

**IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN**

BEFORE THE HONOURABLE JUSTICE J. O. IGE - JUDGE
ON MONDAY THE 29TH DAY OF JANUARY, 2007

SUIT NO. 1/2/ICPC/2006

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

A N D

S. A. ALALADE ACCUSED

R U L I N G

This Ruling is on a No Case submission made by Mr. O. Ogundele, learned Counsel for the Accused person at the close of the case for the Prosecution.

The Accused person who was the former Chairman of the Orire Local Government Council Ogbomosho, Oyo State between the period May 1999 and May 2002 was arraigned before this Court on an Information for the following offence:

COUNT ONE: STATEMENT OF OFFENCE

Using office to confer corrupt advantage contrary to Section 19 of the Corrupt Practices and Other Related Offences Act, 2000

PARTICULARS OF OFFENCE

S. A. Alalade (M) between August 2000 and September 2001 at Orire Local Government, Oyo State, being a public officer, used his office as Chairman of Orire Local Government, Oyo State to confer corrupt advantage upon himself by acquiring a multi rooms storey building for students' hostel valued at ₦9,192,673.00 near Ladoke Akintola University of Technology, Ogbomosho and registered in the name of his son Master Adedayo Alalade the

property being above his income.

The Prosecution called the following four witnesses in proof of its case namely: Jimoh Obeh, Assist Commissioner of Police formerly on attachment with ICPC – 1st P.W., Frank Nanakumo, ICPC Investigator – 2nd P. W., Lawrence Ojo, a staff of the Federal Ministry of Works who tendered Valuation report and Hezekiah Adediran, former Director of Town Planning, Orire Local Government Council. The Prosecution also tendered documentary evidence as Exhibits at the trial. The gist of the case for the Prosecution at the trial was that the Accused person between May 1999 and May 2002 when he was Executive Chairman of Orire Local Government Council Ogbomosho built a hostel Accommodation the value of which was put at ₦9,192,673.00 which was above his income and that he used Government funds for that purpose. Both the PW1 and PW2 investigated the two petitions Exhibits A & A1 written against the Accused person. In the statement made by the Accused Exhibit B, the Accused admitted that he owns the property but that the construction cost was ₦3 million because he did it by director labour. The Prosecution tendered Exhibit C – Summary of direct payments to Hon. S. A. Alalade, Executive Chairman Orire Local Government Council prepared by the Treasurer of the Council showing Accused's total earnings to be ₦18,643,567.08 less ₦500,000 vehicle allowance and also less his Severance allowance. The valuation report of the hostel was also tendered wherein the hostel was valued at ₦9,192,673.00 – Exhibit D. The Prosecution also tendered both the Survey Plan of the land as well as the building-plan submitted for processing approval by the Accused person.

In his submission on no case to answer, Mr. Ogundele, learned Counsel for the Accused person referred to Section 19 of the ICPC Act under which the Accused person is charged for the offence of using his office to confer corrupt advantage on his son. It was submitted that the submission can be made under Section 286 of the Criminal Procedure Law where there has not been a proof of an essential element of the offence etc. Learned Counsel contended that the basis of the charge is that the cost of the building is greater than the amount the Accused person earned as Chairman of the Orire Local Government Council. He referred to the testimonies of

the two witnesses who gave evidence on the amount earned by the Accused person during the relevant period. He pointed out that 1st P.W. said he did not know the amount earned by the Accused during the period he was Chairman. He also referred to the evidence of PW2 on the same point stressing that the witness under cross examination told the Court that the Accused person earned a total sum of ₦15.6 million during the period under review less the sum of ₦500,00.00 earned by the Accused as shown at page 21 of Exhibit C which brings the total earnings of the Accused person to ₦19.1 million. It was pointed out by Counsel that the position of the case as at the close of the case for the Prosecution was that the Accused person earned a total sum of ₦19.1m and he built a house of ₦9.1m so he would have had a balance of ₦10 million to manage himself and the family.

It was the argument of learned Counsel that the case ought not to have come to Court at all. He urged the Court to hold that the Accused person did not use his office to confer any advantage on his son, and therefore no case has been made to warrant his being called upon to make any defence.

In his reply, Mr. Nwaigwe Chief Legal Officer for the Prosecution submitted that Section 236 of the Criminal Procedure Law is not applicable in this case because the Prosecution has established a prima facie case against the Accused person. He referred to Section 19 of the ICPC Act under which the Accused person is charged and submitted that the Prosecution has a duty to prove the following ingredients of the offence namely (i) that the Accused person is a Public Officer (ii) that he has used his position as a public officer to confer corrupt advantage on himself or relation.

It was submitted by learned Counsel that the Prosecution has established a prima facie case against the Accused person. He cited and relied on the case of Ubanatu Vs. C.O.P. (2000) 2 NWLR (Pt 643) 115 on the meaning of prima facie case and submitted that the Prosecution has satisfied the requirements of prima facie case because they have established through PW1 and PW2 that the Accused person was Chairman of Oriri Local Government Council between 1999 and 2002 and as such he

is a Public Officer. On the 2nd ingredient, Counsel submitted that the Prosecution through PW1-PW4 has established that the Accused person used his office as Chairman for 3 years to confer corrupt advantage upon his son by building a multi million hostel at Ogbomoso in the name of his son. Counsel referred to Exhibit B – statement of the Accused wherein he claims to have married and having 5 children which means that he has a large family to cater for. He also referred to the portion of Exhibit B where the Accused claimed to be paying a sum of ₦30,000 monthly to his political Godfather together with 10% of his salary for running the Party office.

The Court was again referred to the Petitions Exhibits A & A1 which were stated to have been written in year 2001 by which time the Accused was just two years in office to show that the Accused was able to build a house worth ₦9.1 million within that short period. Still on Exhibit C – the tabulation of Accused's earnings during the period under review, it was the argument of Counsel that payment of the earnings was not made enblock but in bits, and that his salary is ₦136,900 per month while the other earnings are allowances. In the course of his argument Counsel raised a poser namely whether it is rational to believe that the Accused person could build a house of over ₦9.1m within 2 years going by the lifestyle of Nigeria Politicians.

Learned Counsel further submitted that what is incumbent on the Prosecution at this stage of the trial is to establish a link between the Accused person and the Commission of the offence for which he is charged. He submitted that the Prosecution has made out a prima facie case to establish the ingredients of the offence charged and he should therefore be called upon to make his defence. The attention of the Court was also drawn to Exhibit B where the Accused said he built the house for his son for ₦3 million in contrast with ₦9.1m for which PW3 valued the house. He submitted that the Accused person should be called upon to explain the difference between the two valuations. He urged the Court to overrule the no case submission.

In his reply, Mr. Ogundele, defence Counsel referred to Petitions Exhibits A & A1 said to have been written by faceless persons, and submitted that in a criminal

trial such Petitions should not be taken as evidence against the Accused person. See Benjamin Okpolor Vs. State 1977 11/12 SC 1 at 6 ; and on Exhibit B the statement of the Accused, Counsel cited the case of Sanusi V. State (1984) 10 SC 106 at 107 that when statement of an Accused is tendered, it is only as a proof that it was made and not as proof that the contents are true.

By virtue of Section 286 of the Criminal Procedure Law Cap 31 Laws of Nigeria State 1978 if at the close of the Prosecution's case it appears to the Court that from the evidence adduced to prove a charge a case has not been made out against the Accused sufficiently to require him to make a defence the Court should discharge him from that particular charge.

A submission of no case to answer may be properly made and upheld in the following circumstances:

- (i) when there has been no evidence to prove an essential element in the alleged offence either directly or circumstantially or inferentially; or
- (ii) where the evidence adduced by the Prosecution witnesses has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable Tribunal can safely convict on it.

These are the two conditions one of which and even both of which can make for a no case submission – See Godwin Chianugo Vs. The State (2002) 2 NWLR (pt 750) 225 & Ekpor Vs. State (2001) 7 NWLR (pt 712) 292.

Section 19 of the Corrupt Practices and Other Related Offences Act 2000 provides as follows:

“Any public officer who uses his office to gratify or confer any corrupt or unfair advantage upon himself or any relation or Associate of the Public Officer or any other Public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for 5 years without option of fine”

The offence for which the Accused person is charged borders on Corruption. In a nutshell, that while he was serving as Chairman of Orire Local Government Council he built a Student hostel for an amount which is above his legitimate earnings. The ingredients of the offence under Section 19 of the ICPC are as follows:

- (i) The Accused person must be a Public Officer
- (ii) That he has used the opportunity of his office to confer unfair or corrupt advantage upon himself or his relation.

The word "Corruption" has been defined in Black's Law Dictionary as "Depravity, perversion, or taint; an impairment of integrity, virtue or moral principle especially, the impairment of a public official's duty by bribery. The word "corruption" indicates impurity or debasement and when found in the criminal law it means depravity or gross impropriety.

Now, to the above ingredients of the offence charged, by virtue of his office that is Executive Chairman of Orire Local government Council, the Accused person falls within the definition of "Public Officer" under Section 2 of the ICPC Act 2000.

On the second ingredient which is the conferment of corrupt advantage on himself or his son, the Prosecution has relied heavily on the outcome of the Investigation prompted by Exhibits A & A1 the anonymous Petitions. In criminal Proceedings, all facts except as may be permitted by law, must be proved by direct oral evidence of a witness who has personal knowledge of the facts in issue – See Benjamin Opolo Vs. State (1977) 11/12 SC 1 at page 6. The Accused person's total earnings that is, salaries and allowances for the period May 1999 to May 2002 are contained in Exhibit C prepared by the Director of Orire Local Government Council at ICPC request. The total package is put at ₦18,643,597.08 less severance allowance and vehicle allowance of ₦500,000 that is a sum of ₦19,143,597.08 all told. The Prosecution was not even sure of the exact earnings of the Accused person during the relevant period when 1st PW said under cross-examination:

"I will not know whether the total amount he collected for his 3 year tenure was ₦20,000,658.00 that is over ₦20m."

Therefore the total earnings collected by the Accused during the period was close to ₦20m.

The Prosecution has valued the hostel accommodation building at ₦9.1m whereas the Accused put a value of ₦3m on it having constructed it through direct labour. In his evidence in chief, PW1 said:

"From the income tabulation and the estimated cost of the building given by the Accused compared with that of the Federal Ministry of Works, one would see that the cost of the building is far beyond the Accused legitimate earnings. With that I can say that he has contravened a section of the ICPC Law"

One may ask, what is the Accused's legitimate earnings during the period in question. His legitimate earnings will include Salaries, Severance allowances, out of pocket allowances, furniture allowances, Security allowances, Imprest allowances etc. All these payments are detailed in Exhibit C tendered by the Prosecution. The total salaries collected during the period as shown on Exhibit C is ₦3,610,357.99 that is close to ₦4m. If the Accused had built a house of ₦9.1m from that alone one can rightly impute some element of corruption in the matter; but his total earnings include the other payments which I have itemised bringing the sum total to ₦19,143,597.08 from which sum the hostel was built. In the course of the evidence in chief, 2nd P.W., one of the two Investigators who investigated the Petitions, he said:

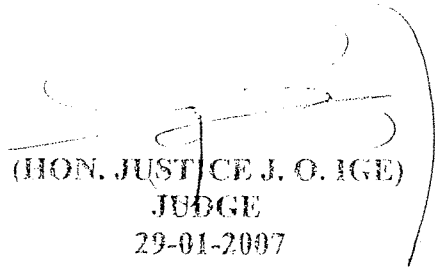
"Among the allegations in the petitions was that the Accused built a hostel accommodation the value of which was above his income and that he used Government funds"

The question of the Accused person using Government funds is not part of the case of the Prosecution. It is a misconception on the part of the Prosecution to say that the Accused legitimate income is limited to his salaries. Again, and, this is very important, the allegation of corruptly conferring advantage upon himself or his son

has not arisen as a result of any loss of public funds in the Local Government Council or as a result of any audit query. From the totality of the evidence before the Court, I am of the firm opinion that the value of the hostel built by the Accused between May 1999 and 2002 is within his legitimate earnings and not from Government funds.

Based on the testimonies of the Prosecution Witnesses and the documents before the Court, I am of the view that an essential ingredient of the offence charged has not been proved either by direct or circumstantial evidence. In the instant case, the Prosecution cannot be said to have made out a prima facie case to warrant the Accused person being called upon to make any explanation.

The No Case submission is upheld. The Accused person is accordingly discharged.


(HON. JUSTICE J. O. IGE)
JUDGE
29-01-2007

Mr. Ifeanyi Nwaigwe, Chief Legal Officer,
for the State.

Mr. O. Ogundele (with Segun Oyewo) for
Accused person.