted that for the prosecution to secure conviction for forgery against the 1st Defendant, the prosecution must prove the following ingredients: -

- (a) That the Accused utters or forges a document.
- (b) That he know the document to be false
- (c) That he presented the said document to the other party with the intention that it could be acted upon.
- (d) That the document was acted upon by the other party to his detriment. He relied on the cases of ***IDOWU V STATE, (1998) 11 NWLR (pt 574) page 354 at 363 para E, ONTARIO OIL & GAS (NIG) LTD V FRN (2015) LPELR 24651 (CA), ODIAWA V FRN (2008) LPELR 4230 (CA) ALAKE V THE STATE, (1991) 7 NWLR (pt 205) page 567.***

Learned Counsel submitted further that calling of a hand writing analyst to establish a prima facie case of forgery by the prosecution is a necessity and indispensable requirement. He relied on the case of ***AITUMA V STATE, (2006) 10 NWLR (pt 989) page 452 at 468 – 469 para D – A.***

He submitted also that a party alleging forgery must of necessity produce two documents before the Court i.e. the original document before it was forged and the forged document before the Court can determine whether indeed there was a forgery. He relied on the case of ***ALL PROGRESSIVE CONGRESS V PEOPLES DEMOCRATIC PARTY & ORS, (2015) LPELR 24587 (SC).***

In conclusion, the learned Counsel for the 1st Defendant submitted that the prosecution failed to make out a prima facie case of forgery against the 1st Defendant in that the prosecution failed to call a hand writing analyst and also failed to tender two sets of documents as required by law. He

therefore urged me to resolve issue three in favour of the 1st Defendant.

Finally, learned Counsel urged me to dismiss the whole charge, discharge and acquit the 1st Defendant.

The learned Counsel for the 2nd Defendant also filed his final written address on behalf of the 2nd Defendant on 7th February, 2018. He distilled a sole issue for determination as follows: -

"Whether the prosecution has proved beyond reasonable doubt the offences of criminal conspiracy and official corruption against the 2nd Defendant to warrant his conviction."

In arguing the sole issue for determination the learned Counsel for the 2nd Defendant states that the 2nd Defendant is standing trial bordering on the offences of conspiracy and using his office as a public officer to confer unfair advantage.

At paragraphs 3.02 – 3.04 of the final written address of the 2nd Defendant, learned Counsel submitted that by our adversarial criminal system of justice, the law places the burden of proving the guilt of the Defendant on the prosecution in order to secure conviction and sentencing of the Defendant by the Court. He relied on section 135 (1) of the Evidence Act and the cases of ***UGURU V STATE, (2002) 10 NSCQR (pt 1) page 37 at 54 paragraph C, STATE V AJIE, (2000) 3 NSCQR page 53 at 65 paragraph G.***

In the instant case, learned Counsel submitted at paragraphs 3.08 – 3.13 of the final written address on the offence of criminal conspiracy to confer corrupt advantage that the prosecution must prove the ingredients of conspiracy as follows: -

- (a) An agreement between the Accused persons to do or cause to be done some illegal acts or some acts which is not illegal by illegal means; and
- (b) Each of the Accused persons participated in the conspiracy.

He relied on Section 96 of the Penal Code, Notes on the Penal Code Law (Cap 89 Laws of Northern Nigeria, 1963) Fourth

Edition 1987 page 76 by S. S. Richardson and plethora of judicial authorities.

He then submitted at paragraphs 3.15 – 3.29 of the 2nd Defendant's address that the prosecution failed to place before the Court whether direct or circumstantial to show that there was any such agreement or confederacy between the 1st and the 2nd Defendant in proving the offence of conspiracy.

In the instant case, learned Counsel referred me to the testimonies of PWS 1 and 2 and submitted that they testified to the effect that they were not aware of any personal relationship that exist between the 1st and 2nd Defendants apart from their relationship as colleagues. Learned Counsel also referred me to the cross examination of PW1 on the 28th June, 2016 by the 2nd Defendant's Counsel.

He further submitted that PW2's evidence under cross examination on the 28th June, 2016 by the 2nd Defendant's Counsel stated that she has never witnessed any meeting between the 1st and 2nd Defendants. He further submitted that PWS 1, 2, 3 and 4 all agreed that the 2nd Defendant could not allocate land to anyone because it is the Land Adjudication and Allocation Committee that allocates land to successful Applicants and thereafter instructs the Secretary of the Committee to issue allocation letters.

The learned Counsel also referred me to the testimony of PW4, the nominal complainant who testified that he does not know if any personal relationship exists between the 2nd and the 1st Defendants. According to learned Counsel, PW4 testified further that he did not mention the 2nd Defendant in his petition and that he does not have any complain against the 2nd Defendant. thus, the learned Counsel for the 2nd Defendant contended that by the testimonies of PWS 1, 2, 3 and 4 which were given under cross examination, there is no iota of credible evidence led by the prosecution whether direct or circumstantial, to show the existence of any agreement or confederacy between the 1st and 2nd Defendants in proving the offence of conspiracy especially as PW3 failed to name the cohorts that assisted the 1st Defendant to manipulate the record of the allocation letter of Plot SS1 Jikwoyi Extension.

Then at paragraphs 3.26 – 3.32 of the address of the 2nd Defendant, learned Counsel contended that it may not be out of place to say that the 2nd Defendant was charged based on mere suspicion as there was no evidence linking him to the offences charged except the fact that he signed the letter of allocation and the 1st Defendant worked under him.

He therefore submitted that suspicion no matter how strong, can never amount to proof in the absence of requisite evidence to establish a criminal allegation beyond reasonable doubt. He relied on the cases of ***DUNG V STATE, (2015) 9 NWLR (pt 1465) page 503 at 516 para E, SULE AHMED (alias Eza) V THE STATE, (2001) 8 NSCQR 273 and AHMED V STATE, (2002) 1 MJSC page 50 at 65 – 66 paragraphs G – A.***

Learned Counsel further stated that where there is any doubt in the evidence of the prosecution in proving the ingredients of the offence charged against the Defendant, the Court should resolve same in favour of the Defendant. He relied on the case of ***RODA V FRN (2015) 10 NWLR (pt 1468) page 427 at 486 paragraphs B – C.***

He then contended that the evidence led by the prosecution is tainted with serious doubt since PW3's investigation is conclusive from his testimony in Court which is also at variance with the prosecution's proof of evidence in support of the charge against the 2nd Defendant and thus obscure as to how the 2nd Defendant could have been one of the alleged cohorts of the 1st Defendant when he stated that he did not know any of the alleged cohorts. He therefore urged me to hold and treat the evidence of PW3 as unreliable and thus discountenance same. He relied on the case of ***ADELEKE V ASERIFA, (1986) 3 NWLR (pt 30) page 575.***

In conclusion on Count One of the charge, the learned Counsel urged me to discharge and acquit the 2nd Defendant on Count One as the prosecution failed to prove the ingredients of the offence beyond reasonable doubt.

In respect of Count Two of the charge contrary and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000, the prosecution to secure a conviction against the 2nd Defendant, the prosecution must prove: -

- (a) That the 2nd Defendant is or was a Public Officer at all material time.
- (b) That the 2nd Defendant knowingly or intentionally conferred unfair advantage on the relation of the 1st Defendant.

Learned Counsel stated that by the evidence adduced by the prosecution there is no dispute that the 1st and 2nd Defendants were at all material time public or civil servants, that is, the 1st Defendant was Zonal Administrative Officer and the 2nd Defendant, a Zonal Manager with the Abuja Municipal Area Council, Zonal Land Office between 1997 and 2000. However, learned Counsel submitted that the prosecution failed to prove the actus reus and mens rea of the offence.

Learned Counsel stated that the crux of the prosecution's case against the 2nd Defendant is that the 2nd Defendant signed the letter of allocation for Pax Education Resources Limited. the 2nd Defendant Counsel conceded that Pax Education Resource Limited, a company falls within the meaning of "associate" as defined by section 19(2) of the Act. And to secure a conviction, the prosecution must lead credible evidence to show that the 2nd Defendant not only has interest in the company, it must also prove that the Directors of the company are persons known to act subject to the directive or influence of the 2nd Defendant and he relied on exhibit 9 that the 1st and 2nd Defendants are neither Directors or shareholders of Pax Education Limited. He further submitted that there is no evidence that any of the shareholders or Directors of Pax Education Resources Limited has any affinity with the 2nd Defendant. Learned Counsel then referred me to the cross examination of PW3 by the 2nd Defendant's Counsel submitted that his evidence contradicts his earlier evidence and the charge that the 2nd Defendant conferred advantage on Pax Education Resources Limited. He then contended that the evidence of PW3 is fraught with material contradiction, unreliable and urged me not to place any weight on it or believe same. He relied on the cases of ***ESAN-GBEDOR V STATE, (1989)4 NWLR (pt113) page 57 at 83.***

Furthermore, 2nd Defendant's Counsel submitted that exhibit 9 was dampened on the Court to make findings as whether Pax Education Resources Limited is owned by the 1st Defendant's relations.

At paragraphs 4.26- 4.44 of the 2nd Defendant's final written address, learned Counsel submitted to the effect that assuming (but without conceding) that the prosecution was able to prove any or the ingredients of the offences, he submitted that by the testimony of the 2nd Defendant as DW6, the 2nd Defendant was able to disprove the allegations against him.

According to the learned Counsel that the 2nd Defendant testified that he has no power to allocate or grant land to any person as he was merely the secretary of the land adjudication and allocation committee whose only duty was to issue letters of allocation to those approved by the committee whose Chairman was either the Minister or the Chairman of the area Council. He submitted that the evidence of DW6 was corroborated by both prosecution and the defence witnesses. He then referred me to the elicited evidence of PWs1,2,3 and DW1 under cross examination and submitted that their testimonies supported the evidence of DW6 of the existence of land Adjudication and Allocation Committee and that it is the committee that allocates and then direct the secretary of the Committee to issue allocation letters.

Learned Counsel for the 2nd Defendant contented that the only nexus between the 2nd Defendant and the present charge is that the 2nd Defendant signed letter of allocation of both Pax Education Resources Limited and Fine Trust Academy which the 2nd Defendant explained that there are cases of double allocation resulting from human error. 2nd Defendant's Counsel submitted that DW6 explained to the effect that where such cases of double allocation arise, the procedure is to relocate one of them to another plot. Learned Counsel also referred me to the evidence of PWs1 and 3 under cross examination to the effect that double allocation exist and a committee do resolve the issues of double allocation particularly the first on time gets the land.

In the instant case, learned Counsel for the 2nd Defendant submitted that the 2nd Defendant assuming that he signed both letters of allocation which resulted into double allocation due to human error, the 2nd Defendant can be exculpated by this Court unless the prosecution is able to prove that the error resulted from lack of care expected from a reasonable man of an average intelligence. He relied on the case of **AIGUIKHIAN V STATE (2004) ALL FWLR (pt207) page 600.**

Learned Counsel for the 2nd Defendant also submitted that the 2nd Defendant, in exhibit 11 (A) demanded for the original letter of allocation of Fine Trust Academy which the prosecution failed to produce before the Court. He submitted that this amounts to withholding of evidence and he relied on the case of **ONAH V STATE, (1985) 3 NWLR (pt12) page 236 at 245 paragraph F-G.**

In conclusion, learned Counsel for the 2nd Defendant submitted that the entire case of the prosecution against the 2nd Defendant is based on suspicion and speculation because they believe that since the 1st Defendant was an officer under him, he may have influenced the allocation of the plot to Pax Education Resources Limited and the 1st Defendant. He therefore contended that it is unsafe to convict a Defendant on speculative findings or suspicion. He relied on the cases of **AMADI V STATE, (1993) 8 NWLR (pt314) at 644 and ADIE V STATE, (1980) ANLR page 39 at 49.**

Finally, he urged me to discharge and acquit the 2nd Defendant on the two counts charge brought against him for failure of the prosecution to prove the case beyond reasonable doubt.

Having said the above, both the prosecution and the two sets of Defendants distilled issues for determination in their respective final written addresses. The issues are all encompassing and either of the issues formulated for determination and adopted by this Honourable Court will assist the Court in resolving this case. Thus, the two issues set out for determination by the prosecution are apt and I hereby adopt them in the resolution of the contending issues in this case.

As earlier stated, the 1st Defendant is standing trial for a three count charge while the 2nd Defendant is standing trial for a two counts charge. The first two counts charge against the 1st and 2nd Defendants is for conspiracy by using their positions to confer corrupt advantage upon relations and associates of the 1st Defendant by causing the title documents of plot SS1 Jikwoyi Extension III to be made in favour of Pax Education Resources, an unregistered company belonging to the 1st Defendant's relations and associates contrary to section 26 (1) and punishable under section 19 of the Corrupt Practices and other Related Offences Act, 2000.

In this case both parties agreed and that is the law that for the prosecution to secure a conviction against the two Defendants, he must prove the elements or ingredients of the offence beyond reasonable doubt. This is in line with sections 135 and 139 of the Evidence Act (2011) as amended.

See also **SHAIKHSIBILI NOMANY V FRN (2018) LPELR 44546 (CA), Lagos Judicial Division, BAKARE V STATE UGURU V STATE (supra) and STATE V AJIE (supra)**

Thus, for the offence of criminal conspiracy pursuant to section 96 of the Penal Code applicable in the Federal Capital Territory, Abuja to be proved by the prosecution, the ingredients of criminal conspiracy was aptly stated in the case of **ADESINA KAYODE V THE STATE, 2016 LPELR 40028**, the Supreme Court stated:-

" It is settled law that the essential ingredients of the offence of conspiracy lies in the bare agreement and association to carry out an unlawful act, which is contrary to or forbidden by law, whether that act be criminal or not and of course whether or not the accused persons had knowledge of its unlawfulness."

See also **IKECHUKWU OKON V THE STATE, (2014) CLARK V THE STATE, (1986) 4 NWLR (pt 35) page 381.**

Also by section 97 (1) of the Penal Code, the ingredients of the offence of criminal conspiracy are:-

- (a) An agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means;

- (b) The illegal act must be done in furtherance of the agreement and participation by each of the accused person in the conspiracy.

See **ABU ISAH & ANOR V THE STATE, (2007) LPELR 3575 (CA)**. On the otherhand, by

Section 26 (1) of the Corrupt Practices and other related Offence Act, 2000 provides:-

- (a) Any person who attempts to commit any offence under this Act;
- (b) Does any act or preparatory to or in furtherance of the commission of any offence under this Act; or
- (c) Abets or is engaged in a criminal conspiracy to commit any offence under this Act,
- (d) Commits any offence under this Act, shall be guilty of an offence and shall on conviction, be liable to the punishment provided for such offence.

Also in relation to conferring unfair advantage against the Defendants, section 19 of the Corrupt Practices and other Related Offences Act, 2000 provides:-

"Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantages 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 of the offence under section 19 of the Act are:-

- (a) That the Defendants are public officers at the material time;
- (b) That they used their position or office;
- (c) They confer corrupt or unfair advantage upon themselves or their relations or other public officer or the relations of other public officer.

(d) The above are the ingredients of the offences which the prosecution must prove against the Defendants beyond reasonable doubt. And to prove the ingredients of the offence or guilt of the two Defendants, such manner of proof has been rightly captured in the case of **AGBOOLA V THE STATE (supra)** where the Supreme Court held:-

"It is trite law that in criminal trials the guilt of the Accused person for the commission of an offence could be established by any of the following:-

- (a) The confessional statement of the Accused;
- (b) Circumstantial evidence;
- (c) Evidence of an eye witness.

See also **SOPAKIRI BA IGBIKIS V THE STATE, (2017) LPELR 41667 (SC)** **SUNDAY UDOR V STATE, (2014) LPELR 23064 (SC)** and **BITO SEMAKA V THE STATE, (2018) LPELR 44001 (CA)**

Arising from the above, for the offence of conspiracy, how can the prosecution prove its ingredients? In the case of **MRS. MUBO IKOTUN V FRN & ANOR (2017) LPELR 43396**, the Court of Appeal, Lagos Judicial Division held:-

"The offence of conspiracy is hardly proved by direct evidence. Conspirators normally shroud their criminal activities with secrecy. Evidence of conspiracy is ordinarily drawn from inferential or circumstantial sources showing the criminal acts of the parties concerned done in pursuance of a criminal enterprise in common between the parties so the offence of conspiracy by inference can be proved by circumstantial or inferential evidence vide **NJOVENS & ORS V THE STATE (1973) NWLR (pt 76) at 96-97.**"

And it is also the law that proof of conspiracy can be inferred from the circumstances of the case. And once the prosecution succeeds in proving the existence of conspiracy, evidence against one conspirator is admissible against the other.

See **SANI GWANDU V FRN, (2014) LPELR 23992 (CA)** **Kaduna Judicial Division** and **MUSA YARO V STATE, (2008) 3 NCC page 250 at 262.**

In the instant case, I have seen the submissions of the learned prosecuting Counsel at paragraphs 3.19-3.46 of his final written address and his reliance on exhibits 4,4,(a), 5,6,7,7 (a),9,10,11 and 22, the evidence of PWs2,3,and 4 and the voluntary confessional statement of the 1st Defendant and he submitted to the effect that the evidence of overt act of collusion by the Defendants exist to deprive the nominal complainant of his title in the plot allocated to him in 1997.

The learned Counsel for the 1st Defendant at paragraphs 4.7 and 4.8 of his final written address referred me to the evidence of PWs1-4 and submitted that none of the witnesses even alleged conspiracy against the 1st or the 2nd Defendants and no cogent evidence adduced to establish the ingredients.

The 2nd Defendant's Counsel equally at paragraphs 3.14- 3.26 of his final written address referred me to the testimonies of PWs1, 2,3 and 4 especially under cross examination and concluded that the 2nd Defendant was charge based on mere suspicion.

Firstly, it is important to note that the subject matter that culminated into the filing of the instant charge is plot SS1 Jikwoyi Extension III, Abuja.

To prove the first two counts charge, the prosecution called four (4) witnesses. In his testimony PW1 stated as follows:-

"Plot SS1 Jikwoyi Extension III was a plot applied by Fine Trust Academy and they were allocated the plot of land. The allocation was done in favour of Fine Trust Academy."

PW1 testified that he was posted to Abuja Municipal Area Council between 1997-2000 as a land surveyor.

PW2, worked also in Abuja Municipal Area Council between 2004 to about February, 2011 as the Resident surveyor in charge of all surveys and mappings. PW2 testified as follows:-

"I know the Defendants in this case. The 1st Defendant, Mr. Pillah, we were colleagues in the office at Area 11 and he also brought an application for processing of his title deed plan."

The 2nd Defendant was my senior colleague in the office. The application for processing of title deed plan was in respect of plot in Jikwoyi. The title deed was not processed because when the file was brought to us, we followed due process to find out if the name of the person is on the list and we also checked the cartography Department whether that file has ever been charted."

PW2 testified further as follows:-

"On checking, I discovered that it was charted in 2005 for Fine Trust Academy and title deed was processed and collected by Fine Trust Academy as at that time."

Then exhibits 5 and 5(a) were received in Evidence through PW2. Exhibit 5 is the application for customary right of occupancy by Fine Trust Academy while exhibit 5(a) was the application for customary right of occupancy by PTA (Nigeria) Limited PW2 testified that by exhibit 5(a), it was PTA Nigeria Limited that applied for the land but when the allocation letter came out, it came out in the name of Pax Education Resources. PW2 when shown exhibit 5(a) especially the last minutes on exhibit 5(a) testified as follows:-

"The minutes of my colleague showed that the plot has been charted already in favour of MISC 9764. 9764 is the number for Fine Trust Academy."

PW2 was also shown the last page of exhibit 5 and testified as follows:-

"Exhibit 5, the last page, the title deed was signed by me in 2005. When title deed is signed it gives the person the right to the plot."

PW2 further testified "it is not consistent for one person to apply and then the allocation comes out in another person's name. If application is made the allocation is made in that same name.

PW3, Kyanta Kumiyawo is the investigating officer in this case. PW3 in the course of his investigation of exhibit 3, a petition written on behalf of PW4, Mr. Effiong Nsungusi proprietor of Fine Trust Academy that his land allocated to his company in 1997 by Abuja Municipal Area Council officials was re- allocated to another company called Pax Education Resources. PW3 testified that in the course of their investigation, they requested for the two policy files of the two companies. PW3 confirmed the evidence of PW2 that the application was made by PTA Nigeria Limited but the allocation came out in the name of Pax Education Resources. PW3 stated that they conducted a search on PTA Nigeria Limited with Corporate Affairs Commission and he then testified as follows:-

"Search report at Corporate Affairs Commission indicated that Pax (Nigeria) Limited is a Director in Pax Education Resources and the 1st Defendant, Mr. Patrick Pillah is a Director in PTA (Nigeria) Limited.

PW3 testified further thus:-"we now discovered that there is a link between PTA (Nigeria) Limited and Pax Education Resource."

He stated that when the 1st Defendant was invited by the commission, the 1st Defendant stated that the General Manager of Pax Education Resource is his relation. The 1st Defendant admitted this fact in his statement exhibit 11 wherein he stated that Joseph Jande, the General Manager is his second cousin.

Further, PW3 in the course of his investigation testified thus:-" 1st Defendant confessed to us that he was the one that processed the land in favour of Pax Education Resource, a company of his relation or cousin." The testimony of PW3 was also confirmed by the 1st Defendant in his statement, exhibit 11 wherein he stated:-

"I facilitated the acquisition, processing of the property in question."

The evidence of PW4, Effiong Nsungusi, the proprietor of Fine Trust Academy further confirmed the testimonies of Pws1,2,3 to the effect that on 11th October, 1997, he completed an application form for grant of school land and submitted to

Abuja Municipal Area Council in the name of Fine Trust Academy. Abuja Municipal Area Council allocated plot SS1 Jikwoyi Extension III in favour of Fine Trust Academy. PW4 testified that he paid all the necessary land fees and he was issued with titled deed plan of Plot SS1 Jikwoyi Extension III. Then PW4 testified as follows:-

"Then sometimes in 2005, Mr. Patrick Pillah the 1st Defendant met me in my school in which at that time I had taken possession of the land and I was farming and that he was informed that I am in possession of title documents of SS1 and I told the 1st Defendant "yes" and why the question?"

PW4 testified further as follows: - "the 1st Defendant then told me that the land belongs to him and that he has all the title documents." He stated also:-" He then showed me photocopies of his own title on the land and requested to see my own." PW4 stated that the 1st Defendant told him in his own interest, he should return the land papers and he should not go to that land again. PW4 testified that few weeks after the encounter with the 1st Defendant, he was invited by the DPO Jikwoyi Police station that he trespassed into somebody's land. PW4 narrated his ordeal with the police and was eventually arraigned before the Magistrate Court and detained at prison custody.

Now from the testimonies of PWs 1,2,3 and 4 it is crystal clear that by exhibits 7, 7(a) and 7(b), plot SS1 Jikwoyi Extension III was allocated to Fine Trust Academy in 1997. It is also clear from the testimonies of PWS1 and 2, who were staff and colleagues in Abuja Municipal Area Council with the 1st and 2nd Defendants confirmed that the plot SS1 Jikwoyi Extension III was charted in favour of Fine Trust Academy. Especially, PW2 surveyor Michael Ola Charity between 2004 to about February, 2011, she was the Resident surveyor in charge of all surveys and mappings. And PW2 testified that the 1st Defendant brought an application for processing of his title deed plan wherein she followed due process whether the name of the person was on the list. According to PW2, she discovered that the land had been charted in 2005 in favour of Fine Trust Academy and title deed processed and collected by Fine Trust Academy. PW2 testified that because the plot can only be

charted once then the file of Pax Education Resource of the 1st Defendant could not be charted.

The 2nd Defendant, in his statement exhibit 11 (a) stated as follows:-

"I allocated many plots in Jikwoyi from 1997 to 2000. As I can see from the signature, I am the person that allocated this plot SS1 Jikwoyi Extension III Layout."

The 2nd Defendant, in exhibit 11(a) also stated that the allocations were made by him and sometime there are human errors which normally causes double allocations. The 2nd Defendant, in exhibit 11(a) stated that "when this occurs we cross check and see if any of the two has gone to chart and title deed plan issued. I or we as usually done in land allocation, we then replace the second person another plot to settle the case."

In the instant case, it is clear from the evidence of PWs1,2,3 and 4, plot SS1 Jikwoyi Extension III had been charted in favour of Fine Trust Academy and the evidence of PW2 is apt here. In otherwords, by the statement of the 2nd Defendant, exhibit 11(a) and the 2nd Defendant being the Zonal Land Manager that signed the two allocations as shown on exhibits 5 and 5(a) i.e Fine Trust Academy and Pax Education Resource amounting to double allocation due to human error, the plot SS1 Jikwoyi Extension III had already been charted in favour of Fine Trust Academy and TDP issued. This is to say, plot SS1 Jikwoyi Extension III having been charted in favour of Fine Trust Academy, as evidence by exhibit 18 and the evidence of PW2, if there is any person to be re- allocated to another plot as a replacement from the evidence before the Court is Pax Education Resource.

Furthermore, by exhibits 5 and 5 (a), the letter of allocation of Fine Trust Academy is dated 11th December, 1997 duly signed by the 2nd Defendant while the allocation letter of Pax Education is dated 12th July, 2000 and equally signed by the 2nd Defendant. Thus, if the 2nd Defendant is sincere that it was a human error, by their procedure in resolving issues of double allocation and in law, the first on time will be left with the plot,

the subject of double allocation while the second person will be reallocated and replaced. In the case of **RAPHAEL OKOCHA V MOSES O. IRUBOR & ANOR (2013) LPELR 20756**, the Court of Appeal, Benin Judicial Division held thus:-

“Indeed, the law is well settled and firmly established and beyond reproach that where two persons, lay claim of title to a parcel of land, allegedly allocated to them by a common grantor, the first on time clearly takes priority, because it is stronger in law. Therefore, in law and also in equity, the doctrine is that estates and interests created thereon primarily rank in the order of their creation. So he who is earlier- or first in time is stronger in equity. That is the rationale for the maxim, qui prior est tempore est jure.”

See also the cases of **AYANWALE V ODUSANMI, (2010)12 SCNJ 362, ERO V TINUBU, (2012) 8 NWLR (pt1301) page 104, 1BBI V MUTUNCI CO. (NIG) LTD, (2012)8 NWLR (pt1297) page 487 at 524 and OKELOLA V ADELEKE (2004)7 SCNJ 103 at 111.**

Now if what the 2nd Defendant stated in his statement, exhibit 11 (a) is the procedure and confirmed by the evidence of PW2, the Resident Zonal Surveyor, why did the 2nd Defendant acted otherwise? The first statement of the 2nd Defendant was made on 5th June, 2013 when the facts of the case were so fresh in his mind and he clearly admitted signing the two allocation documents i.e that of Fine Trust Academy and Pax Education Resource. However, in his second statement made on the 5th July, 2013, one month or thereafter making the first statement, the 2nd Defendant in his 2nd statement stated that due process was not followed in the file of Fine Trust Academy. The 2nd Defendant in his 2nd statement however stated that in respect of obtaining TDP for Pax Education Resource, due process was followed. He however agreed that the two signatures on the allocation papers are his but there is a question mark on that of Fine trust Academy because it is laminated. Further, in his testimony as DW6, the 2nd Defendant set up another version of his case thus:-

"When I was invited by the Independent Corrupt Practices and other Related Offences Commission, I was made to make statement. I was not shown the allocation of Fine Trust Academy but I was shown the original allocation of Pax Education Resource Limited which I confirmed signing. Then the allocation of Fine Trust Academy was laminated and I told them that I cannot confirm whether I signed it or not because it was laminated. The signature on the allocation of Fine Trust Academy Limited looks like my signature but it was laminated."

Another disturbing revelation from both the evidence of PW2 and DW6 and his statement exhibit 11 (a) made on 5th July, 2013 was the assertion that PTA (Nigeria) Limited applied for the grant but the letter of allocation came out in the name of Pax Education Resource. DW6 in both his testimony in open Court and his statement, exhibit 11 (a) made on 5th July, 2013 conceded and admitted that the process was wrong. The question now is why did the 2nd Defendant as DW6 ignored the application form of PTA Nigeria Limited contained in its policy file, exhibit 18 and then proceeded to issue allocation letter in the name of Pax Education Resources that never applied for land allocation?

To answer the question, it is important to once again review the statement of the 1st Defendant exhibit 11 and his testimony before the Court as DW4. In exhibit 11 made on 30th January, 2012, the 1st Defendant stated:-

"SS1 Jikwoyi III was allocated to Pax Education Resources in 2000."

Before I proceed, the evidence before me especially the testimonies of PWS2, 3, the statement of the 2nd Defendant, exhibit 11(a) and his evidence as DW6, it is wrong to allocate a plot of land to a person that did not apply for allocation of land as in the instant case, PTA (Nigeria) limited applied but allocation exhibit 5(a) came out in the name of Pax Education Resource, an unregistered company at the time of allocation.

Secondly, in exhibit 11, the statement of the 1st Defendant, he stated:-

"Joseph Jande, the General Manager is my second cousin and I facilitated the acquisition, processing of the property in question. A report submitted by Abuja Municipal Area Council to the DPO indicated that Fine Trust Academy is located on 1770 while SS1 belongs to Pax Education Resources. Then the 1st Defendant as DW4 testified as follows:-

"In my innocence and sense of justice I Looked at the papers before me and declared them false and that they were forged. The papers are the papers presented to me by Fine Trust Academy. I then pointed out to Independent Corrupt Practices and Other Related Offences Commission that the lay out in question was prepared by Chris Akinbote and Company in the year 2000 and it cannot therefore be allocated in 1997 because allocations are made based on layouts and approved by the Minister before allocations are made."

However, by exhibit 11(a), the statement of the 2nd Defendant who was at the material time the Zonal land Manager whom the 1st Defendant worked under him stated that he allocated many plots in Jikwoyi from 1997 to 2000 and he identified the allocation letters of Fine Trust Academy and that of Pax Education Resources as those allocations made in 1997 and 2000 respectively.

Thus from the evidence adduced by the prosecution witnesses especially PWs1, 2, 3 and 4, exhibits 3,4,5,5(a)6(a)7,7(a)7(b) 12, 15, 18,22 and the statements of the 1st and 2nd Defendants, exhibits 11 and 11(a) and indeed the testimonies of DWs4 and 6, the 1st and 2nd Defendants, with all the facts available at their disposal as regards the two allocations to Fine Trust Academy and Pax Education Resource Limited, the Defendants vowed and indeed were battle ready to allocate Plot SS1 Jikwoyi Extension III to a company that has never applied for such allocation despite the knowledge that Plot SS1 Extension III, Jikwoyi had already been charted for Fine Trust

Academy and title Deed plan collected. Hence, the facts and circumstances of the instant case clearly shows further that the 2nd Defendant by signing the allocation letter exhibit 5 (a) without Pax Education Resources completing the application form which is a pre- requisite to processing of the allocation letter and the 1st Defendant being the secretary of the Rural land Adjudication Committee of Abuja Municipal Area Council (AMAC) in which in his statement, exhibit 11 stated as follows:-

"We in receipt of the offer, paid the necessary fees and the file was forwarded to the Zonal surveyor for charting, and preparation of title deed plan. On discovering that a purported letter from Fine Trust Academy dated 1997, three years before the layout was prepared in 2000 was being done, we reported to Abuja Municipal Area Council (AMAC) whose report indicated that the Plot belonged to us and thereafter directed that it be charted accordingly."

From the evidence of PWS1,2,3,and 4 and the statements of the 1st and 2nd Defendants i.e exhibits 11 and 11(a) respectively and indeed the oral testimonies of DWS 4 and 6, it is evident that the 1st and 2nd Defendants are public officers holding the positions of Zonal Land Manager and secretary Rural land allocation and Adjudication Committee of Abuja Municipal Area Council (AMAC) at the material time that culminated into the filing of the instant charge. Secondly, by the evidence of PW2 that the 1st Defendant brought title documents for processing and issuance of Title Deed Plan to her, the evidence of PW2 is confirmed by the statement of the 1st Defendant that he has interest in plot SS1 Jikwoyi Extension III. Further in both his statement exhibit 11 and his oral testimony, DW4 asserted that when the offer of plot SS1 Jikwoyi Extension III was granted to Pax Education Resource, they paid for the processing fee and receipts were issued to them. He also stated under cross examination on the 17th January, 2018 that Joseph Jande is his 2nd cousin. The statement of the 1st Defendant exhibit 11 and his oral testimony under cross examination clearly confirmed the testimony of PW4 of the interest of the 1st Defendant in plot SS1 Jikwoyi Extension III. Further, by exhibits 9 and 10, PTA Nigeria Limited is one of the Directors of Pax Education

Resource while by exhibit 10, the 1st Defendant, is a Director of PTA (Nigeria) Limited. Thus, apart from Joseph Jande being the General Manager of Pax Education Resource and a second cousin of the 1st Defendant, the 1st Defendant being a Director in PTA Nigeria Limited and PTA Nigeria Limited being a Director of Pax Education Resource, and the testimony of PW4 and the travails of PW4 in respect of Plot SS1 Jikwoyi Extension III, there exist credible evidence by the prosecution to establish the interest of the 1st Defendant in Plot SS1 Jikwoyi Extension III. Further, by the testimony of PWS1, 2, 3 and 4 and a close look at the statements of the 1st and 2nd Defendants, exhibits 11 and 11 (a) including their elicited evidence during cross examination by the prosecution, it is crystal clear that the 1st and 2nd Defendants inappropriately or unlawfully used their positions or office to deprive the Proprietor (PW4) of Fine Trust Academy plot No SS1 Jikwoyi Extension III which plot had already been allocated and charted in favour of Fine Trust Academy.

Earlier, I have established by the credible evidence of PWS1, 2, 3,4, exhibits 9, 10 and the statement of the 1st Defendant, exhibit 11 and his oral testimony under cross examination by the prosecution of the interest of the 1st Defendant in plot SS1 Jikwoyi Extension III, it is not however possible to link the interest of the 2nd Defendant to plot SS1 Jikwoyi Extension III. Thus, therefore, I hold the view that the ingredients of the offence of conferring unfair advantage under section 19 of the Corrupt Practices and Other Related Offences Act , 2000 have been proved beyond reasonable doubt against the 1st Defendant and I so hold. The 2nd Defendant, on the otherhand, as I said before, there is no credible evidence to prove that the allocation relates to him or any of his associate. Consequently, the 2nd Defendant is discharged and acquitted on the offence of conferring unfair advantage under section 19 of the Corrupt Practices and other Related Offences Act.

In relation to the offence of conspiracy under section 26 of the Act as defined by section 96 of the Penal Code, both Counsel for the 1st and 2nd Defendants dissipated a lot of energy in submitting that the prosecution failed to prove the existence of an agreement by the Defendants and that all the prosecution witnesses testified that they are not aware of any alleged

conspiracy. See paragraphs 4.7 and 4.8 of the final written address of the 1st Defendant's Counsel and paragraphs 3.15-3.29 of the final written address of the 2nd Defendant's Counsel to the effect that the prosecution failed to prove actus reus and mens rea that the Defendants conspired to manipulate the record of the allocation letter of SS1 Jikwoyi Extension III. He referred me to the answers elicited during cross examination of PWS2 and 3 to the effect that the witnesses failed to say the alleged cohorts, hence the investigation of PW3 was evidently inconclusive raising reasonable doubt as to the existence of any agreement.

The position of the law is that it is from the acts or manner the accused persons were doing things towards actualizing a common end it can be inferred or deduced that they did so in furtherance of their conspiratorial agreement to commit the alleged offence. See **OBIAKOR V THE STATE, (2002) 10 NNLR (pt776) page 612, BABATUNDE ADELANI V THE STATE (2018) 5 NWLR (pt1611) page 18 paragraphs D-E IFEANYI- CHUKWU AKWUOBI V THE STATE, (2017) 2 NWLR (pt1550) page 421 at 444 and BABANGIDA SULE V FRN (2018) LPELR 45284, (CA) Abuja Judicial Division.**

Further, the proof of conspiracy is generally a matter of plausible inference. Hence in a charge of conspiracy, proof of the actual agreement which is an essential element or ingredient of the crime is not always easy to come by. Thus, the fact that there was no positive evidence of any agreement between the accused persons to commit the offence is not enough to hold that the prosecution cannot establish charge of conspiracy. See **CALEB OJO V FRN (2008) LPELR 5155 (CA) Abuja Judicial Division, OYAKHIRE V THE STATE(2006)15 NELR (pt1001) page 157.**

Also Niki Tobi JSC (as he then was and of blessed memory) in **KAZA V STATE (2008) LPELR 1683 (SC)** said "In the offence of conspiracy, the mens rea is not easy to locate as it is mostly, if not invariably, buried in secrecy. And so, the actus reus of the offence which is easier to locate can draw the mens rea to the open and make it possible for the Court to find inculpatory evidence."

In the instant case, from the evidence of the prosecution witnesses it is difficult to establish a common agreement or mens rea between or of the Defendants to do an illegal act. However, by the actus reus of the 1st and 2nd Defendants in the allocation of Plot SS1 Jikwoyi Extension III to Pax Education Resource, the evidence of PWS1, 2, 3, 4 and exhibits 5, 5(a) 6,6(a),7,7 (a) 7(b), 18 and 22 including exhibits 11 and 11(a), the statements of the Defendants respectively, has drawn the mens rea of the Defendants in the open.

For the purpose of clarity, exhibits 5, 7,7 (a), 7(b) and 22 are documents evidencing title for Fine Trust Academy. Exhibit 22 is the policy file of Fine Trust Academy in which Plot SS1 Jikwoyi Extension III was granted to it. The policy file no is MISC 9764. In contrast, PTA (Nigeria) Limited by exhibits 6 and 5 (a) also applied for grant of land for Educational purpose. Exhibits 5(a) and 6 are the application for land by PTA (Nigeria) Limited. The Abuja Municipal Area Council however did not approve any allocation of land to PTA Nigeria Limited. Further, by exhibit 5(a) and 6, the application file number of PTA Nigeria Limited is MISC 2209. Then by exhibit 18, the same file number Misc 2209 which ought to be the policy file number of PTA Nigeria Limited, the name on the policy file is Pax Education Resource. And by the evidence of PW2 and 3, their testimonies tallies with the contents of exhibit 18 to the effect that PTA Nigeria Limited applied for the land but the allocation letter came out in the name of PAX Education Resources. And by the evidence of PW2, the Resident ZONAL Surveyor, the 1st Defendant brought to her title documents of PAX Education Resource to process and issue title Deed Plan (TDP) which PW2 told the 1st Defendant that the Plot SS1 Jikwoyi had already been charted in favour of Fine Trust Academy. Despite evidence in exhibit 18 and the testimonies of PWS1,2, 3 and the evidence of PW4 and indeed exhibits 11 and 11(a) and the evidence of DWS4 and 6, the 1st and 2nd Defendants manipulated the processes of land application by using exhibit 18, the policy file number 2209 of PTA (Nigeria) Limited and issued the grant of Plot SS1 Jikwoyi Extension III to PAX Education Resource exhibit 6 (a). The 2nd Defendant admitted in his statement, exhibit 11 (a) that he signed exhibit 6(a) as well as exhibits 4 and 7 (a) respectively. He also admitted in

exhibit 11(a) that the process was wrong for PTA to apply for land allocation and the allocation letter to come out in another person's name that is, PAX Education Resource. Under cross examination by the learned prosecuting Counsel, I watched closely the 2nd Defendant as DW6 while responding to questions. The 2nd Defendant as DW6 testified thus:-

"I can see exhibit 15. Exhibit 15 is a replacement and PAX Education is not the first allottee. I signed the letter of replacement."

While the cross examination by the prosecution continued, I was watching closely the demeanour of DW6 especially when he testified thus:-

"I can't remember which plot was allocated to PAX Education first before the replacement." He also stated: - "An Applicant does not apply for replacement I am not aware of the application of the first allotment. I have not seen the 1st application for PAX Education."

Under cross examination, DW6 further stated:-

"There is no application form for Pax education in exhibit 18. I did not see the application form for land of PAX Education. I picked names of allottees by instructions from the Honourable Minister. I did not see the application form for land of PTA Nigeria Limited for forwarding to the Minister for approval."

Then when DW6 was asked under cross examination by the prosecution who gave him the name of PAX Education, he answered:-

"I can't remember who gave me the name of PAX Education Resources Limited. Anybody can walk into Abuja Municipal Area Council (AMAC) without application form for land and we can allocate land to the person."

Further DW6, testified under cross examination thus:-

"Patrick Pillah was the Secretary, Lands Committee. Patrick Pillah was also the secretary

of the lands allocations committee. The list of allottees were made by the registry and taken to me and I will now take it to the land allocation Committee. The Registry makes the list on my instructions."

As I said earlier, I have watched closely the demeanour of DW6 while answering questions in the witness box. He was not consistent with his testimony and he appears too economical with the truth. DW6 is not a witness of truth.

Firstly, DW6 under cross examination by the prosecution when shown exhibit 15, states:-

"I can see exhibit 15. Exhibit 15 is a replacement and PAX Education is not the first allottee."

On the otherhand, under further cross examination by the prosecuting Counsel, DW6 avers:-

"I can see exhibit 11 (a). In my statement it is correct that where there is double allocation, the Applicant that got the title deed plan first would be left in the plot and the other given a replacement."

By the evidence of DW6 under cross examination above, DW6 admitted himself that the allocation to PAX Education was not the first. Secondly, DW6 by his evidence, Plot SS1 Jikwoyi Extension III cannot be allocated to PAX Education Resource because the Plot had already been charted in favour of Fine Trust Academy.

The question that begs for an answer is that with all the avalanche of evidence by PWS1,2,3,4 and the admission of DW6 including exhibits 4,5,6,6(a) 7,7(a),7(b),15,18, 22 and the statement of the 2nd Defendant, exhibit 11 (a) why did the 2nd Defendant failed in his statutory duties to do the right thing but instead signed a fresh allocation letter, exhibit 5 (a) to PAX Education Resource?

The answer appears not farfetched. From the evidence of DW6 and his statement, exhibit 11 (a) it is not in doubt that the 1st Defendant worked under the 2nd Defendant and served as

secretary of lands allocation committee. Further, from the statement of the 1st Defendant, exhibit 11, there is no dispute that he has interest in the allocation to PAX Education Resources, a company that has never applied for allocation of land and even the policy file, exhibit 18 that suppose to bear the name of PTA (Nigeria) Limited, exhibit 18 bears the name of PAX Education Resource. And it is common knowledge that the 1st Defendant, being the secretary of land allocation Adjudication Committee, was the custodian of the records pertaining to land allocations and or applications for land within the period in question. Further by the evidence of PWS2,3,4, exhibits 9,10 and 11, the interest of the 1st Defendant in plot SS1 Jikwoyi Extension III is crystal clear. And by the actus reus of the 1st and 2nd Defendants in their avowed pursuant to deny and deprive the nominal complainant the Proprietor of Fine Trust Academy of Plot SS1 Jikwoyi Extension III, by the said human error admitted by the 2nd Defendant and his refusal to rectify same, and by the steps taken by the 1st Defendant that culminated into the 1st Defendant pursuing or visiting the site of SS1 Jikwoyi Extension III and urging the Proprietor of Fine Trust Academy, PW4 to return the title documents of the said plot and keep off the said Plot in his own interest and the prosecution of PW4, the Proprietor of Fine Trust Academy, the actions of the 1st and 2nd Defendants, the actus reus of the 1st and 2nd Defendants, mens rea can be drawn or inferred.

However, I have perused the testimonies of DWS1,2,3,5 and 7 called by the 1st Defendant. The testimonies of DWS1,2,3,5 and 7 including exhibits 15 and 20 are not helpful to the 1st Defendant or the 2nd Defendant. DW1 in his testimony in- chief stated thus:-

"The name in which I first applied for the land was P.T.A meaning Pius. Terwase Ajike. The land was not allocated in the name of PTA. The name in which the land was allocated was Pax Education Resources."

DW1 testified further in examination in chief as follows:-

"In the lands registry, I was then advised to get an Educational name and the new name Pax

Educational Resource was substituted with the name PTA. The 1st Defendant is not a shareholder or Director in either PTA or Pax Educational Resources."

DW1 further testified in –chief thus:- " I Reverend Father Dr. Pius Ajike is the Chief Executive and Director of Pax Education Resource."

Then under cross examination by the prosecution DW1 testified as follows:-

" I was directed by the church to apply for the land. All along I was acting for the church."

DW1 under cross examination by the prosecution testified thus:-

"Pius Ajike and Catholic Church are one and the same. The Directors of Pax Education Resource are also the same as Catholic Church."

DW1 testified once again thus:-

"I am the alter ego of Pax Education Resource but it goes with the church. It is correct PTA (Nigeria) Limited belongs to me. It is equally for the church."

In both his evidence in chief and cross examination by the prosecution, DW1 has been consistent that he is the owner of both PTA (Nigeria) Limited and Pax Education Resource. He also testified that both PTA (Nigeria) and Pax Education Resource are incorporated entities but he cannot remember when Pax Education Resource was incorporated except when shown the documents. Then DW1 was confronted with Exhibit 10, the particulars of Directors of PTA Nigeria Limited and he testified as follows:-

"I can see exhibit 10. My name is not on the list of Directors of PTA Nigeria Limited. PTA Nigeria Limited has three Directors. It is correct I am not one of the Directors but I am the Chief Executive."

At this juncture, DW1 became completely unstable and uncoherent by being confronted with exhibit 10. Hence, by

exhibit 10, it is crystal clear that DW1 is not a shareholder or a Director in PTA (Nigeria) Limited which he claimed that he is the owner.

Further, when DW1 was asked by the prosecution of his relationship with the three Directors of PTA (Nigeria) Limited, he answered thus:-

"My relationship with the three Directors -is that they are members of my church.

The 1st Defendant is a member of my church."

DW1 did not tender any evidence to support his assertion that he is the Chief Executive and Director or a shareholder or agent of PTA (Nigeria) Limited. In fact, I watched closely DW1 while testifying in-chief and under cross examination. As I said earlier, during cross examination by the Prosecution, DW1 was unstable, incoherent, and inconsistent and to some extent stammering in search of answers for questions put to him by the Prosecution. Especially when the Prosecution asked when Pax Educational Resource was registered, DW1 stated: -

"Pax Education Resource was registered around 2000 and 2005."

DW1 then remembered that he was shown exhibit 9, the investigation activities submitted by Corporate Affairs Commission and he submitted thus: -

"It is only when I see the documents I will be able to confirm the date of registration."

By exhibit 9, Pax Education Resource Limited was incorporated in 2012 and this was confirmed further by DW1 when shown exhibit 9. DW1 was also confronted with exhibit 5 and 5(a), the Policy Files of Fine Trust Academy and Pax Education Resource Limited. By exhibit 5(a), the policy file of Pax Education Resource Limited, DW1 testified under cross examination by the Prosecution that the plot has been charted in favour of MISC 9764, that is, Fine Trust Academy while the same plot was allocated to Pax Education Resource Limited in 2000 while its incorporation took place in 2012.

Now I have perused exhibit 9; by exhibit 9 Pax Education Resource Limited was registered on 1st February, 2012 with its registered office address at Plot SSI Jikwoyi Phase III, Abuja. Also by exhibit 9, DW1 is a Director of Pax Education Resource Limited. In other words, by the evidence of DW1 Plot SSI Jikwoyi Extension III was allocated to Pax Educational Resource Limited some 12 years before the registration or incorporation of Pax Education Resource Limited. Thus, if one view the testimonies of PWS 1, 2, 3, 4 especially the evidence of PWS 1 and 2 that were the land surveyors between 1997 – 2000 and between 2004 – 2011 to the effect that they were colleagues in Abuja Municipal Area Council together with the 1st Defendant and that Plot SS1 Jikwoyi has been charted in favour of Fine Trust Academy which was to the knowledge of the 1st Defendant, it is crystal clear that Pax Education Resource Limited was hurriedly incorporated in 2012 to justify the grant to Plot SS1 Jikwoyi Extension III.

The incorporation of Pax Education Resource Limited was done by DW1 in order to cover up the inherent interest of the 1st Defendant who is a Director in PTA (Nigeria) Limited and a member of DW1's church while PTA (Nigeria) Limited is a Director or Shareholder in Pax Education Resource Limited by virtue of exhibit 9.

Thus, a close examination of the testimonies of DWS 1, 4, 6 and 7 and exhibits 9, 10, 11 and 11(a) they have a dubious origin by perpetrating illegality in the allocation to Pax Education Resource Limited in order to deprive the legitimate grant to Fine Trust Academy because of the interest of the 1st Defendant.

It is sad that DW1, an acclaimed man of God can come to Court to testify on falsehood not fully seize with the facts of the allocation of Plot SS1 Jikwoyi Extension III. DW1 is not a witness of truth and I cannot rely or believe his testimony.

The evidence of DW2 cannot also be relied upon. DW2 in his evidence in-chief in reaction to the letter they received from the Police testified as follows: -

"So the list of allottees was handed over to us by our predecessor. We then checked the list to

find out whether it tallies with the request of the Police. We confirmed the names and then replied the Police. The two names i.e. Pax Education Resource and Fine Trust Academy were on the list. Pax Education was on SS1 and Fine Trust Academy was on Plot 1170."

Then under cross examination by the Prosecution, DW2 testified thus: -

"There are documents to indicate when the land was allocated. I was able to see the allocation letters of Pax Education Resource and Fine Trust Academy in the course of my investigation."

Further, DW2 under cross examination testified as follows: -

"I can see exhibit 6(a). I can also see exhibit 7(a). I saw exhibits 6(a) and 7(a) before writing the report. I saw the name Fine Trust Academy on Plot 1170 and Pax Education Resource was on Plot SSI and both on extension III."

DW2 is a blatant liar. By exhibits 6(a) and 7(a), both Pax Education Resource and Fine Trust Academy are on plot SS1 Jikwoyi Extension III. And by exhibit 7(b), survey plan, showed the beacons of SS1 Jikwoyi Extension III belonging to Fine Trust Academy and Fine Trust Academy was or never allocated plot 1170. Indeed, Pax Education Resource never tendered in evidence the survey plan showing the beacons and size of its purported plot SS1 Jikwoyi Extension III.

Further, to confirm that DW2 is not a witness of truth, under cross examination by the prosecution when shown once again exhibit 6(a) and whether he saw the word "replacement" answered as follows: -

"I cannot remember whether I saw the word replacement or not while I was writing my report. I wouldn't know the Plot that was withdrawn before issuing this one as a replacement. I did not find out the reasons for

my conclusion that Pax Education Resource is the owner or allottee of the Plot."

Both the 1st and 2nd Defendants and the evidence of DW2 could not explain to the Court the Plot that was first allocated to Pax Education Resource Limited before the replacement with Plot SS1 Jikwoyi Extension III. The human error and the resolution of the double allocation as claimed by the 1st Defendant, the 1st Defendant jettisoned their own procedure with an idea of replacement in order to justify the deprivation of Plot SSI granted to Fine Trust Academy. The prosecution has discredited both the evidence of DWS 2, 4 and 6 as regards replacement and their evidence is unreliable in the instant case.

Hence, therefore, as I said before, DW2 is not a witness of truth including his Investigation Report, exhibit 21.

The evidence of DW3 further confirms that it was PTA (Nigeria) limited that applied for allocation of Plot from Abuja Municipal Area Council and not Pax Education Resource Limited. While the evidence of DW5 only strengthened the case of the prosecution especially when DW5 testified under cross examination as follows: -

"I can see exhibit 13. The assessment fees have been paid into Abuja Municipal Area Council coffers. Before the assessment of fees, there must have been an allocation."

Thus, by the evidence of DW5 under cross examination, Plot SS1 Jikwoyi Extension III was duly and rightly allocated to Fine Trust Academy and Fine Trust Academy paid the Right of Occupancy Rent and fees and was issued a receipt by Abuja Municipal Area Council, exhibit 13. DW5 did not deny exhibit 13 emanating from Abuja Municipal Area Council and the receipt exhibit 13 is a certified true copy. The evidence in-chief of DW5 is that the Right of Occupancy Rent and fees attached to exhibit 5 was purportedly said to have been signed by him. DW5 did not categorically disown or deny that the assessment fees attached to exhibit 5 was not signed him but his quarrel was with the format used which the assessment document did not carry the characters.

Further the evidence of DWs 4 and 5 that the assessment of Right of Occupancy Rent and Fees attached to exhibit 5 was made on a Sunday; by the evidence of DW5, PWs 1, 2, 3 and 4 and exhibits 5, 7(a), 7(b) and 22, it is clear that Plot SS1 Jikwoyi Extension III was duly allocated to Fine Trust Academy. And DW5 categorically stated under cross examination that the assessment fee as evidenced by exhibit 13 has been paid into Abuja Municipal Area Council coffers. He further testified that before assessment of fees, there must have been an allocation.

In the instant case, there was an allocation to Fine Trust Academy and Fine Trust Academy has paid the assessment fees and Abuja Municipal Area Council issued it with a receipt, exhibit 13. Thus, whether the assessment of Right of Occupancy was done on a Sunday or not by Abuja Municipal Area Council, Fine Trust Academy is not the architect of the document and therefore cannot be held liable for inserting wrong date.

Thus, as I said in the course of reviewing the testimonies of the witnesses called by the 1st Defendant, the actus reus of the 1st and 2nd Defendants towards the allocation of Plot SS1 Jikwoyi Extension III in favour of Pax Education Resource, an unregistered legal entity as at the year 2000, it is a clear demonstration of collusion by the 1st and 2nd Defendants to deprive Fine Trust Academy of Plot SSI Jikwoyi Extension III upon which mens rea can be drawn in the open. In other words as stated in the case of **KAZA V STATE (Supra)** that for the offence of Conspiracy to be proved mens rea is not easy to locate as it is mostly buried in secrecy and the actus reus of the offence is easier to locate and then mens rea can be drawn.

In the instant case by the evidence of the prosecution witnesses and the exhibits referred to above, I hold the view that the prosecution has proved the offence of conspiracy beyond reasonable doubt against the 1st and 2nd Defendants and I so hold. Accordingly, the 1st and 2nd Defendants are hereby convicted of the offence as contained on count 1 as charged.

On Count two (2) of the charge contrary to Section 19 of the Corrupt Practices and Other Related Offences Act 2000, I had

earlier set out the elements of the offence in the course of this judgment. For the purposes of clarity, I herein once again reproduce the ingredients of the offence as follows: -

- (a) That the Defendant are Public Officers at the material time;
- (b) That they used their position or office;
- (c) They confer corrupt or unfair advantage upon themselves or their relations or other public officer or the relations of other public officer.

In the resolution of count one (1) of the charge in the course of this judgment, I have found that the prosecution failed to establish the elements or ingredients of the offence of Section 19 of the Act beyond reasonable doubt against the 2nd Defendant. Thus, I abide by my findings and reasoning stated earlier and I hold the view that the prosecution failed to prove the offence of Section 19 of the Act against the 2nd Defendant beyond reasonable doubt and I so hold. Accordingly, the 2nd Defendant is hereby discharged and acquitted on Count Two (2) of the charge.

In relation to the 1st Defendant, I also abide by my findings and reasoning earlier stated in the course of this judgment in the consideration of Section 19 of the Act. I will however add that by the evidence of PW2, 3, 4 and exhibits 9, 10 and 11, the 1st Defendant has interest in the fraudulent allocation of Plot SSI Jikwoyi Extension III. Especially, by exhibit 11, the statement of the 1st Defendant made on 30th January, 2012 when the facts of this matter were so fresh to him stated thus: -

"It must be informed here that we acquired, effected payment and taken possession of the property by fencing it."

The above admission by the 1st Defendant of his interest in Plot SS1 Jikwoyi Extension III reinforces the testimony of PW4 to the effect that while the Police were investigating the purported trespass on the said Plot, the 1st Defendant entered the subject matter, excavated and fenced the Plot and also erected a structure where the 1st Defendant kept his building materials.

Further, in exhibit 11, the 1st Defendant also stated: -

"The site plan is a pre-requisite towards obtaining Certificate of Occupancy. It is my prayer here to request the surveyors to conclude the survey to enable us obtain Certificate of Occupancy, please."

The admission of the interest of the 1st Defendant in Plot SS1 Jikwoyi Extension III also supports the evidence of the prosecution witness PW2 to the effect that the 1st Defendant brought to her title documents of Plot SS1 Jikwoyi Extension III for charting. And by her evidence i.e. PW2, she testified that Plot SS1 Jikwoyi Extension III had already been charted in favour of Fine Trust Academy as per exhibits earlier referred to in this judgment. However, despite the clear evidence available to the 1st Defendant that Plot SS1 had been charted, because of the interest inherent by the 1st Defendant in the said Plot, used his office to confer unfair advantage to himself and his relations or associates as revealed by his statement, exhibit 11, as well as exhibits 9 and 10.

Thus, therefore, I hold the view that the Prosecution has proved the ingredients of the offence under Section 19 of the Act beyond reasonable doubt against the 1st Defendant and I so hold. Accordingly, the 1st Defendant is hereby convicted of the offence.

On the final count which relates to the 1st Defendant contrary to section 363 of the Penal Code, to prove the offence against the 1st Defendant, the prosecution submitted that the following ingredients must be established:-

- (i) That the Accused made, signed, sealed or executed the document in question or any part thereof;
- (ii) With intent to cause any person to part with property or with intent to commit fraud or that fraud may be committed.
- (iii) That the Accused made the documents dishonestly.

The learned Counsel for the 1st Defendant also at paragraph 4.21 of the final written address cited the case of **ONTA RIO OIL & GAS NIGERIA LTD V FRN** (*supra*) relying on the case of **ODIAWA V FRN** (*supra*) and **ALAKE V THE STATE**

(*supra*) states the ingredients of the offence of forgery and uttering of a false document.

To prove the offence under count 3 of the charge, the prosecution relied on the evidence of PWs3, 4 exhibits 7 and 22.

I have perused the evidence of PWs3 and 4. PW3 is the investigating officer from Independent Corrupt Practices and other Related Offences Commission (ICPC) in this case. PW3 narrated the course of his investigation activities pursuant to a petition written on behalf of PW4, exhibit 3. PW3 testified as follows:-

"When we studied the policy file of Fine Trust Academy, we discovered that some pages were removed and missing. We now discovered that Fine Trust Academy applied for the land since 1997 three years before the allocation letter to Pax Education Resource. In the application of Fine Trust Academy, we discovered that the date of the application form was altered by the 1st Defendant from 1997 to 2005"

PW3 further testified in his evidence in-chief thus:-

"We now called the Petitioner, Mr. Effiong and he said that he was able to photocopy the application before submission to Abuja Municipal Area Council (AMAC)." PW3 stated:- "the date that was altered was given to us by the Petitioner which was 1997."

On the otherhand, PW4 in his evidence stated generally the contact between himself and DW4 i.e the 1st Defendant as regards the allocation of Plot SS1 Jikwoyi Extension III that culminated into the police arraigning him before the Magistrate Court. However, under cross examination by the 1st Defendant's Counsel, PW4 testified as follows:-

"I can see exhibit 7. When I was given the application form there was no official stamp at the left hand corner. Further, the alteration on the date was not there."

By the evidence of PWS3 and 4, there is nothing to link the 1st Defendant to the alteration either contained in exhibit 7 or the alteration of the date in exhibits 5 and 22 on the face of the application form of Fine Trust Academy. The learned prosecuting Counsel at paragraph 4.22 of his final written address himself submitted thus:-

“PW3 and PW4 testified that because it is 1st Defendant that is contesting plot SS1 Jikwoyi Extension III with him and he was the only one working in Abuja Municipal Area Council as at the time.”

Hence, from the evidence of PWs3 and 4 and in deed the submission of the learned prosecuting Counsel, there is no link of the 1st Defendant to the alteration on the date on the application form as it appears on exhibits 5, 7 and 22 and the evidence are purely based on suspicion.

There is no evidence adduced by the prosecution to establish the ingredients of the offence of forgery and uttering of a false document against the 1st Defendant. Thus, the entire testimonies of the Prosecution witnesses i.e PWs3 and 4 to prove count three of the charge is based on suspicion. The Supreme Court of Nigeria in the case of **THE STATE V ODUNAYO AJAYI, (2016) LPELR 4066 (SC)** held thus:-

“The entire case of the Prosecution, in my view was built on suspicion. The law is that suspicion, no matter how strong cannot ground a conviction for a criminal offence. It cannot take the place of legal proof.”

See also **ABIEKE V THE STATE, (1975)9-11 SC 60, IDOWU V THE STATE (1998)11 NWLR (pt 574) page 354 and SHEHU V STATE,(2010)8 NWLR (pt 1195) page 112.**

In the instant case of count 3 of the charge against the 1st Defendant, the legal proof known to law in criminal trial either by eye witnesses, admission or confession or by circumstantial evidence, the prosecution failed to prove same against the 1st Defendant. Accordingly, the 1st Defendant is hereby discharged and acquitted on count 3 of the amended charge.

In conclusion, based on the credible evidence of the prosecution witnesses testimonies and the exhibits before the Court, I believe the case of the prosecution and disbelieved that of the defence and I hold the view that the prosecution has proved its case beyond reasonable doubt against the 1st and 2nd Defendants for the offence on count one and also the offence of conferring corrupt advantage upon relations and associates contrary to section 19 of the Corrupt Practices and Other Related Offences Act against the 1st Defendant. Accordingly the 1st and 2nd Defendants are hereby convicted for the offence on count one as charged and the 1st Defendant convicted for the offence of conferring corrupt advantage contrary to section 19 of the Act as charged.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
10/12/18

1st and 2nd Defendants present in Court.

Michael Adesola:- For the prosecution.

Terhemba Gbashima:-With me are Ruben Kinfa and Amina Musa for the 1st Defendant.

Emmanuel C Udegbumam:-For the 2nd Defendant

Signed
Judge
10/12/2018

PLEA OF ALLOCUTUS

SENTENCE:-

Gbashima:- On behalf of the 1st convict, I refer to section 311 (1) and (2) of Administration of Criminal Justice Act, 2015, which deals with conditions of

sentencing especially section 311 (2),(1) of Administration of Criminal Justice Act, 2015 in lieu of imprisonment. The custodian sentence will not serve the interest of justice and I urge the Court not to award it. The 1st convict is a 1st offender and he has displayed good conduct throughout the entire proceedings. He has always attended Court. The 1st Convict is the bread winner of his family and if sent to prison, it would have adverse effect on his family. Secondly, I refer the Court to section 416 (2) (b) (f) and (g) of the Administration of Criminal Justice Act, 2015 which enjoins the Honourable Court not to impose a maximum sentence on a 1st offender. I therefore urge the Court to use its discretion judiciously and temper justice with mercy as the aim of sentencing is for correction and deterrent.

Emmanuel:- On behalf of the 2nd convict I prayed the Court

that sequel to section 311 (1) and (2) (c) of Administration of Criminal Justice Act, 2015 prayed the Court in passing sentence, to consider a non custodian sentence on the 2nd convict. The 2nd convict is a man of integrity and he served this country well before his retirement. The 2nd convict is a family man with so many dependants on him. And as he stands right now, he is alone because he lost his spouse (wife) who is a supporter of the 2nd convict. As presently, the 2nd convict is right now battling with a life threaten ailment, that requires medical attention every week. If the 2nd convict is incarcerated, we are afraid he would not be able to meet with the required medical needs from the prison authorities. The

2nd convict is a victim of circumstances. I urge the Court to temper justice with mercy as the 2nd convict has no interest in the plot of land in question. The essence of punishment is to either reform or serve as retribution to others. In both of the public eye and the law, punishment is imposed where it reforms, and it will at best serve the interest of justice. The 2nd convict is a retired civil servant and if sent to prison will not attain the aim of punishment to reform him because he must have learned from his pasts and he is no longer in the civil service to put his reformation into practice. I also refer the Court to section 416(2) (e) of Administration of Criminal Justice Act, 2015 and not to pass the maximum sentence.

Micheal:- In passing sentence there are two areas to consider- sentencing without option of fine and sentencing simpliciter. The Court has discretion to even give option of fine and even where it is mandatory, the Court has discretion to grant a lesser punishment in form of sentence.

Sentence:-

Court:- In passing the sentence on the 1st and 2nd convicts on the first count, I have listened to the submissions of Counsel in their plea of allocutus on behalf of the 1st and 2nd convicts. I have listened to the passionate plea of the 1st convict's Counsel to the effect that the 1st convict is a 1st offender and that throughout the trial, the 1st convict has been attending trial and shown good conduct throughout the hearing and determination of this case. He further submitted on behalf of the 1st convict that the 1st convict has a family and dependants that depend on him for their

sustenance and that he is no longer in public service. Learned Counsel submitted that the essence of sentence is to serve as a reformation or deterrent and by the whole hug of trial that the 1st convict has gone through, he has learnt his lessons. He therefore urged me to take into account section 311 (1),(2) and 416 (2) (b), (f) and (g) of Administration of Criminal Justice Act, 2015 and impose non-custodian sentence on the convict.

The learned Counsel for the 2nd convict also made similar submissions like the learned Counsel for the 1st convict but added that the 2nd convict is a 1st offender, a man of integrity and that he served this country well with an unblemished record. He added further that the 2nd convict just lost his wife and he is equally battling with life threatening ailment which requires the 2nd convict to have medical attention every week. He therefore urged me to apply section 311 (1), (2) (c) and 416 of Administration of Criminal Justice Act, 2015 and impose non-custodian sentence on the 2nd convict. The learned prosecuting Counsel in his submissions stated that the essence of sentencing are twofold sentencing without option of fine and sentencing simpliciter. He however submitted that even where the Act or statute did not provide discretion to be exercised by the Court, the Court can still exercise its discretion by passing a lesser sentence and not the maximum.

Now having listened to the submissions of Counsel I have perused sections 311 (1) (2) (c), 416 (1) and (2) of Administration of Criminal Justice Act, 2015.

In the instant case although section 19 of the Corrupt Practices and Other Related offences Act 2000 did not make provision as regards discretion of

the Court in imposing sentence, it appears by the combine provisions of sections 311 (1) (2), 416 (1) (2) of the Administration of Criminal Justice Act, 2015 and the inherent powers of the Court as provided by section 6 (6) of the 1999 Constitution that enjoins the Court to do justice to all persons without ill- will, it appears by imposing the maximum sentence as provided by the Act, the Act has indirectly taken away the powers of the Court under section 6 (6) of the 1999 Constitution (as amended). To that extent, I am of the humble view that this Court has inherent powers to impose either the maximum or a lesser sentence based on the circumstances of each case particularly after considering the plea of allocutus and provisions of sections 311 and 416 of Administration of Criminal Justice Act, 2015 as to the essence of sentencing.

In the circumstances, from the plea for mercy of the convicts, I am of the humble view that imposing a lesser sentence will serve the end of justice not only to the convicts but the society in general. The 1st and 2nd convicts are hereby sentenced to a term of imprisonment on count one for 30 days imprisonment. And in respect of the 2nd convict, the prison officials are hereby ordered to grant the 2nd convict unfettered access to medical attention especially where the prison authorities have no such facilities.

In respect of count 2 of the charge, the 1st convict is also sentenced to a term of imprisonment of 30 days. The term of imprisonment to run concurrently.

Further, in respect of plot SS1 Jikwoyi Extension III, by the provisions of section 321 (b) (i) of the

Administration of Criminal Justice Act, 2015 which provides

- (A) A Court on conviction may adjourn proceedings to consider and determine sentence appropriate for each convict
- (b). Order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the Court may direct the convict.
 - (i) To return the property to the owner or to a person designated by the owner.

In the circumstance, plot no. SS1 Jikwoyi Extension III is hereby returned to the nominal complainant, Fine Trust Academy and all title documents in possession of Pax Education Limited are hereby declared null and void.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
10/12/18