IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

TUESDAY, FEBRUARY 13, 2018

CHARGE NO. FCT/HC/CR/57/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ... ... PROSECUTION

AND

DR FORTUNE FIBERESIMA ... ... DEFENDANT

[a.k.a. FORTUNE DAVID, DAVID THANKGOD FIBERESIMA]

RULING

THIS RULING is in respect of a no-case submission made on behalf of the Defendant herein, *Dr Fortune Fiberesima* who is standing trial on a 6-count charge of corrupt practice and abuse of office contrary to and punishable under ss. 12 and 19 of the *Corrupt Practices and Other Related Offences Act, 2000* [hereinafter "the ICPC Act"]. The specifics of the charge preferred against him are as follows:

> ***"COUNT 1***
>
> *That you, Dr. Fortune Fiberesima (a.k.a Fortune David and David ThankGod Fiberesima), being the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President and while employed in the public service, sometime in 2012, in Abuja, within the jurisdiction of this Honourable Court, knowingly and directly held a private interest in the contract for land reclamation at the State House Medical Centre, Abuja in the sum of Two Hundred and Fifty-Eight Million, Nine Hundred and Fifty Thousand Naira (₦258,950,000), which contract was awarded to T. E. &*

C. Limited, a company in which you were a director, and hereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and other Related Offences Act, 2000.

COUNT 2

That you, Dr. Fortune Fiberesima (a.k.a Fortune David and David ThankGod Fiberesima), being the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President and while employed in the public service, sometime in 2014, in Abuja, within the jurisdiction of this Honourable Court, knowingly and directly held a private interest in the contract for supply of medical consumables to the Nursing Unit of the State House Medical Centre, Abuja in the sum of Thirty-Six Million, Nine Hundred and Eighty-Six Thousand, Two Hundred and Fifty Naira (₦36,986,250), which contract was awarded to Ibomaedomi Global Services Limited, a company owned by members of your family and which you were a signatory to its account, and thereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and other Related Offences Act, 2000.

COUNT 3

That you, Dr. Fortune Fiberesima (a.k.a Fortune David and David ThankGod Fiberesima), being the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President and while employed in the public service, sometime in 2011, in Abuja, within the jurisdiction of this Honourable Court, knowingly and directly held a private interest in the contract for supply of medical consumables to the Physiotherapy Unit of the State House Medical Centre, Abuja in the sum of Five Million, Three Hundred and Ninety-Seven Thousand, Four Hundred and Eighty-Three Naira (₦5,397,483.00), which contract was awarded to Ibomaedomi Global Services Limited, a company owned by members of your family and which you were a signatory to its account, and thereby committed [an] offence contrary to and punishable under Section 12 of the Corrupt Practices and other Related Offences Act, 2000.

COUNT 4

That you, Dr. Fortune Fiberesima (a.k.a Fortune David and David ThankGod Fiberesima), being the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President and while employed in the public service, sometime in 2012, in Abuja, within the jurisdiction of this Honourable Court, did use your position to confer unfair advantage upon yourself and members of your family in relation to the contract for land reclamation at the State House Medical Centre, Abuja in the sum of Two Hundred and Fifty-Eight Million, Nine Hundred and Fifty Thousand Naira (₦258,950,000), which was awarded to T. E. & C. Limited, a company in which you and your brother were directors, and thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and other Related Offences Act, 2000.

COUNT 5

That you, Dr. Fortune Fiberesima (a.k.a Fortune David and David ThankGod Fiberesima), being the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President and while employed in the public service, sometime in 2014, in Abuja, within the jurisdiction of this Honourable Court, did use your position to confer an unfair advantage on yourself and members of your family in relation to the contract for supply of medical consumables to the Nursing Unit of the State House Medical Centre, Abuja in the sum of Thirty-Six Million, Nine Hundred and Eighty-Six Thousand, Two Hundred and Fifty Naira (₦36,986,250) which contract was awarded to Ibomaedomi Global Services Limited, a company owned by members of your family and which you were a signatory to its account, and thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and other Related Offences Act, 2000.

COUNT 6

That you, Dr. Fortune Fiberesima (a.k.a Fortune David and David ThankGod Fiberesima), being the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President and while employed in the public service, sometime in 2011, in Abuja, within the jurisdiction of this Honourable Court, did use your position to confer an unfair

advantage on yourself and members of your family in relation to the contract for supply of medical consumables to the Physiotherapy Unit of the State House Medical Centre, Abuja in the sum of Five Million, Three Hundred and Ninety-Seven Thousand, Four Hundred and Eighty-Three Naira (₦5,397,483.00), which contract was awarded to Ibomaedomi Global Services Limited, a company owned by members of your family and which you were a signatory to its account, and thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and other Related Offences Act, 2000."

Upon being arraigned on 25/4/17, the Defendant pleaded "Not Guilty" to all six (6) counts of the charge, thereby setting the stage for the Prosecution to discharge the non-shifting burden of establishing his guilt beyond reasonable doubt. The Prosecution called five (5) witnesses in a frantic bid to demonstrate the Defendant's guilt. At the close of the Prosecution's case, the Defendant opted to make a no-case submission as he could not see his way clear that a *prima facie* case has been out against him to warrant entering his defence, whereupon written addresses were filed, exchanged and adopted by the respective counsel for the parties in open court on 16/1/18. The Defendant's written no-case submission is dated 8/12/17; the Prosecution's written address filed in opposition to the no-case submission is dated 12/1/18; whilst the Defendant's reply on points of law is dated 15/1/18. Whereas the sole issue identified by the Prosecution is: "*Whether from the overwhelming oral and documentary evidence presented by the Prosecution, the Prosecution has established a prima facie case against the Defendant to warrant this Honourable Court to call upon him to enter his defence*", two (2) issues are formulated for determination on behalf of the Defendant as follows:

1. *Whether from the evidence before the Honourable Court the Prosecution have made out a prima facie case of corrupt practice and abuse of office against the Defendant as required by law.*

2. *Whether this Honourable Court is duty bound to discharge and acquit the Defendant of this charge if the Prosecution fails to make a prima facie case against the Defendant.*

I have given a careful and insightful consideration to the issues identified by the parties which are not markedly dissimilar. The straightforward issue to be resolved is whether the Prosecution has made out a *prima facie* case to warrant calling upon the Defendant to enter his defence. It is merely restating the obvious that our adversary criminal justice system is accusatorial in nature and substance, and every person charged with a criminal offence is presumed innocent until he is proved guilty. See ***s. 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*** A necessary corollary of the presumption of innocence is that in a criminal trial such as the present, the burden is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. Quite unlike civil proceedings, this burden on the prosecution is static in a manner akin to the fabled constancy of the 'Northern Star' and never shifts to the accused. It is if, and only if, the prosecution succeeds in proving the commission of a crime beyond reasonable doubt that the burden shifts to the accused to establish that reasonable doubt exists. See ***ss. 135 and 137 of the Evidence Act 2011.*** The Prosecution has the onus of proving all the material ingredients of the offence(s) charged beyond reasonable doubt. See ***STATE v SADU [2001] 33 WRN 21 at 40.*** Where the prosecution fails so to do, the charge is not made out and the court is bound to record a verdict discharging and acquitting the accused. See ***MAJEKODUNMI v THE NIGERIAN ARMY [2002] 31 WRN 138 at 147.*** Also, if on the totality of the evidence adduced, the court were left in a state of doubt or uncertainty, the prosecution would have failed to discharge the onus of proof cast upon it by law and the accused would be entitled to an acquittal. See ***UKPE v STATE [2001] 18 WRN 84 at 105.*** However, proof beyond reasonable doubt does not mean proof beyond all shadow of doubt, but such proof as would

reasonably and/or irresistibly lead to the inference that the accused committed the offence. See ***AKINYEMI v STATE [1996] 6 NWLR (PT 607) 449, ONI v STATE [2003] 31 WRN 104 at 122*** and ***MILLER v MINISTER OF PENSION (1947) 2 ALL ER 372 at 373.***

For present purposes, what we are grappling with is not whether the guilt of the accused person has been established on the criminal threshold of proof beyond reasonable doubt. In considering a plea of *no-case-to-answer* at the close of the Prosecution's case, the court is not required to enquire into the guilt or otherwise of the accused person *per se* by evaluating the evidence adduced thus far. No. Rather, the court is preoccupied with ascertaining whether a *prima facie* case has been made out to warrant calling upon the accused person to enter upon his defence. The decision should depend not so much on whether the adjudicating tribunal will at this stage convict or acquit the accused, but whether the evidence adduced is such that a reasonable tribunal could convict on it. See ***ATANO v ATTORNEY-GENERAL, BENDEL [1988] 2 NWLR (PT. 75) 201***. In other words, what the court seeks to ascertain at this stage is whether on the face of the evidence adduced thus far by the Prosecution upon whom the non-shifting burden of proof lies, there is a ground for proceeding with the trial in that there is something worth looking at. Generally, there is ground for proceeding where the evidence before the court is such that if uncontradicted and if believed will be sufficient to prove the case against the accused person. See ***DURU v NWOSU [1989] 1 NWLR (PT. 113) 24*** –*per Nnamani JSC* and ***FIDELIS UBANATU v C. O. P. [2002] 2 NWLR (PT. 643) 115.*** The chief rationale behind a no-case submission is that the accused person [who is presumed innocent until proved guilty] should not be saddled with the burden of defending himself when there is no evidence upon which a trial court could validly convict. In the leading case of ***IBEZIAKO v COMMISSIONER OF POLICE (1963) 1 ALL NLR 61 at 67-68,*** the Supreme

Court (per *Adetokunbo Ademola, CJF*) held that a no-case submission may properly be made and upheld when: (a) there has been no evidence to prove an essential element in the alleged offence; and (b) the evidence adduced by the prosecution has been so discredited as a result of cross examination, or it is so manifestly unreliable that no reasonable tribunal could safely convict on it. See also ***FIDELIS UBANATU v C. O. P. supra at 136*** *–per Kalgo JSC,* ***STATE v AUDU (1972) 6 SC 28, ONAGORUWA v STATE [1993] 7 NWLR (PT. 303) 49*** and ***AGBO v THE STATE (2013) LPELR-20388 (SC)*** amongst a host of other cases. These requirements have now been codified in ***s. 303 (3) (a) – (d)*** of the ***Administration of Criminal Justice Act, 2015*** (hereinafter "ACJA"). In considering whether or not there is *prima facie* case against a defendant, the trial court is bound to confine itself severely to the evidence adduced in court. See ***MOHAMMED v STATE [2007] 7 NWLR (PT. 1032) 152 (SC).*** Against the backdrop of the foregoing, let us proceed presently to ascertain whether or not, on the face of the evidence adduced thus far by the Prosecution, there is any basis or ground for proceeding with the trial by calling on the Defendant to enter his defence as urged upon me by the Prosecution and resisted by the Defence.

The PW1 [*Engr. Aminu Abubakar*] stated that he was formerly the Director of Maintenance at State House, Abuja but retired from service in September 2015; that he was in court to testify in respect of a land reclamation project at State House Medical Centre which he administered whilst in office at the State House; that the need to expand the State House Medical Centre arose and they had to source for land to carry out the expansion; that the Directorate of Military Intelligence (DMI) graciously ceded about 3 hectares of its land which was rugged and swampy for that purpose, and reclamation was required; that a consulting engineer was engaged to advice on what to do in order to reclaim the land and a detailed recommendation as well as bill of

quantities for the required works were prepared; that the works included land clearing, construction of reinforced concrete wall and earth-filling; that the Procurement Department was responsible for procuring the contract [i.e. processing, tendering, bidding, etc.]; and that the matter had to be taken to the Bureau of Public Procurement (BPP) and because the site was close to security institutions, what was done was restricted tendering as approved by the BPP, which also gave approval for selected companies to participate in the bidding. He further stated that in the process of evaluating the bids, *T. E. & C. Ltd* was recommended as contractor; and that the Tenders Board met and approved the award of the contract to *T. E. & C. Ltd*; that the contract sum was ₦258,980,000.00 and the contract was to be completed within sixteen (16) weeks; that the contractor, *T. E. & C. Ltd* mobilised to site in February 2012 and completed the project in December 2013; and that a certificate of practical completion was issued pending the retention period. He maintained that he knew the Defendant and that they all worked in the State House; that the Defendant was a very senior official – the Chief Physician to the President and was also administering the State House Clinic; that he had course to interact with the Defendant in the course of his duties; that the Economic and Financial Crimes Commission (EFCC) invited him sometime in 2015 to explain the role his department played in the procurement of the land reclamation project; and that the Department of State Services (DSS) equally invited him sometime in 2015 in respect of the same project.

Under cross examination by *G. I. Abibo, SAN* of counsel for the Defendant, the PW1 maintained that he was a member of the State House Tenders Board; that he sat as a member of the Tenders Board in respect of the land reclamation project; that the Defendant was neither a member of the Tenders Board nor did he attend any meeting of the Tenders Board; that the Tenders Board reports to the Permanent Secretary of the State House; that the contract

was executed and there was no objection when the contract was awarded. The PW1 could not say with certainty if the contract has been fully paid for but maintained that all payment processes in respect of the project were completed and handed over to the Accounts Department before he left service.

The PW2 [*Rukiyat Odekunle*] stated that she is currently the Director of Procurement at Ministry of Budget and National Planning; that prior to that, she was at the State House and also at the Ministry of Health; that in December 2012, the State House awarded a contract for land reclamation valued at ₦280m to *Messrs T. E. & C. Ltd* and the delivery period was sixteen (16) weeks; that she was the Deputy Director of Procurement at the State House at the time and her role was to ensure that due process was administered in the award of the contract; that she signed the contract award letter by virtue of her position as Secretary of the Tenders Board; that a selective tender was adopted in view of security considerations, and the approval of the Bureau of Public Procurement (BPP) was sought and obtained and due process was followed in the award of the contract. She stated further that a contract for the supply of medical consumables at State House Medical Centre valued at ₦36m or so was also awarded in favour of *Messrs Ibomaedomi* sometime in June 2014; that she ensured that due process was administered and followed; and that she equally signed the award letter by virtue of her position as Secretary of Tenders Board.

Under cross examination by *G. I. Abibo, SAN* of counsel for the Defendant, the PW2 maintained that selective tender process means that the bid was restricted to selected companies; that the contract was awarded without any objection from BPP and upon compliance with due process; that she knew the Defendant as the Chief Physician to the former President; and that he was not

a member of the Tenders Board. The PW2 maintained that she is aware that the contract for medical consumables was executed; that she could not say for sure if payment has been made; and that she would be surprised to hear that full payment has not been made in respect of the land reclamation contract.

The PW3 [*Abdullahi Tafida*] stated that he is the Compliance Officer at Zenith Bank; that they received a letter from the EFCC in August 2015 requesting for mandate cards, statements of account and other account opening documents in respect of *T. E. & C. Ltd*, *Ibomaedomi Global Services Ltd* and *Dr. Fortune Fiberesima*; that they responded to the said letter and forwarded the said documents to the EFCC; and that the documents were printed from a computer used for day-to-day banking activities. The PW3 identified the documents signed by Compliance Officers at Zenith Bank's Head Office in Lagos and tendered Exhibits P1, P2, P2^{A}, 2^{B} and P2^{C}. Exhibit P1 is EFCC's letter to the Managing Director of Zenith Bank PLC; Exhibit P2 is Zenith Bank's reply; whilst Exhibits P2^{A}, P2^{B} and P2^{C} are the account documents attached to Exhibit P2. The PW3 further stated that the statement of account of *T. E. & C. Ltd* shows a transaction of ₦123,895,394.06k being payment from Federal Road Maintenance Agency (FERMA) for rehabilitation and repairs of roads on 23/8/13; that there was also a transaction of ₦45,238,095.24 on 23/7/14 as construction/provision of office building, CBN; that the signatory of the account is *David Fiberesima*, whilst the directors are *Peter Ogar, David Fiberesima, Dr. Fortune Fiberesima* and *Miss Lauven Ogar*; and that the signatories to the account of *Ibomaedomi Global Services Ltd* are *Dr Fortune Fiberesima* and *Mrs Ibeleye Fiberesima*, whilst the directors are *Ibeleye Fortune, Omoebi Edward, Ibinabo William* and *Boma Elizabeth.*

Cross-examined by *G. I. Abibo, SAN* of counsel for the Defendant, the PW3 maintained he does not know the Defendant personally and also does not

know him as a customer of Zenith Bank; that none of the accounts has any problem with their bank prior to EFCC's letter; and that he will also not know David if he sees him.

The PW4 [*Eweje Kabir Olajide*] stated that he is a Relationship Manager with Ecobank Nigeria Limited; that the EFCC requested for account opening documentation and statements of account in respect of *Ibomaedomi Nig. Ltd*, *T. E. & C. Ltd* and *Dr. Fortune Fiberesima* sometime in September 2015; that they printed the documents from their system which is connected to an online server that records the day-to-day activities on the above accounts; that the copies so printed were compared with what they had on the system and they appeared as a true representation of what was held in their database; that the computers were in perfect working condition and the documents were duly certified and confirmed by the Chief Compliance Officer, *Mr Chidi Oboigwe* who is currently out of station before they were submitted to the EFCC. He identified and tendered Exhibits P3, P4 and P5. Exhibit P3 is a letter dated 23/9/15 written by Ecobank Nig. Ltd to the EFCC in respect of *T. E. & C. Ltd* together with the attachments; Exhibit P4 is a collective of account opening documents, statement of account, means of identification, etc. of *Dr. Fortune Fiberesima's* personal account at Ecobank Nig. Ltd; whilst Exhibit P5 is also a collective of the account opening documentation, statement of account and allied documents in respect of the account of *Ibomadoemi Global Services Ltd* at Ecobank Nig. Ltd (formerly Oceanic Bank). The PW4 further stated that the statement of account of *Dr. Fortune Fiberesima* [Exhibit P4] shows a lodgement of a cheque of ₦5m by order of *Ibomaedomi Nig. Ltd*; that the statement of account of *T. E. & C. Ltd* [Exhibit P3] shows a lodgement of ₦35,143,214.30k on 2/1/13 with a narration showing it was for a construction provision; that the sum of ₦17,690,900.00 was transferred on 15/3/11 by order of State House Main Account from Zenith Bank to the account of *Ibomaedomi Global*

Services Ltd; that there was another deposit of ₦9.5m on 25/3/11 as payment by order of UPTH via CBN P/H.

Under cross examination by *G. I. Abibo, SAN* of counsel for the Defendant, the PW4 maintained that he knows the Defendant personally as *Dr Fiberesima Fortune* but not as *ThankGod David Fiberesima*; that being a Relationship Officer means he is an account's officer; that he has been the Defendant's account's officer since 2014 and that there has been no untoward activities on the Defendant's account to the best of his knowledge.

The final witness called by the Prosecution, *Ani Davis Stanley* [PW5] stated that he is a detective with the EFCC and his duty entailed investigating economic and financial crime cases assigned to him and any other responsibilities given to him by his superiors; that the office of Director of Operations assigned a petition by one *U. K. Obioha* to his team [i.e. the Counter Terrorism and General Investigations/Pension Section] on 4/8/15 for Investigation; that the Petitioner failed to show up for interview but they continued with the investigation by sending investigation activities' letter to various agencies that featured in the petition, taking into consideration the allegation of gross misconduct, abuse of office, contract inflation and money laundering levelled against the Defendant; that letters were sent to the Permanent Secretary of the State House, Corporate Affairs Commission (CAC) and Banks; that out of the seven (7) companies that featured in the response they received from the State House, the Commission identified *T. E. & C. Ltd* and *Ibomadoemi Nig. Ltd* as two companies connected with the Defendant; that the Defendant is a director in *T. E. & C. Ltd* which was awarded a land reclamation contract worth about ₦258m by the State House in 2012 when the Defendant was the Chief Physician to the former President of Nigeria as well as Head of State House Medical Centre, Asokoro, Abuja; that the

Defendant is not a director of *Ibomadoemi Global Services Ltd* which was awarded a supply contract by the same State House in the sum of about ₦36m and ₦5m respectively, but he is one of the signatories to the company's account as chairman of the company which is owned by his wife and children; that the response from the CAC confirmed the relationship between the Defendant and these two companies; that the Defendant was invited for interview and he made statements voluntarily under caution in a conducive atmosphere devoid of intimidation, harassment or duress in the presence of other members of his team. The PW5 further stated that they also received responses from Zenith Bank and Ecobank and it was discovered that the Defendant is a signatory to the Zenith Bank account as *Dr Fortune Fiberesima*, and also a signatory to the Ecobank account with the name *Fortune David*; that they probed further into the Defendant's personal account where they discovered that his personal account at Zenith Bank was opened with the names *Fiberesima Fortune David Peter*; whilst another of his personal account with Ecobank was opened in the name of *Fortune Fiberesima*; that they equally discovered cash movement between *T. E. & C Ltd* and *Ibomadoemi Global Services Ltd* accounts; that they invited the Defendant again to react to these discrepancies and he made statements; that the signatory to the *T. E. & C. Ltd* Ecobank account is *Mr Fiberesima David ThankGod*; whilst the signatories to *Ibomadoemi Global Services Ltd* account at Ecobank are *Ibeleye Fortune* and *David Fortune*; that the means of identification for *David Fortune* is a National Driver's Licence with the photograph shown; that the means of identification of the Defendant's personal account is a Driver's Licence in the name of *Fiberesima Fortune*; that the Zenith Bank account of *T. E. & C. Ltd* has *David Fiberesima* as sole signatory and the means of identification is the international passport of *David Fiberesima ThankGod*; that the signatories to the Zenith Bank account of *Ibomadoemi Ltd* are *Miss Ibeleye Fiberesima* with international passport as means of identification and *Fortune Fiberesima* with National ID

Card. The PW5 tendered the petition signed by *U. K. Obioha*, the Defendant's extra-judicial statements dated 5/11/15 and 7/12/15, and the responses from the State House [dated 15/9/15] and the Corporate Affairs Commission (CAC) [dated 5/11/15 and 21/1/16] as Exhibits P6, P7[A–B], P8, P9 and P10 respectively; and stated that the contract award letter dated 10/12/12 in favour of *T. E. & C. Ltd*, and the acceptance letter dated 17/12/12 in respect of the land reclamation contract valued at ₦258,950,000.00 are contained in Exhibit P8.

Under cross examination by *G. I. Abibo, SAN* of counsel for the Defendant, the PW5 conceded that he found out during investigation that there is a *Mr David Fiberesima ThankGod* and that the photograph of *David Fiberesima ThankGod* as shown in the means of identification is different from the Defendant herein; and that the Defendant confirmed in his extra-judicial statement that *Fiberesima David ThankGod* is his older brother. When pressed by counsel to explain what he meant by *Dr Fortune Fiberesima* (a.k.a *Fortune David, David Fortune Fiberesima*), the PW5 stated that *Dr. Fortune David* has the photograph of the Defendant and his signature as well; but conceded that the photograph shown in the account documents of *T. E. & C. Ltd* at EcoBank [Exhibit P3] is not that of the Defendant, and also that the name on Exhibit P3 is *Fiberesima David ThankGod* who he did not see in the course of investigation. The PW5 stated that the Defendant told them he was the Chief Physician of the President and was also in charge of State House Medical Centre, but conceded that he neither requested for nor did he see the Defendant's appointment letter. He however insisted that the Defendant did not deny that in his statement. When pressed further by counsel that the Defendant was not the CEO of State House Medical Centre, Abuja at any time nor was he a public servant, the PW5 stated that the Defendant was a political appointee or political aide to the former president and by extension a public servant;

but conceded that the Defendant came into office with the former President and left with him; that the response from the State House [Exhibit P8] shows how the contract in favour of *T. E. & C. Ltd* was awarded; that in the course of investigation, other members of his team took the statements of *Rukiyat Odekunle* (PW2) and *Engr. Aminu Abubakar* (PW1) who insisted that the contracts were properly awarded by a restricted bidding process and also that the contracts were duly performed/executed; and that some payments are still outstanding on those contracts. He stated that the complainant was not interviewed; that there was a complaint against the Defendant and one *Dr. (Mrs) Ogbe*; that they made findings against *Dr. (Mrs) Ogbe* and forwarded same to the Legal Department which has the prerogative to decide what cases to take to court; that their investigation did not indict the two companies [i.e. *T. E. & C. Ltd* and *Ibomadoemi Global Services Ltd*]; that Exhibit P8 shows that the Defendant was not a member of the Tenders Board that awarded the contract; and that investigation revealed that the contract was awarded through a *"restricted bidding process"* which means that the bidding was not made open to the public, and that was done because of the security installations in that area.

The foregoing is the totality of the evidence led by the Prosecution which, in the Defendant's estimation, does not disclose a *prima facie* case to warrant calling upon him to enter a defence. It is forcefully contended on behalf of the Defendant that there is no modicum of proof that the Defendant was a public servant and/or civil servant to whom the provisions of the extant laws and rules apply, and the entirety of the Prosecution's case is based on speculation, supposition and guesswork; that no evidence was led or proffered by the Prosecution to show that the Defendant was a public servant or public officer employed in the public service of the Federation, State or Local Government, public corporation or private company wholly or jointly floated by the government or its agency in and out of Nigeria as contemplated by s. 318 of

the 1999 Constitution (as amended), citing ***NWAWOLO v FEDERAL REPUBLIC OF NIGERIA (2015) LPELR 2058 (CA), INEC & ORS v ORJI & ORS (2009) LPELR-4320 (CA), MOMOH v OKEWALE (1977) 6. SC 81, (1977) 11 NSCC 365*** and ***REGISTERED TRUSTEE, PPFN v SHOGHOLA [2004] 11 NWLR (PT. 883) 1 at 20;*** and that before a person can be said to have fraudulently benefitted from a contract, it must be shown that he is a member of staff of the contract awarding ministry, department or agency, placing reliance on ***MAIDERIBE v FEDERAL REPUBLIC OF NIGERIA [2014] 5 NWLR (PT. 1399) 68 at 93 E-F.*** It is further contended on behalf of the Defendant that there is also lack of evidence to show that the State House Medical Centre, where the Defendant's office was located, is a commission, statutory corporation or authority established for the Federation by the Constitution or an Act of the National Assembly; an educational institution established or financed principally by the government of the Federation; or a company or enterprise in which the Government of the Federation or its agency owns controlling shares or interest; that the Defendant's position as Chief Physician to the President was a purely political appointment held at the pleasure of the President which ended when the President ceased to hold office, citing ***s. 171 (G) (2) (a) & (e) of the Constitution,*** insisting that both PW2 [*Rukiyat Odekunle*] and PW5 [*Ayim David Stanley*] conceded that the Defendant was only an aide to the former President and/or an appointee of the former President; that whereas the Prosecution is bound to prove all the essential elements of an offence as contained in the charge, it failed to show that the Defendant facilitated the award of contract as both PW1 and PW2 not only insisted that that the contracts were awarded by the State House Tenders Board which was answerable to the Permanent Secretary of the State House and that due process was followed in awarding the contracts, they equally testified that the land reclamation contract [for which some payments are still outstanding] was awarded through a restricted bidding process *"not made open to the public*

because of security concerns" and the Defendant played no role whatsoever in facilitating the award of the contracts. The court was urged to uphold the no-case submission and discharge the Defendant.

In opposition to the no-case submission, the Prosecution contended that a *prima facie* case has been made out against the Defendant and urged the court to call upon the Defendant to enter his defence, if any, insisting that the Prosecution has adduced overwhelming evidence to establish the essential ingredients of the offences charged as held in the case of ***NWAWOLO v FEDERAL REPUBLIC OF NIGERIA supra.*** The Prosecution contends that the Defendant who was employed both as Chief Personal Physician to the President and Head of the State House Medical Centre falls squarely within the definition of public officer *in* ***s. 318 of the Constitution*** and ***s. 12 of the ICPC Act****; that* there was no need to tender the Defendant's letter of appointment since he had admitted in his extra-judicial statements [Exhibits $P7^A$ and $P7^B$] that he was Head of the State House Medical Centre, citing ***s. 20 Evidence Act 2011*** and the cases of ***BALOGUN v YUSUF (2010) LPER-3847 (CA) at pp. 27-28*** *–per Bage, JCA (as he then was),* ***AKPAN v STATE [2008] 14 NWLR (PT. 1106) 72,*** and ***AMALA v STATE (2004) 12 NWLR (PT. 888) 520 at 549;*** and that there was equally no need for the Prosecution to prove that the State House Medical Centre which is under the State House is a public institution being run with state funds because that is a notorious fact the court ought to take judicial notice of, citing ***IDEN v STATE (1994) LPER-14608 at p. 18*** *–per Tobi, JCA (as he then was);* that personal staff appointed by the President in furtherance of powers conferred on him under paragraph (e) of s. 171(2) of the Constitution must be given the same status as other officers mentioned in paragraphs (a) – (d), and the Chief Physician to the President is a public officer just like Ambassadors, Head of the Civil Service of the Federation, Secretary to the Government of the Federation, etc. The Prosecution further

contended that a compound look at Exhibits P2, P3, P5, P7[A-B], P9 and P10 as well as the testimonial evidence of PW3, PW4 and PW5 show that there is no dispute whatsoever that the Defendant has an interest in *T. E. & C. Limited* [as a director] and in *Ibomaedomi Global Services Limited* owned by members of his family [as a signatory to the account]; and there is equally evidence that the land reclamation contract at State House Medical Centre valued at ₦258,980,000 was awarded to *T. E. & C. Limited,* whilst the contracts for supply of medical consumables at the State House Medical Centre valued at ₦36,986,250.00 and ₦5,397,483.00 were awarded to *Ibomaedomi Global Services Limited* which are not joint stock companies consisting of more than twenty members when the Defendant was the Head of State House Medical Centre. The Prosecution argued that the case of ***MOMOH v OKEWALE (1977) 6 SC 81, (1977) 11 NSCC 365*** [cited by the defence] is inapplicable as it was decided under the 1963 Constitution; that the Defendant is not standing trial for non-execution of the contracts and the fact that the contracts have been executed is immaterial; that evidence has been led to show that companies belonging to the members of the Defendant's family and in which the Defendant is also signatory to the bank accounts executed contracts awarded under selective tender for whatever reason in the office the Defendant was heading regardless of the fact that the Defendant was not a member of the Tenders Board, citing the unreported decision of the Court of Appeal [per *Shuaibu, JCA*] in ***F. R. N. v DAKINGARI [Appeal No. CA/S/26C/2017 delivered on 20/10/17].*** The court was urged to hold that the Prosecution has established a *prima facie* case which is not the same thing as proof beyond reasonable doubt and call upon the Defendant to enter his defence, citing ***EKWUNUGO v F. R. N supra at 641-642.***

Now, ss. 12 and 19 of the ICPC Act, 2000 under which the Defendant is charged provide as follows:

"12. *Any person who, being employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than twenty (20) persons, a private interest in any contract agreement or investment emanating or connected with the department or office in which he is employed or which is made on account of the public service, is guilty of an offence, and shall on conviction be liable to imprisonment for seven (7) years."*

"19. *Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without the option of fine."*

The elements of the offence created under s.12 [as stated by the Court of Appeal in the case of ***NWAWOLO v FEDERAL REPUBLIC OF supra*** are: (a) that the accused person is employed in the public service; (b) that he knowingly acquired a private interest either directly or indirectly; and (c) that the interest is in any contract, agreement or investment in connection with his department or office thereof; whilst the ingredients of the offence of conferring a corrupt advantage upon oneself, relation or associate under s. 19 ICPC Act are: (a) that the Defendant was a public officer; and (b) that the Defendant used his office or position to confer corrupt or unfair advantage upon himself or any relation or associate. It can be gleaned from the foregoing that a common denominator in both offences is that the accused must be shown 'a person employed in the public service' or 'a public officer' before any question as to whether he knowingly acquired a private interest in any contract, agreement or investment in connection with his department or office, or that he exploited his official position to gratify or confer a corrupt or unfair advantage upon himself or any relation or associate will arise. In this connexion, whereas the Defendant contends that he is neither a public officer nor has any material

been placed before the court to demonstrate that he is a person employed in the public service to whom the offences in ss. 12 and 19 of the ICPC Act relate and he has no case to answer, the Prosecution maintains that the Defendant was a public officer at all material times, and that having admitted in his extra-judicial statements [Exhibits P7^{A} and P7^{B}] that he was Personal Physician to the President/Head of State House Medical Centre, Asokoro, Abuja when the contracts subject matter of the charge were awarded by the State House Medical Centre to the two (2) companies linked to him and members of his family, the necessity to produce and tender the Defendant's letter of appointment did not arise because what has been admitted need no further proof.

The term 'public officer' is defined in s. 2 of the ICPC Act as a person employed or engaged in any capacity in the public service of the Federation state or local government, public corporations or private company wholly owned or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving as magistrate, area or customary courts or tribunals". Not dissimilarly, the *Interpretation Act, Cap. 123, LFN 2004* which guides the interpretation of the Constitution [see s. 318(4) of the 1999 Constitution (as amended)] as well as all enactments except insofar as the contrary intention appears [see s. 1 of the Interpretation Act] defines public officer in s. 18 (1) thereof as *"a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999 or of the public service of a state";* whilst s. 19 of the 5th schedule to the 1999 Constitution (as amended) which deals with Code of Conduct for Public Officers defines "public officer" as *"a person holding any of the offices specified in part 2 of this Schedule"*. It is worthy of note also that s. 318 CFRN 1999 (as amended) defines "*public service of the Federation*" to mean:

"[T]he service of the Federation in any capacity in respect of the Government of the Federation, and includes service as -

(a) Clerk or other staff of the National Assembly or of each House of the National Assembly;

(b) Member of staff of the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal for the Federal Capital Territory, Abuja, the Customary Court of Appeal of the Federal Capital Territory, Abuja or other courts established for the Federation by this Constitution and by an Act of the National Assembly;

(c) Member or staff of any commission or authority established for the Federation by this Constitution or by an Act of the National Assembly;

(d) Staff of any Area Council;

(e) Staff of any statutory corporation established by an Act of the National Assembly;

(f) Staff of any educational institution established or financed principally by the Government of the Federation;

(g) Staff of any company or enterprise in which the Government of the Federation or its agency owns controlling shares or interest; [and]

(h) Members or officers of the armed forces of the Federation or the Nigeria Police Force or other government security agencies established by law."

I have been both tedious and copious in setting out the definition of 'public officer' under the Constitution as well as other statutes owing to its centrality to the offences with which the Defendant is charged. It was deliberate. On behalf of the Prosecution, it is forcefully contended o that s. 318 of the Constitution talks about '*service of the Federation in any capacity*' and **that** the Defendant was undoubtedly a public officer because it would *"be amazing for the defence to ask the court to hold that a private individual was heading a public institution"* such as the State House Medical Centre which *"is being funded by public funds and it enjoys budgetary allocation every year"* and that the court should take judicial notice of the fact that as Chief Physician to the

President/Head of State House Medical Centre, the Defendant was being paid from the State Treasury and not from the personal resources of the [former] President.

I should think that the Prosecution's contention to the effect that 'the State House Medical Centre is a public institution run with public funds and the Defendant was equally being paid out of the State Treasury' affords a convenient starting point in my consideration of the Defendant's no-case submission. The point to underscore at the outset is that the question of whether or not a person is a 'public officer' or 'employed in the public service' is one of mixed law and fact. In the case of ***REGISTERED TRUSTEES, PPFN v SHOGHOLA [2004] 11 NWLR (Pt. 883) 1 at 20*** [cited by learned counsel for the Defendant], the Court of Appeal [per *Chukwuma-Eneh, JCA*, as he then was] gave a clear insight into the proper identity of a public officer and what to look out for as follows:

> *"I cannot but agree with the appellants that from the authorities, the following ingredients of a public officer within the intendment of section 318(1) of the Constitution are as follows:*
>
> *a. The term "Public Officer" or servant relate only to the holders of the offices as reflected only in section 318 of the 1999 Constitution*
>
> *b. Refers to those officers whose employment enjoy statutory flavour as reflected in section 318(1) of the Constitution.*
>
> *c. The office must be a creation of the Constitution, statute or enabling legislation*
>
> *d. The functions, duties, and powers' are as defined by law and other regulation*
>
> *e. The office must have some form of permanency*
>
> *f. A person employed by the Public Service Commission of the Federation or State is a public officer*
>
> *g. Political office holders cannot qualify as being in the public service ..."*

The above decision of the Court of Appeal makes it clear beyond peradventure that there are certain ingredients that must be present before a person can be said to be a public officer, and the mere fact alone that the institution to which a person is said to be engaged is run with state funds and/or that he is paid from the public till is not one of the ingredients. If that were so, consultants engaged by public institutions as well as political office holders would be public officers because they are undoubtedly also paid out of the State Treasury, whereas the decision of the Court of Appeal in ***REGISTERED TRUSTEES, PPFN v SHOGHOLA supra*** is to the effect that political office holders are not public officers within the meaning and intendment of s. 318(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

In the case at hand, what appears in rather bold relief is that the Prosecution did not lead any evidence to show that the Defendant holds of any of the offices enumerated in s. 318 of the 1999 Constitution, or that he held an office created by the Constitution or any enabling legislation, or that the functions, duties and powers of the office he held are defined by law or other regulation. The Prosecution did not also lead any evidence to show that the Defendant was employed by the Public Service Commission of the Federation or that or that he held an employment with statutory flavour which has some form of permanency. Quite the contrary, the PW5 conceded under cross examination that the Defendant was a political appointee or political aide to the former president who came into office with the former President and left with him.

It is forcefully contended on behalf of the Prosecution that there was no need to tender the Defendant's appointment letter because he had admitted in his extra-judicial statements [Exhibits $P7^{A}$ and $P7^{B}$] that he was Head of the State

House Medical Centre, placing reliance on ***BALOGUN v YUSUF supra, AKPAN v STATE supra*** and ***AMALA v STATE supra.*** In Exhibit P7[A] dated 5/11/15, the Defendant wrote *inter alia* that:

> *"I was appointed the Chief Physician to the Vice President 2007-2010 and the Chief Physician to the President 2010-2015. I am a fellow of West Africa College of Physicians. As the Chief Physician to the President, I was responsible for the health of the President and his family. I organised his medical check-ups, attend to him when he or any member of his family is ill, take care of the medical needs of any person directed to me by the President. I also double as the head of the State House Medical Centre where I supervise the activities of ... the Medical Centre."*

It is the above excerpt of Exhibit P7[A] that the Prosecution has relied upon in arguing that no further proof that the Defendant was a public officer at all material times is required; and that without the Defendant being head of the State House Medical Centre, Messrs *T. E. & C. Limited* and *Ibomaedomi Global Services Ltd* may never have been awarded the contracts for land reclamation and supply of medical consumables. It is hornbook law that facts admitted need not be proved. See ***s. 123, Evidence Act 2011, UREDI v DADA [1988] 1 NWLR (PT. 69) 237, CHIEF OKPARAEKE & ORS v EGBUONU & ORS (1941) 7 WACA 53*** and ***NDAYAKO v JIKANTORO & ORS [2004] 8 MJSC 163 at 185.*** Admission is, in fact, the best form of proof. See ***CHIEF OKPARAEKE v EGBUONU supra*** and ***IGWE v AFRICAN CONTINENTAL BANK PLC [1999] 6 NWLR (PT. 605) 1 at 11*** *–per Nsofor, JCA*]. According to *Aniagolu, JSC* in ***OJUKWU v ONWUDIWE & ORS [1984] NSCC 172 at 199:***

> *"Another principle deeply enshrined in our jurisprudence is that admissions made do not require proof for the simple reason, amongst others, that 'out of the abundance of the heart the mouth speaketh' and that no better proof is required than that which an adversary wholly and voluntarily owns up on".*

But whilst an admission generally drowns the element of dispute and puts an end to proof [see ***AKANIWO v NSIRIM [2008] 9 NWLR (PT.1093) 439*** *–per Niki Tobi JSC*], in order for an admission against interest to be valid in favour of an adverse party, it must not only vindicate or reflect the evidence before the court, it must also vindicate and reflect the true legal position. Where any such admission does not reflect the legal position, it is regarded to all intents and purposes as superfluous and of no probative value or forensic utility. See ***ODUTOLA v PAPERSACK NIG LIMITED [2006] 18 NWLR (PT. 1012) 470 at 494.***

As stated hereinbefore, the question whether or not a person is a public officer is one of mixed law and fact. A person does not become a public officer merely because he says so. No. Should it then be taken for granted that the Defendant was a public officer merely because it is stated in his extra-judicial statement [Exhibit P7[A]] that he 'was appointed the Chief Physician to the Vice President 2007-2010 and the Chief Physician to the President 2010-2015' and 'also double[d] as the head of the State House Medical Centre where [he] supervise[d] the activities of the Medical Centre'? I do not think so. The allegation in the charges preferred against the Defendant is that he abused his office and/or engaged in corrupt practices while employed in the public service as *"the former Chief Executive Officer of the State House Medical Centre, Abuja and Chief Physician to the President"*. In this connection, it occurs to me that government hospitals or other state-owned medical facilities are headed or administered by persons designated as Chief Medical Directors. For instance, s. 9(1) of the ***National Hospital for Women and Children, Abuja (Establishment, etc.) Act*** provides that *"there shall be for the hospital a Chief Medical Director who shall be appointed by the President on the recommendation of the Board and on such terms and conditions as may be specified in his letter of appointment or as may be determined, from time to time,*

by the government of the Federation"; whilst subsection 2(a) and (b) of s. 9 provides that the Chief Medical Director shall be the Chief Executive and accounting officer of the hospital, and be responsible to the Board for the day-to-day administration of the hospital. But '*Chief Physician to the President/Head of State House Medical Centre*' is neither a creation of the Constitution or any statute nor is it a typical public service position or office which can be taken judicial notice of.

Since proof of whether a person is a public officer or a person employed in the public service is a crucial ingredient of the offences with which the Defendant is charged, I take the considered view that it is incumbent on the Prosecution to put forward evidence of the Defendant's alleged employment in the public service or as a public officer before any question as to whether he knowingly acquired a private interest in any contract, agreement or investment in connection with his department or office, or that he exploited his office or position to gratify or confer corrupt or unfair advantage upon himself or any relation or associate will arise. The appointment of a public officer is usually evidenced by an appointment letter issued by an appropriate appointing authority [such as the Public Service Commission] or other instrument of appointment [such as an Official Gazette]. But since no letter or other instrument of appointment was offered in evidence to demonstrate that the Defendant was a public officer to whom the penal provisions of the ICPC Act applies, and 'Chief Physician to the President/Head of State House Medical Centre' is not an office created by or under any statute which the court could take judicial notice of, there is a yawning want of evidence in support of a crucial ingredient of the alleged offences and this is fatal to the case of the Prosecution.

What is more, even if it is assumed *arguendo* that the Defendant was a public officer [and I have already held that the Prosecution did not put forward any evidence to demonstrate that he was], it occurs to me that the offences with which the Defendant is charged are not strict liability offences but 'true offences' requiring proof of both *actus reus* [physical element] and *mens rea* [mental element]. Thus, the Prosecution is required to lead evidence to show not only that the act complained of occurred [which is the *actus reus*] but also that it was done with the requisite criminal intent [which is the *mens rea*]. This is encapsulated in the Latinism '*actus non facit reum nisi men sit rea*' [which literally means 'the act does not make guilt unless the mind is guilty as well']. The gravamen or gist of the offences under ss. 12 and 19 of the ICPC Act is a public officer 'knowingly acquired private interest in any contract, agreement or investment in connection with his department or office' or 'used or exploited his official position to gratify or confer corrupt or unfair advantage upon himself or any relation or associate'. This implies a 'knowing' or deliberate action on the part of the public officer charged under s. 12. It also occurs to me that what s. 19 of the ICPC Act prohibits is not that a public officer cannot confer an advantage on himself, his relation or associate. No. Rather, what the section prohibits is 'conferring a corrupt or unfair advantage'. The Prosecution must therefore adduce credible evidence to prove not merely that a public officer exploited his position to confer an advantage on himself or his relation or associate, but that the advantage so conferred was a corrupt and unfair one.

Let us construct a scenario whereby a public officer invited and received bids from potential contractors to build a culvert to make for easy access to the premises where his office or department is situate, but considered that the lowest bid was still not cost effective. He has a relation or associate carrying on construction business that can build the culvert and decides to award the

contract to that relation or associate who successfully executes the job for a sum much less than the lowest bid, thereby saving cost for the government. Can this public officer be accused of having used his office to confer a corrupt or unfair advantage upon his relation or associate within the meaning and intendment of s. 19 of the ICPC Act? I reckon that if the public officer failed to disclose his interest before awarding the contract, he may have run afoul of extant public service rules relating to disclosure of interest for which disciplinary action may be taken against him, but I would hate to think that any legitimate accusation of conferring a corrupt and unfair advantage under s. 19 of the ICPC Act can be levelled against him by the mere fact of awarding the culvert job to his relation or associate. I can only hope that I have succeeded in putting across the point I am labouring to make.

In the case at hand, the Prosecution did not lead any shred of evidence as to what the Defendant did positively that constitutes 'knowingly' acquiring private interest in the contracts subject matter of the charge or what actions he took that amounts to using or exploiting his official position to confer corrupt or unfair advantage on himself, his relation or associate. If anything, the Prosecution witnesses [PW1 and PW2] testified in no uncertain terms that due process was administered at all material times in the award of the contracts and that the Defendant played no role whatsoever in the scheme of things. They also testified that security considerations informed the adoption of selective bidding process in awarding the land reclamation contract to *T. E. & C. Ltd* with the approval of the Bureau of Public Procurement (BPP); and that both the land reclamation project [awarded to Messrs *T. E. & C. Ltd*] and the contract for supply of medical consumables [awarded to *Ibomadoemi Global Services Ltd*] were duly executed and some payments on these contracts are still outstanding. Quite clearly therefore, the testimonial evidence of PW1 and PW2 exonerates the Defendant of any wrongdoing. Where then is the

evidence put forward by the Prosecution to prove that the Defendant 'knowingly' acquired a private interest directly or indirectly in the contracts awarded by the State House Medical Centre [as envisaged by s. 12], or that he 'exploited or used his official position to gratify or confer corrupt or unfair advantage upon himself or his relation or associate' [under s. 19] to warrant calling upon the Defendant to enter his defence?. I have not been fortunate to find any such evidence.

The Prosecution placed heavy reliance on the decision of the Court of Appeal (Sokoto Division) in ***F. R. N. v DAKINGARI supra*** in support of the contention that the Defendant has a case to answer notwithstanding that he was not a member of the Tenders' Board since the land reclamation contract was not made open to the general public for whatever reason and a company in which the Defendant has interest was awarded the contract. But it seems to me that ***DAKINGARI's case*** is markedly different and distinguishable from the case at hand in three crucial respects. *Firstly*, the respondent in that case [being the Accountant General of Kebbi State] was undoubtedly a public servant and the court was eminently entitled to take judicial notice of that fact. *Secondly*, the Court of Appeal held [per *Shuaibu, JCA*] held at p. 17 of the unreported judgment that the prosecution led ample evidence to show the pivotal role played by the respondent in authorising his co-defendant [who, by the way, was convicted by the lower court] to issue a fraudulent irrevocable standing payment order [Exh. 17] as well as an instruction for domiciliation of account [Exh. 8] in respect of a sham, non-existent contract for the supply of rice between Kebbi State Government and Cigale SA which ignited the false pretence against the nominal complainant. *Thirdly* and finally, the respondent approved and effected payment to his own company [*Beal Construction*] in his official capacity as Accountant General. The respondent's fraudulent actions which amounted to abuse of office and corrupt practice were amply

marshalled in evidence by the prosecution, thus satisfying both the physical and mental elements of the offences under ss. 12 and 19 of the ICPC Act, quite unlike the case at hand where Prosecution witnesses have testified that the Defendant played no role whatsoever in the scheme of things and no scintilla of evidence has been put forward to demonstrate what actions the Defendant took that amount to abuse of office and corrupt practice.

It therefore seems to me obvious that the scenario in the instant case is markedly different from the scenario in ***F. R. N. v DAKINGARI supra*** and the outcome ought also to be different. As a notable English Judge, *Lord Steyn* once said, *"In law, context is everything"*. See ***REGINA v SECRETARY OF STATE FOR HOME DEPT., EX PARTE DALY [2001] UKHL 26, [2001] 3 ALL ER 433, [2001] 1 AC 532.*** It cannot be overemphasised that no one case is exactly like another, and justice and fairness demand that the *ratio decidendi* of an earlier case '*should not be pulled by the hair of the head and made willy-nilly to apply to cases where the surrounding circumstances are different*'. See ***OKAFOR v NNAIFE [1987] 2 NSCC 1194 at 1198*** *–per Oputa, JSC* and ***GREEN v GREEN [1987] 3 NWLR (PT. 61) 480 at 501.*** The decision relied upon must be inextricably and intimately related to the factual matrix that gave rise to it so as not to take the *ratio decidendi* outside the parameters of the facts of the decision and the principles decided therein. See ***ADEGOKE MOTORS v ADESANYA [1989] 3 NWLR (PT. 109) 250 at 265 - 275*** and ***MULIMA v GONIRAN [2004] All FWLR (PT. 228) 751 at 785.***

The point has already been made that the penal provisions of ss. 12 and 19 the ICPC Act under which the Defendant is charged did not create strict liability offences but true offences requiring proof of both *actus reus* and *mens rea*. The side notes of ss. 12 and 19 are '*fraudulent acquisition of property*' and '*offence of using office or position for gratification*' respectively. The

provisions are directed at the fraudulent acquisition of property or misuse or exploitation of official position by public officers for personal gain or for the benefit of persons with whom they enjoy close familial relationship, which require proof of the fraudulent actions taken by such pubic officials. It certainly will not suffice to merely allege that contracts were awarded to a company [or companies] in which a public officer has interest. A person cannot be said to have knowingly acquired interest fraudulently or used his office to gratify or confer corrupt or unfair advantage unless some evidence is put forward by the Prosecution to show what he did. In the instant case, rather than lead evidence to show the positive actions or steps the Defendant took that constitutes misuse or abuse of office and corrupt practice, the Prosecution witnesses [PW1 and PW2] adduced positive evidence to demonstrate that due process was administered in the award of the contracts subject matter of the charge and that the Defendant played no role whatsoever in awarding any contracts to himself or his relations/associates. It would seem therefore that the Prosecution has merely treated this court to a cocktail of suspicion that the Defendant must have exploited his position to secure the award of contracts in favour of companies to which he is directly or indirectly linked. Unfortunately for the Prosecution, notwithstanding that it is suspicion that triggers investigation and the discovery of evidence against a criminal suspect, suspicion alone is not a sufficient basis for preferring a criminal charge against any person. Suspicion however grave cannot be elevated to the pedestal of legally admissible evidence that is required to prove that an offence has in fact been committed: there must be evidence to meet all the essential elements of the alleged offence. This is a notorious legal proposition for which the citation of authorities is unnecessary, but for reasons of completeness, I will refer to the decisions of the Supreme Court in ***IKOMI & ORS v THE STATE [1986] 3 NWLR (PT.28) 340 at 356, [1986] 1 NSCC 730 at 739*** and ***ABACHA v STATE [2002] 11 NWLR (PT. 779) 437.***

In the premises of the foregoing, the inescapable conclusion to which I must come is that the Prosecution has failed or neglected to adduce any shred of evidence to prove that the Defendant was/is a public officer to whom the penal provisions of the ICPC Act applies; and/or that the he 'knowingly acquired' private interest in the contracts awarded by the State House Medical Centre or 'used his official position to gratify or confer' corrupt or unfair advantage upon himself or any relation or associate, which are the essential elements/ingredients of the offences alleged to warrant calling on the Defendant to enter upon his defence. See ***EKWUNUGO v F. R. N. [2008] 15 NWLR (Pt. 1111) SC 630 at 638***. To do otherwise would be tantamount to imposing on the Defendant a misplaced burden of establishing his innocence, which would be invidious for being inconsistent with the constitutional presumption of innocence under s. 36(5) of the Constitution that inures to his benefit in our adversarial system of administration of justice. See ***MUMUNI v STATE supra, SUBERU v STATE (2010) 3 MJSC (Pt. II) 47*** and ***DABOH v STATE (1977) 5 SC 122 at 129***.

The Prosecution pointed out that a ruling on a no-case submission should be as brief as possible and not in any way go into evaluation of the evidence led, citing ***EKWUNUGO v F. R. N. supra at 639-640.*** Whilst it is no doubt correct that it is inappropriate for the court to embark on a detailed evaluation of the evidence at the stage of no-case submission [see ***AJIBOYE v. THE STATE [1995] 8 NWLR (PT. 414) 408 at 416***], and we have painstakingly refrained from doing so in the case at hand, the proposition that 'a ruling on a no-case submission should be as brief as possible' holds good when, and only when, the court is of the opinion that the submission is not well-founded and ought to be overruled. The rationale is to prevent the court from falling into the temptation of evaluating the evidence and predetermining the credibility of witnesses, making remarks or observations on the facts in order not to fetter its

discretion [see ***UBANATU v C. O. P. supra*** and ***OMISORE v THE STATE (2005) VOL. 1 Q.C.C.R. 148 at 143***], or generally *"entering effectively into and even deciding the merits of a case, which full course was yet to run"*. See ***EGHAREVBA v F. R. N. (2016) LPELR-40045(SC).*** And even at that, the mere fact that a trial judge delivers a lengthy ruling on a no-case submission will not necessarily vitiate such a ruling insofar as there is no *"feature or element suggesting that the court or tribunal has fettered any discretion it can only judicially exercise after the whole evidence which either side wishes to tender has been placed before it"*. See ***ATANO & ANOR v ATTORNEY-GENERAL OF BENDEL STATE [1998] 2 NWLR (PT. 75) 201 at 230-231*** *–per Oputa, JSC,* ***STATE v EMEDO [2001] 12 NWLR (PT. 726) PAGE 131, EKANEM v KING (1950) 13 WACA 108*** and ***BELLO v STATE (1968) 1 ALL NLR 361.*** The other side of the spectrum is that where a court upholds or sustains a no-case submission, the ruling may not necessarily be brief as the court is obligated to explain the entire basis for its decision.

Accordingly, I will and do hereby uphold the no-case submission and record an order discharging the Defendant, *Dr Fortune Fiberesima* on all six-counts of the charge preferred against him. IT IS SO ORDERED.

PETER O. AFFEN
Honourable Judge

Counsel:

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G. I. Abibo, SAN (with him: ***K. Tarikoro, Esq., M. A. Ebute, Esq., J. E. Abibo, Esq., U. B. Eyo, Esq., I. M. Abibo, Esq.*** and ***I. L. Okoye, Esq.***) for the Defendant.