

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 TUESDAY THE 19TH DAY OF DECEMBER, 2006

SUIT NO. I/1/ICPC/2006

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

A N D

ADEYEMI RICHARCD OLALEKAN ACCUSED

J U D G M E N T

This Charge has been initiated by the Independent Corrupt Practices And Other Related Offences Commission (ICPC) when on 12/6/06 they filed an Information wherein the Accused person was charged with the following offences:

"STATEMENT OF OFFENCE 1ST COUNT

Impersonating public officer contrary to and punishable under section 108(1) of the Criminal Code Cap 77 Laws of the Federation 1990.

PARTICULARS OF OFFENCE

Adeyemi Richard Olalekan on or about the 11th day of April 2006 at Ibadan did falsely represent himself to Alhaji Adamu Maina Waziri as the head of the investigation department of the Independent Corrupt Practices & Other Related Offences Commission.

STATEMENT OF OFFENCE 2ND COUNT

Obtaining money by false pretences contrary to and punishable under section 419 of the Criminal Code Cap 77 Laws of the Federation 1990.

PARTICULARS OF OFFENCE

Adeyemi Richard Olalekan on or about the 18th day of April 2006 at Ibadan Oyo State by false pretence and with

intention to defraud did obtain the sum of N800,000.00 (eight hundred thousand naira only) from Alhaji Adamu Maina Waziri on the pretext of helping him kill the petition written against him at the Independent Corrupt Practices & Other Related Offences Commission Abuja.

Dated this 12th day of June 2006"

On arraignment, the Accused person pleaded not guilty to the two Counts on the Information. The Prosecution called four witnesses in proof of their case while the Accused person gave evidence in his own defence and called no witness.

The 1st & 3rd P.W.'s are officials of the ICPC who handled the investigation of the case while 2nd P.W. is an officer of the United Bank for Africa, U.C.H. Ibadan branch where the offence was committed. The 4th P.W. who is the Complainant gave a synopsis of how the offence was planned and executed. The 1st P.W. Sufianu Alani Falade, the Head of the Special Duties Department of the ICPC told the Court that his department handles investigation of petitions that border on corrupt practices. He said he came to know about the Accused person on 12/4/06 when the Secretary of the ICPC called him to find out whether there was any officer by name A.S. YAKUBU among his Investigators and he confirmed to him after checking through the nominal roll that there was no such officer at the Commission. The same enquiry was made by the National Headquarters of the State Security Services, Abuja and he affirmed what he said earlier. He was then directed to meet one ADAMU WAZIRI 4th P.W. the Executive Secretary of Petroleum Trust Development Fund Abuja who told him how one A.S. YAKUBU had demanded a sum of N800,000 from him to help him kill a petition written against him (that is Waziri) before the ICPC, Yakubu claiming to be an Investigator at the ICPC. He said he advised Waziri to play along with the person who made the demand (that is the Accused person). He told the Court further that the man who made the demand directed that the money should be paid into the United Bank of Africa Plc. Asokoro branch Abuja and should be paid in the name of one ADEYEMI OLALEKAN (that is the Accused person) and to be collected with the use of Olalekan's International Passport.

Testifying further he said the money was paid into the UBA Bank in the name of Adeyemi Olalekan but the Accused did not come to the bank as he promised Waziri. He said since the money could be collected anywhere after it has entered the Internet he directed the Management of the Asokoro branch of UBA to put the word "Do not pay until confirmation" on the money transfer. He stated further that on

18/4/06 at about 5.50 p.m. he was informed by the Asokoro branch of UBA that Adeyemi Olalekan (the Accused) was at their UCH branch Ibadan to collect the sum of N800,000 but he told the Asokoro branch Management to get the UCH branch Ibadan to delay payment to enable him contact his team of Investigators who were then in Ibadan. He said he immediately contacted one Olatunji Yusuf P.W.3 the head of the Investigating team then at Ibadan to go to the UBA UCH branch where he would meet somebody who was about to collect a sum of N800,000 with the use of International Passport bearing the name of Adeyemi Olalekan. He said Yusuf complied and Adeyemi Olalekan was arrested with the sum of N800,000 and was later taken to Abuja.

Under cross examination, the witness told the Court that he did not know the Accused person before the incident. He said he had 25 Investigators in the Special Duty Department and none of them bears the name YAKUBU or "A. S." as his initials. He said he was with Adamu Waziri (the Complainant) and he heard (the Accused person) telling Waziri to pay the money into the bank in the name of Adeyemi Olalekan because Waziri put his handset on Speaker. It was also in his presence that Waziri gave a sum of N800,000 to one of his staff to go and pay into Asokoro branch of UBA. He said he would not know at the time Waziri put the handset at Speaker that it was the Accused's voice he heard until the Accused person was brought to Abuja and he made a Confessional statement that he is the one bearing the name Adeyemi Olalekan and whose picture is contained on the International passport. He said he would be surprised to know that the name of the father of one of his female investigators is YAKUBU. The report of how the Accused person impersonated being an ICPC Investigator which was all the case is about was written by the witness, and together with the Chairman's comments were all admitted as Exhibit A – Memo from HOD (SDD) to Chairman dated 19/4/06, HOD (SDD) to Hon. Chairman dated 24/4/06 Exhibit B and HOD (SDD) to Hon. Chairman dated 27/4/06 – Exhibit C. He further stated that the caveat he asked should be put on the money as well as the information that the Accused was at the UCH Ibadan branch at 5.50 p.m. are all contained in his reports Exhibits A – C.

The Customers' Service Manager of the UBA PLC UCH Ibadan branch Mr. Osuolale Fatai testified as PW2. He is the officer in charge of the operations of the branch including tellering, Customers' service and funds transfer. On the 18/4/06 on receiving tellers refer transactions of Local Money transfer of N800,000 which is

above a limit of N50,000, he said he checked the form filled by the beneficiary, interviewed him and also made photocopy of his International Passport after which he held him on so that he could confirm from the originating branch that is Asokoro branch Abuja. When he contacted the Asokoro branch, the Customers' Services Manager there told him to hold on to the Customer because the ICPC wanted him. After the Asokoro branch had gotten in touch with the Sender of the money, they phoned to Ibadan to let them know that the ICPC Officials then in Ibadan will come and pick up the beneficiary from the branch. When the ICPC people arrived at the bank they identified themselves. After the Accused person had been paid, he was arrested and the bank Management commended the witness for a job well done. When the Asokoro branch was later informed about the arrest, they told him that E-mail had been sent to all the Customers' services Managers that they should call them immediately the beneficiary showed up in their office. Copy of the E-mail received by the witness was admitted as Exhibit D.

In answer to questions under cross examination the witness stated that he did not know the Accused until 18/4/06 when he came to cash the money. He said the Accused person had no Account with them.

The ICPC Official who led a team of Investigators to Ibadan at the material time testified as PW3. His name is Yusuf Olatunji. He said he was on an assignment at Ibadan when his Head of Department PW1 phoned and directed that they should proceed immediately to UBA UCH branch Ibadan to effect the arrest of the Accused person who has paraded himself as an Investigator with the ICPC to one Alhaji Adamu Maina Waziri the Executive Secretary of Petroleum Development Fund so as to assist the said Maina to kill the Petition against him. They proceeded to UBA UCH branch and after they had introduced themselves to the Manager, the Manager then pointed out the Accused person to them after which they took vantage positions in the bank. He said when the Accused person was called upon to come for his money, he saw him presenting his International Passport for identification purpose. The Accused also filled withdrawal slip for money collected. After he had collected the money, the witness told the Court that the arrest of the Accused person was then effected outside the banking hall. Immediately after his arrest, he said they recovered the sum of N800,000 from him as well as his International passport and withdrawal slip used in collecting the money. The Accused was later taken to Abuja the following day.

On arrival at Abuja, the witness stated that he took the statement of the Accused person under caution. He also tendered the pink colour form which the Accused completed at the bank as Exhibit E. The money recovered from him, the sum of N800,000 in the denomination of N500 note wrapped in N50,000 in a wrap making 16 wraps totalling in all N800,000, the 16 wraps were admitted as Exhibit F. When the witness sought to tender the statement which he obtained from the Accused person, learned defence Counsel raised objection to its admissibility on the ground that it was obtained under duress and as a result of torture. A trial within trial was conducted in consequence of that objection and the objection was overruled and the statements were admitted as Exhibits G & H. The International Passport recovered from the Accused as well as the Biodata Form completed by the Accused were admitted as Exhibits I & J respectively in the proceedings.

Under cross examination, the witness said the Accused person had not collected the money at the time he and his colleague Linus Gubbi got to the bank. He denied the suggestion that he and his colleague collected money from the Manager and imposed it on the Accused person. He also denied having anybody by the name of TIJANI Yusuf or A.S. YAKUBU at the ICPC. He said he would also not know whether there had been any petition against Adamu Waziri at the ICPC before.

The last witness for the Prosecution PW4 was the Complainant – Adamu Maina Waziri Executive Secretary, Petroleum Technology Development Fund Abuja. He said he was travelling in his car from Portharcourt to Yenagoa on 11/4/06 when his Secretary informed him around 11 a.m. and 12 noon that one Tijani Yusuf from ICPC called and left a message that he wanted to discuss something urgent and confidential with him and also gave him the phone Number of the said Tijani Yusuf. When he arrived at Yenagoa he said he phoned Tijani Yusuf and after he had introduced himself to him as Adamu Maina Waziri, he asked him what it was all about. That was when Tijani Yusuf told him there was a Petition against Waziri on Corrupt Practices sent to the ICPC and he had decided to help Waziri because he has heard about him as a good man when the two of them spoke later in the day, Tijani reminded the witness (Waziri) that a similar petition was written against him in Year 2002 and he was one of those who investigated it that was how he came to know of the Waziri being a good man with good records. He told the Court that Tijani thereafter gave him the name of one A.S. YAKUBU as his superior officer handling the Petition and advised him to phone A. S. Yakubu and greet him without telling him

how he (Waziri) got the phone number and how he knew about the petition. He said he called A.S. Yakubu as advised, introduced himself to him and told him that he would see him the next day on his return to Abuja.

On 12/4/06 which was the next day while he was about to board the flight from Portharcourt to Abuja around 10.30 a.m., the witness stated that A. S. Yakubu telephoned him and enquired why he (Waziri) did not tell him when last they spoke that there was a Petition against him and he replied that his intention was to come and see Yakubu on his arrival at Abuja. He said he phoned Tijani immediately and told him that A.S. Yakubu had just called and he mentioned the Petition. When he asked him how Yakubu got to know about the petition, Tijani said he was the one who told Yakubu and that it was part of his effort to help Waziri. He said that was when he became suspicious.

After landing at Abuja from Portharcourt, the witness said he received a phone call from A. S. Yakubu around 12.30 and Yakubu told him three things namely:

- (i) That he has just finished a meeting with his boys handling the petition during which he gave them instructions on how to write a favourable report and will make copies of the report available to EFCC, SSS and himself so that the matter will be killed.
- (ii) That he (Yakubu) will see the Chairman of the ICPC in his office immediately they finished their discussions.
- (iii) That he (Waziri) should do something for the boys, six of them. Yakubu then suggested that each of the boys be given N100,000 and N200,000 for the office boys which brings the total to N800,000.

He went further to state how Yakubu gave him instructions as to how the N800,000 should be paid; that it should be paid by money transfer through Standard Trust Bank UBA branch Asokoro Abuja in favour of Adeyemi Richard Olalekan who will identify himself with his International Passport. It was after all these that he contacted Dr. Tukur Bello Secretary of the I.C.P.C. and requested him to confirm for him whether there are officers by name A. S. Yakubu and Tijani Yusuf with the I.C.P.C.; and by 6 p.m. on that day both Dr. Bello and Waziri's personal Assistant confirmed that the names of both gentlemen are not on the nominal roll of the I.C.P.C. That was when it was suggested to him that he should make a formal

complaint to the State Security Services (SSS) headquarters which he did, and the SSS directed the Director (Special Duties) of the ICPC to discuss with him. When he met the Director, he said he narrated to him everything that happened. There and then he said he called A.S. Yakubu on his own telephone and put the telephone on Speaker phone so that the Director could hear the discussion between him and Yakubu. In their discussion, he said he apologised for not paying the money the previous day but assured him that it would be paid before 1 p.m. on that day. He thereafter sent his Personal Assistant Alhaji Mamman Bukar to go and pay the sum of N800,000 at S. T. B. UBA Asokoro Branch in favour of Adeyemi Richard Olalekan as instructed by A.S. Yakubu. A few days later he said he received a phone call from PW1 informing him that Olalekan (the Accused) had been arrested at the Ibadan branch of S.T.B./U.B.A.

Testifying further, the witness told the Court that he requested to be allowed to see Mr. Yakubu. So he went to the ICPC Office. While he and others were at the PW1's office at the ICPC, one gentleman was brought in to see whether he would know any of the people in the office but the man could not recognise the witness; and when the witness later introduced himself as Adamu Maina Waziri, the young man, that is the Accused person (who was identified in the dock) prostrated and started crying and begging for forgiveness. He said he told him that he had forgiven him but he ought to cooperate to find out his Accomplices.

Under cross-examination, he said he never met the Accused until the time he saw him at the ICPC Office. He confirmed that there was a petition against him at the ICPC in Year 2002 and the Petition was investigated. He said his further investigation showed that there is nobody bearing A.S. Yakubu or Tijani Yusuf at the ICPC. With this evidence the Prosecution closed its case.

In his evidence in defence, the Accused person who described himself as a Plank Seller at Bodija Market Ibadan denied the offences of impersonation and obtaining money by false pretences levelled against him. He stated that an old Customer of his by name Titus Olufemi came to him on 13/4/06 to inform him that he had just been given a contract by a Company known as Abtecky Construction at Abuja for the supply of building construction materials. He said when he went through the contract document he was convinced that Olufemi Titus was in fact given a contract job to do. He told the Court that Olufemi Titus further told him that

payment for the contract was ready but before payment could be made, the pay must furnish them with some documents like International Passport or drive Licence. He said when he was satisfied that the contract documents are genuine, showed him his International Passport and Olufemi said he would send it to the office responsible for the payment. After Olufemi had examined the Passport, copied out the name and age on the passport and returned it to the Accused person after informing the Accused person that he would pass on the particulars he extracted from the passport to the Abuja Company to enable it process the payment that was to be made to Olufemi.

Testifying further, the Accused person told the Court that on 18/4/06 Olufemi Titus came to inform him that the payment he had been expecting had been made in the name of the Accused person by local money transfer and that he (Accused) should go with him to cash the money at the UBA UCH branch Ibadan; and he followed him. On getting to the bank with Olufemi Titus, the Accused said the bank officials gave him the necessary forms to complete and on being satisfied about the genuineness of the documents produced by the Accused, the officials then told him that they would pay the money to him. While completing the bank forms he said Olufemi was with him in the bank, and said after they had waited for about an hour and a half to collect the money, the bank officials came round to appeal to him to be patient, that they were working on the matter and assuring him that he would be paid. It was at that point in time that Olufemi Titus told the Accused person that he would like to rush down to Ogunpa area to go and buy some building construction materials for the contract job and that he would come back to meet him at the bank, but he never returned to the Bank.

He stated further that at a time, the bank Cashier invited him to enter his office to collect the money and when the Accused asked why, the Cashier told him that it was because the money he wanted to collect was quite substantial. As he was sitting down waiting to collect the money he said some people whom he later described as officials of the State Security Services pounced on him and told him that he was under arrest because he wanted to cash the money fraudulently. He told the Court that it was not true as stated by PW2 that he had collected the money before he was arrested.

After his arrest, he told the Court that he was locked up for four days at the SSS's office in Ibadan before he was taken to Abuja. When he got to Abuja, he said

he was taken to the ICPC office where he was confronted with the allegation of impersonation and obtaining money by false pretences which he denied. He said he had never been to Abuja before the incident, and has never met PW4. When confronted with Exhibits G & H, the statements he made in the course of investigation, he said he did not know anything about the contents of the Exhibits. He said he had earlier made statements which the ICPC Investigators destroyed. He finally told the Court that Olufemi Titus had not come back to him at the bank before he was arrested.

Under cross examination, he told the Court that he is not the owner of the Company known as Crown Prince Limited but that the Company is owned by a friend of Olufemi Titus. He said he had no dealings with the Company and has no connection whatsoever with it. He said he knew that Olufemi Titus used to ride a 504 saloon car. He denied knowing anybody by the name of Sunday Olalere. The name of the Company which awarded the supply contract to the Accused was given as Abteky Construction Ltd., and it was on that Company letter headed paper that he saw the quotations for the items to be supplied. He admitted knowing where Oshuntokun Avenue is in Ibadan but not Crown Prince Ltd. At the time of his arrest he stated that he was about to collect a sum of N800,000 from the bank. He further told the Court that Olufemi Titus had absconded since the time he heard of his arrest; and the last time he saw him was when he said he would like to dash to Ogunpa area. He said he filled a bank form to collect a sum of N800,000 but he had not been paid before he was arrested, and he had no agreement with Olufemi Titus to be paid any commission. He said he asked Olufemi why he did not use his own driving Licence instead of an International Passport to cash the money, but Olufemi said he had none. He denied the suggestion that he and Olufemi operated under the name of Crown Prince Ltd. He finally told the Court that the money he wanted to collect from the bank was not for him nor was he the beneficiary.

At the close of the case for the defence, learned Counsel for both Parties addressed the Court. Mr. Okesola leading Counsel for the Accused person after referring to the two counts on the Information submitted that in criminal cases, the burden is on the Prosecution to prove the case beyond reasonable doubt and the onus of proof does not shift – See Section 138 of the Evidence Act, Okoro Vs. State 1988 5 NWLR (Pt 94) 255, 277, Lori Vs. State (1980) 8/11 SC 81 and Section 36(5) of the

1999 Constitution of the Federal Republic of Nigeria. It was his argument that the Prosecution has not discharged the onus placed on it by law.

As regards the 1st Count of impersonating Public Officer under Section 108(1) of the Criminal Code, Counsel gave the ingredients of the Offence to include the following:

- (i) The Accused must have falsely represented himself to be a person employed in the Public Service.
- (ii) The Accused person should have pretended that he was employed in the Civil Service and did the act alleged by such employment – See Criminal Law & Procedure Southern Nigeria, Brett & Mclean page 570 at para 1536, R Vs. Okoro 1937 3 NWLR 111.

On the said Count 1, it was submitted by Counsel that the evidence before the Court is at variance with the charge before the Court. Under the charge the Accused was said to have falsely represented himself to PW4 Adamu Maina Waziri as Head of the ICPC Investigation Department on 11/4/06 at Ibadan which the Accused denied. The following facts are then set out as emanating from the evidence before the Court namely:

- (i) PW4 did not come to Ibadan on 11/4/06 the alleged date of the Commission of the offence and therefore the Accused could not have represented himself to PW4 in any capacity either as a Public officer or a private person.
- (ii) PW4 stated both in his evidence in chief and under cross examination that he first met the Accused person at the ICPC office in Abuja some days after his arrest.
- (iii) The Accused person was arrested on 18/4/06 at UBA UCH Ibadan branch.
- (iv) PW4 did not meet the Accused person prior to his arrest, and it was the PW1 who showed the Accused to PW4 at the ICPC office at Abuja.
- (v) On or about 11/4/06 and thereafter the Accused person did not know the Head of Investigation Department of ICPC.
- (vi) No identity Card or any document was found with the Accused to show that he was employed in the Public Service.
- (vii) There is no nexus between the Accused and PW4 on the one hand or between the Accused and Head of Investigation Department of ICPC on the other hand.

Learned Counsel submitted that the Prosecution has totally failed to prove the two ingredients required in Count 1. Besides, it was submitted that the Accused person was not arrested by warrant. He cited and relied on the cases of Achonra Vs. IGP 1958 3 FSC 50, Adeyemi Vs. C.O.P. (1961) 1 All N.L.R. 387.

On Count 2, Counsel listed the essential ingredients of the offence as follows:

- (i) Falsity of the pretence
- (ii) Guilty Knowledge of the Accused person.
- (iii) Intention of the Accused to defraud

The substance of the offence, according to learned Counsel is in helping PW4 to kill a Petition written against him at ICPC. It was the argument of Counsel that the Accused was arrested on 18/4/06 the day he was alleged to have collected N800,000 from PW4, and PW4 saw the Accused for the first time at Abuja a few days after his arrest. It was therefore submitted that there was no time the Accused collected N800,000 from PW4 therefore the falsity of the allegation of killing the Petition has not been proved. It was pointed out by Counsel that neither the PW1 nor PW3 – officials of ICPC mentioned that any petition was sent to their office against PW4 in 2002 and no petition was tendered. It was further submitted that falsity of an allegation of receiving bribe cannot be assumed, it must be proved – See page 816 of Brett & Mclean.

On the requirement of guilty knowledge, it was submitted that it must be shown beyond reasonable doubt that the Accused knew the pretence to be false or did not believe it to be true. Learned Counsel again stated that the Accused person did not know PW4 and vice versa or that the Accused person know of any petition written against PW4 at the ICPC and the Court is only bound by the evidence before it.

On the requirement of intention to defraud, it was submitted that the Accused person had no intention to defraud in any way because the Accused person denied obtaining the sum of N800,000 on 18/4/06 and there was no evidence that PW4 was in Ibadan on 18/4/06. On the payment by PW4 of the sum of N800,000, it was submitted that there was no evidence as to whether or not PW4 gave cash to Malam Bukar to pay to UBA Asokoro branch and whether the money is his own money or

that of the Petroleum Development Fund where he was Executive Secretary. It was submitted that Mallam Bukar was not called as a witness and if any money was paid as alleged, it was Mallam Bukar's and not PW4's money.

On the telephone conversation which PW4 said he had with some imaginary people called "Tijani Yusuf" and "A. S. Yakubu", it was submitted that there is no petition before the Court which indicates the names of Tijani Yusuff or A.S. Yakubu against PW4 at the ICPC.

On the Confessional statements of the Accused person Exhibits G & H Counsel listed out the tests for determining the veracity or otherwise of the confessional statement to include:

- (i) whether there is anything outside the confessional statement to show that it is true.
- (ii) whether the statement is corroborated and
- (iii) whether the facts contained therein are true.

It was the argument of Counsel that the statement cannot be corroborated as the man who paid the money into the account was not called, and also that the Accused hadn't the opportunity of committing the offence against a person he did not know. Again, it was pointed out by Counsel that Olufemi Titus referred to in the statement was not called by the Prosecution. He therefore urged the Court not to attach any weight to the confessional statement.

Addressing the Court further, it was the argument of Counsel that there are no finger prints of the Accused person on the Naira notes Exhibit F. It was also his contention that since the Bank Manager was arrested together with the Accused person and he also made a statement under caution, he is an accomplice.

Again, it was the argument of learned Counsel that the Accused person was arrested on ground of suspicion which cannot sustain any conviction no matter how strong. He urged the Court to look at the discrepancy in the statements – Exhibits D & E, that Exhibit D was not in existence, at the time investigation was concluded. He urged the Court to discharge and acquit the Accused person.

In his Reply, Mr. Taiwo learned Counsel for the Prosecution submitted that the Prosecution has led evidence to show that there was impersonation of head of the ICPC Investigation Department made to PW4 and that the impersonation was made via telephone conversation between PW4 and one A. S. Yakubu & Tijani Yusuf. It was the argument of Counsel that the issue arising from the first ingredient is whether there is any link between A. S. Yakubu the impersonator of Head of ICPC Investigation Department and the Accused person. It was his argument that in view of the evidence of PW1 who is head of the ICPC Investigation department, it has been established that there exists a post called HOD Investigation. Learned Counsel further pointed out that from the evidence of PW4 & PW1 as well as Exhibit D – Caveat that beneficiary of the money be arrested, Exhibit E – the bank form filled by the Accused when he showed up and Exh. I – the Accused International passport which he used to identify himself as well as his two statements – Exhibits G & H; it was therefore submitted that all the pieces of evidence referred to provide the link as to who is A. S. Yakubu. It was his argument that A. S. Yakubu and the Accused person are the same person because it was the Accused who paraded himself to PW4 as A. S. Yakubu on the telephone. Reference was made to the evidence of PW4 that he had telephone discussions with one TIJANI YUSUF who later brought in A. S. Yakubu, that is the Accused person who demanded for N800,000 bribe in order to kill the Petition.

Again, Counsel referred to Exhibit E – bank form filled by the Accused expecting money from PW4 and identified himself with Exhibit I – his International passport. He also referred to the PW4 evidence on the telephone conversation he had with the Accused person using the name of A. S. Yakubu when PW4 was asked to send money to UBA, UCH branch. He also referred to Exhibit H, one of the statements of the Accused person where he said his official 419 name is A. S. yakubu which is the name of the person with whom PW4 had the telephone conversation who directed that the money should be sent in by name of Richard Adeyemi Olalekan. It was his argument that PW4's evidence is circumstantial enough to hold that the Accused is guilty as charged as there is no break in the chain of the evidence of the Prosecution – See Alfred Aigbadion Vs. State (2000) 7 NWLR (Pt 666) 686, 705 & Peter Vs. State (1997) 12 NWLR (Pt 531) 1 at 19 on circumstantial evidence.

On the second Count, it was submitted that the Prosecution has proved that the Accused person who paraded himself as A. S. Yakubu is not the Head of the

Investigation Department of the I C P C, and that the actual person who heads the I C P C Investigation Department is the PW1 who testified to the effect that there is nobody by the name A. S. Yakubu in his department.

On the second and third ingredients of the 2nd Count that is intention to defraud any knowledge of the fraud, Counsel submitted that at the time of demand and receipt of N800,000 by the Accused person, his intention was to defraud PW4 as he was not a staff of I C P C. Again by virtue of Exhibits G & H, the statements of the Accused person, Counsel submitted that the actus reus and mens rea were to obtain N800,000 by false pretence. On this, reliance was placed on the testimony of PW2 – the bank Manager, Exhibits E & I – the bank form filled prior to collection of the money and the Accused International passport with which he was identified before payment as well as Exhibit D – Caveat sent to all UBA branches that anybody who presented himself as Adeyemi Richard Olalekan should be arrested.

With regard to the defence of the Accused person, learned Counsel submitted that the defence is unreliable. It was the argument of Counsel that Titus Adeyemi who asked the Accused to help him collect the money was not called. Again the document relating to Abtecy on which the items to be supplied at Abuja were typed was never produced in Court. He urged the Court to hold that the Prosecution has proved its case beyond reasonable doubt.

As to the question of the arrest of the Accused person without warrant, it was submitted that Section 5(1) of the ICPC Act gives Investigators powers of Police to arrest. It was further submitted that the Prosecution has led sufficient evidence to prove the charge. For instance Exhibit E – Bank teller shows that a sum of N800,000 was sent by PW4 to be collected by the Accused person. There was evidence by the Accused that he completed Exhibit E and presented it with his International Passport Exhibit I to collect the sum of N800,000. He submitted that the fact that no Petition was tendered is relevant. What is irrelevant is that the Accused paraded himself as A. S. Yakubu and he asked PW4 to send N800,000 via local money transfer to kill a petition, that the Accused person wanted to defraud PW4 and the Accused was arrested when he collected N800,000. He urged the Court to hold that all the tests laid down in Akpan's case on confessional statements have been satisfied.

Section 108(1) of the Criminal Code provides as follows:

“A person who personates any person employed in the

Public Service on an occasion when the latter is required to do an act or attend in any place by virtue of his employment is guilty of a felony, and is liable to imprisonment for three years.”

The two ingredients necessary to constitute the offence are (i) that the Accused must have falsely represented himself to be a person employed in the Public Service. The second is that the Accused should have assumed to do the act alleged by virtue of such employment – See page 567 paragraph 1300, - The Criminal Law and Procedure of the Southern States of Nigeria 3rd Edition, T. Akinola Aguda.

As will be shown later and as stated in the evidence of PW4 Alhaji Maina Waziri, the Complainant, the Accused person first gave his name as Tijani Yusuf a staff of ICPC who told PW4 that there was a petition against PW4 which he would assist him to kill. It was Tijani who gave PW4 the name of one A.S. Yakubu as his boss at ICPC in relation to the Petition. The PW1 – Sufianu Falade is the head of the ICPC Investigation Department. He and 3rd P.W. another official of the ICPC gave evidence that there is nobody by the name of A.S. Yakubu at the ICPC, that is the name falsely represented to the 4th P.W. by Tijani Yusuf as Head of ICPC Investigation Department. The dialogue between PW4 and Tijani Yusuf started the drama, and it was on 11/4/06 as stated by PW4. When PW4 called at ICPC to see the Director (Special Duties) he said he put his phone on speaker phone and had discussion with A.S. Yakubu who posed as the head of the ICPC (Investigation Department). In their discussion, PW4 said after he had apologised to Tijani for not paying the money before then assured him that he would do so before 1 p.m. on that day. The sum of N800,00 Exhibit F was later paid into the Asokoro branch of UBA as directed by Tijani Yusuf and later received by Olalekan Richard Adeyemi (the Accused) in Ibadan UCH branch of the UBA. So at the ICPC there is nobody by the name of Tijani Yusuf or A.S. Yakubu or even that of Olalekan Richard Adeyemi who turned up later to collect N800,000 for assisting to kill the Petition written against PW4. When the Accused was eventually arrested and taken to Abuja, the PW4 said after he had introduced himself to him as Alhaji Maina Waziri the Accused prostrated and was crying pleading for forgiveness. The Accused did not deny this under cross-examination.

The evidence led by the Prosecution has shown clearly that there is nobody by the name Tijani Yusuf, A. S. Yakubu or Adeyemi Richard Olalekan at the ICPC that the Accused used his name to falsely represent to PW4 that he was a staff of the ICPC and therefore was in a position to assist the PW4 kill the Petition written against PW4 before the ICPC. One may ask – why was the Accused person crying when he was

brought face to face with PW4 at the ICPC office? What has he done wrong to call for forgiveness from PW4? I have not the slightest doubt in my mind that the Accused person falsely represented himself to PW4 as Head of Investigation Department of ICPC on 11/4/06 by virtue of which he undertook to kill the petition written to the ICPC against PW4. The ingredients of the first Count are established, and I so hold.

Now, on the 2nd Count which is for obtaining money by false pretences under Section 419 of the Criminal Code, I respectfully adopt the ingredients of the offence as set out by Niki Tobi JSC in the case of Edwin Undemegbunam Onwudiwe Vs. Federal Republic of Nigeria (2006) 8 SCM 264 at page 299 quoting from his earlier judgment in Alake Vs. The State 7 NWLR (Pt 205) 567 at the Court of Appeal:

“Let me deal with the offence as proved in section 419 of the Criminal Code Law. In order to succeed the Prosecution must prove

- (i) that there is a pretence
- (ii) that the pretence emanated from the Accused person
- (iii) and that it was false
- (iv) that the Accused person knew of its falsity or did not believe in its truth
- (v) That there was an intention to defraud
- (vi) That the thing is capable of being stolen
- (vii) That the Accused person induced the owner to transfer his whole interest in the property. The offences could be committed by oral communication, or in writing or even by conduct of the Accused person.”

From the above it is clear and beyond argument that the offence of 419 obtaining money by false pretence can be committed by mere oral communication was done in this case when Tijani Yusuf or A. S. Yakubu ultimately turned out to

Adeyemi Richard Olalekan , the person who showed up on 18/4/06 at UCH UBA branch Ibadan to collect the sum of N800,000. The pretence in this case is clear, namely that the Accused person will assist the 4th P.W. to kill a petition at the ICPC. The Accused knew it was impossible as he was never a staff of the ICPC. The reason why the Appellant made the pretence was to defraud.

Looking closely at the facts of this case, I have no difficulty in linking the Accused with the commission of the offence. The Accused person was the Inventor and bearer of the names "Tijani Yusuf" A. S. Yakubu both fictitious officials of ICPC. In his evidence in chief, his friend Titus Olufemi whom he claimed got the contract the details of which are on Abtecy headed paper told him that before payment, the people paying would require either a driving licence or International Passport but the Accused knew that Olufemi had a car and driving Licence, why did Olufemi not use that to identify himself. He told the Court that Olufemi Titus the beneficiary of the N800,000 was with him at the bank but later left while payment was being processed never to show up again. Unfortunately he never put this to any of the PW1, PW2 and PW3 that someone was with him when he was waiting to cash the money.

According to PW4 when payment was to be made further to the promise to kill the petition A. S. Yakubu instructed that it be paid by money transfer through Standard Trust UBA branch Asokoro Abuja in favour of Adeyemi Richard Olalekan who will identify himself with his International Passport – Exhibit I. In the bank form Exhibit E which the Accused filled and submitted to the bank in Ibadan before he was paid the sum of N800,000 there are these particulars:

“Sender’s Name – Alhaji Adamu Maina Waziri

Expected Amount – N800,000

Name of Receipient – Adeyemi Richard Olalekan

Address – No. 7 Alhaji Lasisi Ayinla Street

Off Ojurin – Ibadan.

Recipient signature – signed”

The Accused person was arrested outside the banking hall red-handed with the sum of N800,000.

By his action and conduct, the Accused person had an intention to defraud PW4. The sum of N800,000 Exhibit F is, by Section 419 of the Criminal Code capable of being stolen and it was in fact stolen by the Accused person. In my view the Prosecution proved the offence of obtaining by false pretences against the Accused person, and I so hold.

Now, to the defence of the Accused person, learned Counsel has urged the Court not to attach any weight to the confessional statements Exhibits G & H. A confessional statement so long as it is free and voluntary and is direct, positive and properly proved is enough to sustain a conviction. The Court should not however act on the confession without first testing the truth thereof. The test for determining the veracity or otherwise of a confessional statement consists of the following:

- (i) whether there is anything outside the confession to show that it is true.
- (ii) whether the statement is corroborated no matter how slightly
- (iii) whether the facts contained therein so far as can be tested are true.
- (iv) whether the Accused person had the opportunity of committing the offence.
- (v) whether the confession of the Accused was possible
- (vi) whether the confession was consistent with other facts which have been ascertained and proved in the matter – See Asimiyu Alarape Vs. The State (2001) 5 NWLR (Pt 705) 79.

The statements Exhibits G & H have been corroborated substantially by Exhibit E – the bank form he filled and presented to the bank to cash the money as well as Exhibit I - his International Passport. He was arrested after he had collected the money by PW3 and one other bank official; the amount to be collected is also stated on the form he filled. The name Titus Olufemi whom he described as the beneficiary of the money and as his Customer also featured in the confessional statements which I believe and hold are substantially corroborated. The Accused can therefore be convicted on his confessional statements in this case.

Again Titus Olufemi who won the Contract for which N800,000 was paid was said to have informed the Accused about the payment of the money to UCH branch of

UBA by bank transfer. This Titus Olufemi man who the Accused assisted with his International passport was never sighted by PW2 - Osuolale Fatai who processed the payments at the UCH branch nor did any of the ICPC officials PW1 & PW3 say they saw any other person with the Accused person when he was pointed out to them by PW2 before he was paid. Indeed the funny story told by the Accused was that Titus Olufemi who is the owner/beneficiary of the money left him in the bank to go to Ogunpa area to buy some building materials never to return to the bank and has since not been seen by the Accused person.

Indeed the evidence before the Court is quite overwhelming and points irresistibly to the guilt of the Accused person. I reject the defence of the Accused person in its entirety. He is a pathological liar. He is no doubt a fraudster. I therefore find the Accused person guilty on the two Counts as charged and I convict him accordingly.

ALLOCUTUS: - Accused is a first offender, married with 4 children and his family bread winner. He did not benefit from this crime. Sentencing him will make him more hardened. I urge Court to caution and discharge him being a victim of circumstances. On the contrary, I urge Court to give him an option of fine. I urge Court to temper justice with mercy.

Taiwo – The issue of sentence is at the discretion of the Court. I do not know anything about the antecedents of the Accused person.

Sentence:

This is a skilfully contrived crime. It was planned and executed with consummate skill. No doubt, the Accused person belongs to the class of those faceless fraudsters who perpetrate all sorts of financial crimes through the use of mobile telephones. It is unfortunate that his other confederates in crime were not apprehended, but whatever punishment is meted out to the Accused person will act as a deterrent to others in his gang.

I have taken into consideration the passionate plea of learned Counsel for the Accused person. Having found the Accused person guilty of the two Counts as charged, he is hereby sentenced as follows:

1st Count

1 Year I. H. L.

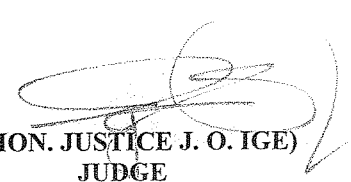
2nd Count

2 Years I. H. L.

Sentences to run consecutively.

Order as to disposal of Exhibits.

It is hereby ordered that Exhibit F – the sum of N800,000 be returned to the I.C.P.C. for onward delivery to PW4 – the Complainant owner of the money.


(HON. JUSTICE J. O. IGE)
JUDGE
19 -12 - 2006

Mr. Bayo Taiwo (with Musa Bala Zakari)
for the Prosecution.
A. Okesola (with B. Falola) for
the Accused person.