

IN THE HIGH COURT OF JUSTICE ONDO STATE OF NIGERIA  
IN THE AKURE CRIMINAL DIVISION  
HOLDEN AT AKURE

BEFORE HIS LORDSHIP HON. JUSTICE W.R. OLAMIDE – JUDGE

THIS WEDNESDAY THE 19<sup>TH</sup> DAY OF DECEMBER, 2018

SUIT NO: AK/27<sup>C</sup>/2016

BETWEEN

FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT

AND

1. YUSUF SAKA OLANRENWAJU  
2. OLUFEMI ABIODUN OMOTOSO..... DEFENDANTS

JUDGMENT

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were arraigned before this Court by an information dated the 22<sup>nd</sup> day of February 2016, on a seven count charge with the commission of the following offences:

COUNT 1

STATEMENT OF OFFENCE

**THE USE OF OFFICE** to confer corrupt advantage upon self contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act, 2000.

1. YUSUF SAKA O

2. OLUFEMI ABI

PARTICULARS OF OFFENCE

OLUFEMI ABIODUN OMOTOSHO (M) on or about the 29<sup>th</sup> day of December, 2009 or thereabout, while being a public officer used his office as the Medical Director, Federal Medical Centre (FMC), Owo, Ondo State to confer a corrupt advantage upon himself when he received the sum of Two Million, Two hundred thousand naira (#2,200,000.00) only, paid to him from the centre's coffers for the purpose of funding of the expenses of the hosting of the meeting of the Board of Federal Medical Centre, Owo, Ondo State, when no



such meeting of the Board of the Centre had been either scheduled nor convened.

## COUNT 2

### STATEMENT OF OFFENCE

**THE USE OF OFFICE** to confer corrupt advantage upon self contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act, 2000

### PARTICULARS OF OFFENCE

OLUFEMI ABIODUN OMOTOSHO (M) in the month of October, 2009 or thereabout, while being a public officer used his position as Medical Director, Federal Medical Centre, Owo, Ondo State to confer a corrupt advantage upon himself when he received the sum of Two Million Four Hundred And Sixty Four Thousand Naira (#2,464,000) only, paid to him from the coffers of FMC for the purpose of procurement of a personal 27 KVA Perkins brand sound-proof generator set for himself.

## COUNT 3

### STATEMENT OF OFFENCE

**THE MAKING OF STATEMENT** which is false contrary to 25 (1) (a) and punishable under section 25(1) (b) of the Corrupt Practices And Other Related Offences Act, 2000

### PARTICULARS OF OFFENCE

OLUFEMI ABIODUN OMOTOSHO (M) in the month of October, 2009 or thereabout, while being a public officer and the Medical Director, Federal Medical Centre, Owo, Ondo State, made a statement which was false to Messrs Shehu Mohammed, Tanko Samaila Abdullahi, and Ephraim Otti, all investigating officers with the Independent Corrupt Practices and Other Related Offences Commission, (ICPC), Abuja, when he asserted that the sum of Two Million, Two Hundred Thousand Naira (#2,200,000.00) only, earlier paid to and received by him from the coffers of the Federal Medical Centre, Owo, Ondo State meant for the purpose of the payment of the expenses of the hosting of the meeting of the Board of the FMC Owo was subsequently expended to purchase Christmas gifts for the members of Board of the Centre which said fact he knew to be false as no such purchases of Christmas gifts has been undertaken.



#### COUNT 4

##### STATEMENT OF OFFENCE

**THE USE OF OFFICE** to confer corrupt advantage upon self, contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act, 2000

##### PARTICULARS OF OFFENCE

OLUFEMI ABIODUN OMOTOSHO (M) in the month of November, 2009 or thereabout, while being a public officer used his office as the Medical Director, Federal Medical Centre (FMC), Owo, Ondo state to confer a corrupt advantage upon himself when he received the sum of Four Hundred and Thirty Thousand Naira (#430,000.00) only, paid to him from the centre's coffers for the purpose of the procurement of a personal firearms licenced to him in his name.

#### COUNT 5

##### STATEMENT OF OFFENCE

**DOING AN ACT PREPARATORY** to the use of office to confer corrupt advantage uponself, contrary to section 26(1) (b) and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act, 2000.

##### PARTICULARS OF OFFENCE

YUSUF SAKA OLANRENWAJU (M) on the 2<sup>nd</sup> day of the month of October, 2009 or thereabout while being a public officer with the Federal Medical Centre, Owo, Ondo State in preparation of Olufemi Abiodun Omotosho's commission of the offence of the use of his office as the Medical Director FMC, Owoto confer a corrupt advantage upon himself, did apply for the provision and payment of funds in the sum of Two Million Four Hundred And Sixty Four Thousand Naira (#2,464,000) only, to him from the coffers of the FMC for the purpose of procurement of a personal 27KVA Perkins brand sound proof generator set for himself.

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## COUNT 6

### STATEMENT OF OFFENCE

**CONSPIRACY TO COMMIT** an offence: contrary to Section 26(1) (c) and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act, 2000.

### PARTICULARS OF OFFENCE

YUSUF SAKA OLANRENWAJU (M) and OLUFEMI ABIODUN OMOTOSHO (M) in the month of October, 2009 or thereabout, did conspire with each other to commit a criminal offence to wit: the use of office to effect the conferment of a corrupt advantage upon Olufemi Abiodun Omotosho by receipt of the sum of Two Million Four Hundred And Sixty Four Thousand Naira (#2,464,000) only paid to him from the coffers of FMC for the purpose of procurement of a personal 27 KVA Perkins brand sound-proof generator set for himself.

## COUNT 7

### STATEMENT OF

### STATEMENT OF OFFENCE

**ABATEMENT OF THE USE** of office to commit an offence contrary to Section 26(1)(c) and punishable under Section 19 of the Corrupt Practices Act, 2000

### PARTICULARS OF OFFENCE

YUSUF SAKA OLANRENWAJU (M) in the month of October, 2009, did abet the commission of the use of office to effect the conferment of a corrupt advantage upon self by Olufemi Abiodun Omotosho (M) when he applied for the approval and provision of funds in the sum of Two Million Four Hundred And Sixty Four Thousand Naira (#2,464,000) from the coffers of FMC for the purpose of procurement of a personal 27 KVA Perkins brand sound-proof generator set for Olufemi Abiodun Omotosho's private use at his residence.

The defendants pleaded not guilty to all counts of the charge and trial commenced with the prosecution calling two (2) witnesses while the 1<sup>st</sup>

**ABATEMENT OF**

Section 26(1) (c) and

Act, 2000



defendant gave evidence for himself and the 2<sup>nd</sup> defendant rested his case on that of the prosecution.

PW1, Henry Akpala, the Operations Manager with First Bank Ltd at Owo branch testified that The Independent Corrupt and other Practices Commission (ICPC) officials visited their office between 2010 and 2011 in connection with certain investigations relating to Federal Medical Centre, (FMC) Owo and one Dr. Abiodun Omotosho, 2<sup>nd</sup> defendant. The ICPC officials accordingly requested to see some statements of accounts and banking documents relating to the aforementioned customers; particulars of three special transaction that transpired between January 2009 and December, 2010 with reference to lodgement of #2,200,000(Two Million Two Hundred Thousand Naira) on 29/2/09 from FMC overhead account to Dr. Omotosho's personal account, the sum of #430,000 (Four Hundred And Thirty Thousand Naira), on 6<sup>th</sup> October 2009 and the sum of 2,464,000 (Two Million Four Hundred and Sixty Four Thousand ) which was a NEFT (Nigeria Electronic Transfer) from FMC account domiciled in FCMB to Dr. Omotosho's personal current account through the records from their archives.

The following documents were tendered and admitted into evidence:

Mandate Opening Account Card of Dr. Omotosho marked exhibit P;

NEFT credit report generated on the 14/4/17 marked as exhibit P2;

Current account no 2002843991 of Dr.Omotosho marked as exhibit P3;

Overhead account of FMC Owo marked as exhibit P4;

Certificate of compliance in line with the provision of Section 84 of the Evidence Act marked exhibit P5

The witness stated that the statement of account for Federal Medical Centre, Owo the three transactions requested by ICPC were underlined for ease of reference.

The first defendant did not cross-examine the witness. The witness stated when cross-examined by the 2<sup>nd</sup> defendant's counsel that their central server is not located in Owo, it is at the head office.

He said he is not the person operating the server from Owo but only did the print out as every member of staff of first bank can retrieve information from the server. He further stated that he did not personally post any of the



transactions in question and does not know who authorised the transfer at FMC. Owo; NEFT was the authority that moves the money to Dr. Omotosho's account.

PW2, Tanko Samaina Abdullahian an investigator with ICPC testified that he knows the defendant in the course of his investigation. He stated that on the 7<sup>th</sup> of January 2011, a petition titled 'Fraud Incorporated at the FMC Owo, over 100 million confirmed missing' was assigned to his team for diligent prosecution. The witness identified the petition and same was tendered and marked exhibit P6.

He further testified that investigation revealed that the two defendants sometimes in October, 2009 agreed that the 1<sup>st</sup> defendant should write a memo requesting for approval of a 27KVA Silent Generator Perkins brand.

This was done without complying with the Procurement processes in accordance with The Procurement Act as there were no contract award letter, agreement, advertisement calling for bids tendering, opening procedure and bid analysis to select the preferred bidder.

He stated that their investigation revealed that there was no company known as Messer Grato Engineering Ventures at no 51, Hospital Road, Akure who issued the receipt/invoice for the purported Generating set, but a payment voucher that did not go through the proper audit process to the tune of #2,464,000 was raised for the generating set having the 2<sup>nd</sup> defendant as the beneficiary.

He stated that a sum of #2,464,000 was moved from the pathology account of FMC domiciled in FCMB to the personal account of the 2<sup>nd</sup> defendant domiciled in First Bank Plc, Owo and there was no outflow of the said amount to the vendor of the Generating set and no record was seen of the 27kva silent generating set at the Federal Medical Centre Store.

The witness stated that their investigation revealed that Dr. Omotosho wrote a request for the release of #430,000 for the purchase of firearms and its licence but no such request (purchase of firearms and licence) was made to the office of the Inspector General of Police which is one of its requirements. He said a payment voucher to the tune of #430,000 was discovered to have been raised for firearms purchase in favour of the 2<sup>nd</sup> defendant which sum was taken from FMC overhead account domiciled in First Bank and paid to the 2<sup>nd</sup> defendant account with no evidence of such outflow from his account for such purchase and no record of same at the store of the Centre.

He stated that a sum



He further said investigation revealed that 2<sup>nd</sup> defendant received a sum of #2,200,000 in his personal First Bank account from FMC overhead account as expenses to be incurred at a Board meeting slated for 29/12/09 which was never held as the last Board meeting held in 2009 was in November and the first Board meeting in 2010 was in February.

PW2 stated that the defendants were invited to ICPC wherein they volunteered their statements in writing on ICPC statement form after administering cautionary words.

The two defendants' statements were tendered and same admitted into evidence without objections.

1<sup>st</sup> defendant statement dated 9/2/11 was marked exhibit P7, 10/2/11 as exhibit P7A, 11/3/11 exhibit P7B respectively.

The statement of the 2<sup>nd</sup> defendant dated 18/2/11 was marked exhibit P8.

The minutes of meeting of the Board of management FMC, Owo held 18/2/10, 24/11/09, 23/4/09 were admitted and marked exhibit P9, P10 and P11 respectively.

PW2 tendered an e-payment mandate from First Bank Plc. Owo, dated 22/12/09 which was marked exhibit P12.

He stated that the investigation team recovered the payment voucher for the sum of #430,000 in favour of Dr. Omotosho for the purchase of firearm and its licence. The payment voucher dated 4/11/09 was admitted and marked exhibit p13.

He stated that the invoice and the payment voucher for processing the sum of #2,464,000 for the payment of a generating set in favour of Dr. Olufemi Omotosho which was duly approved by the 2<sup>nd</sup> defendant and paid into his account was recovered during investigation. Payment voucher dated 5/10/09 for the sum of #2,464,000 and 2(two) attachments were admitted and marked exhibits P14, P14A and P14B respectively.

Under cross examination by the 1<sup>st</sup> defendant counsel, PW2 stated that 1<sup>st</sup> defendant should ordinarily be answerable to the 2<sup>nd</sup> defendant in public service and that there was no evidence that the 1<sup>st</sup> defendant benefitted from the sum of #2,464,000.



He further stated that he does not know why the money was not paid directly to Grato Engineering Ventures since 1<sup>st</sup> defendant claimed that the purchase was going to be done as direct labour.

He testified that he could not give a specific figure of the financial approval limit of the MD of the FMC as it is contained in the Extract Regulation of the Centre. He said it is not the duty of the 1<sup>st</sup> defendant to receive the 27KVA generator. It is the duty of the store department.

Under cross examination by the 2<sup>nd</sup> defendant counsel, PW2 stated that the 2<sup>nd</sup> defendant was the chief executive officer of the Centre at the material time. He claimed that he is aware of the Federal Republic of Nigeria Financial Regulations and that he is not aware there should be a competitive bidding in any contract worth #7,000,000 and that he is not aware that non-compliance with Procurement Act is only triable at the Federal High Court.

He further said that analysis of the statement of the 2<sup>nd</sup> defendant revealed that he spent a sum of #2,200,000 on public relation.

The 1<sup>st</sup> defendant in his statement admitted that he routed the payment for the generator through 2<sup>nd</sup> defendant being a direct purchase which must be through a particular officer of the centre. He stated that he did not ask any member of the Account department of the centre why the payment was made through 2<sup>nd</sup> defendant.

PW2 stated that he was one of the team who tried to locate No 51, Hospital Road, Akure where the purported vendor's address is located but such does not exist. The phone Nos on the invoice, he said never went through and no response from Corporate Affairs Commission when enquires were made regarding Grato Engineering company.

Witness testified that he did not have a copy of the letter written to the Corporate Affairs Commission and that he did not go to MTN office to ascertain the owners of the mobile phone numbers.

He reiterated the fact that there was no evidence of payment of any firearms whatsoever and no record of same at the FMC store. He stated that he is trained to bear arms and there are things to consider before an application for firearms licensing can be considered which the 2<sup>nd</sup> defendant did not follow.

Witness said he is not aware the 2<sup>nd</sup> defendant applied for protection as Medical Director and cannot recall if he ever asked 2<sup>nd</sup> defendant to produce the firearm.



The defence opened their case after the prosecution had closed its case on the 4<sup>th</sup> of July, 2018.

DW1, Saka Olanrewaju Yusuf giving his evidence testified that he is in direct supervision of works and service unit as well as Public Relations unit and Budget and Planning as well as other duties that may be directed by the Medical Director. He stated that he knows why he is in court with the 2<sup>nd</sup> defendant because of the memo he wrote on the behalf of the Medical Director on 2<sup>nd</sup> October, 2009 and further stated that he wrote the memo on the instruction and directive of the 2<sup>nd</sup> defendant.

He said it is not his duty to ensure payment is effected to Grato Engineering Venture as it is the duty of the account department. It is not also his duty to ensure the receipt of the Generator at the store.

On cross examination by the 2<sup>nd</sup> defendant counsel he stated that the decision to purchase the Generator is sequel to management decision. He said he is aware that the Medical Director has power to award contract up to #7,000,000 apart from Management's decisions.

The 2<sup>nd</sup> defendant conducted the market survey; this he knew due to the instruction given to him by the 2<sup>nd</sup> defendant. He claims all correspondences going to the centre are received at the Medical Director's office before it is minuted to him.

He maintained that the 2<sup>nd</sup> defendant did not direct him to pay the money directly to his own account and that he made exhibit P7 voluntarily as he was not promised or given anything by the 2<sup>nd</sup> defendant for raising the memo.

He claimed that he is not aware that the Centre had ever purchased any generator for the use of the 2<sup>nd</sup> defendant. He said he knows S.A Ogunleye of Accounts Department and Afolabi A. of Audit Department.

On further cross examination by the prosecution counsel, the 1<sup>st</sup> defendant reiterated that he knows C.A Omotola, who was the former Medical Director but could not remember the time of his tenure. He also stated that he knows the late Dr. David A. Oguntuase who was the acting Medical Director after Omotola and Dr. Omotosho succeeded Dr. Oguntuase who functioned in acting capacity.

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He testified that he was appointed the Head of Special Duties during the tenure of the 2<sup>nd</sup> defendant as special duties was originally created by an administrator from the Federal Ministry of Health..

He said the Purchase of firearms, Generator were under the Recurrent Expenditure but cannot say if they were captured by the 2009/2010 budget and that he agreed with the directives of the Medical Director before putting up exhibit P14.

He further stated that the organisation of the office of the FMC are Board of Management—Medical Director\_\_ Heads of departments and Heads of units

And finally, he admitted that he attended the meetings in exhibits P10 and P11.

The 1<sup>st</sup> defendant then closed his case.

The 2<sup>nd</sup> defendant rested his case on that of the prosecution and all the evidence led so far.

Further documents were tendered with the consent of all parties and admitted into evidence.

The certified true copy of the statement of Mr. Afolabi Williams dated 10/2/11 marked exhibit D1

The certified true copy of the statement of Mr. S. A. Ogunleye dated 8/3/11 marked exhibit D2

The certified true copy of the statement of Mr. Abiodun Olawale dated 10/2/11 marked exhibit D3.

The defence there in after closed its case on the 8<sup>th</sup> of October, 2018.counsel to both parties adopted their respective written addresses.

Addressing the court, counsel to the 1<sup>st</sup> defendant, Usman Shehu Obanimon Esq formulated one issue for determination to wit; whether from the totality of evidence adduced by the prosecution, the offence of conspiracy and corruption against the 1<sup>st</sup> defendant has been proved. On this issue, counsel submitted that assuming without conceding that the said 27KVA Generator was not purchased the 1<sup>st</sup> defendant cannot be held liable for it because he carried out the instruction of the chief executive officer of the centre which is in line with section 2916(1) of the Finance (Control and Management) Act, Financial Regulations Cap f.26 LFN



He further argued that in the instant case, the threshold which the 2<sup>nd</sup> defendant as an approving authority has was more than #2,500,000 as contained in the Bureau of Public Procurement Act.

Counsel submitted further that the prosecution has failed to establish or prove its case against the 1<sup>st</sup> defendant as it is never the duty of the 1<sup>st</sup> defendant to ensure that the person claiming the payment is the person authorised to receive the amount. He cited section 613 of the Finance Control and Management Act which provides that it is the duty of the paying officer to verify the recipient of the sum received.

He stated further that there is no credible evidence before the court to show that the 1<sup>st</sup> defendant benefitted from the money appropriated for the said Generator.

He urged the court to hold that the case of the prosecution before the court is predicated on speculation which evidence cannot grant conviction.

He submitted that it is fundamental in our criminal justice administration that suspicion however strong cannot take the place of legal proof as it does not amount to proof and the slightest doubt must be resolved in favour of the accused person. He cited the cases of **RABIU VS STATE (2010) 10 NWLR (PT 1201) 127 @ P155 PARA A-F, B-C; OLADOTUN VS SATE (2010) 15 NWLR (PT1217) 490 @ 521; ISAH VS STATE (2007) 12 NWLR (PT 1049) 582@ 605.**

He finally urged the court to discharge and acquit the 1<sup>st</sup> defendant as the prosecution failed woefully to discharge the burden of proof placed on him against the 1<sup>st</sup> defendant to warrant conviction in this case.

Also addressing the court, counsel to the 2<sup>nd</sup> defendant, Femi Emmanuel Emodamori distilled two issues for determination to wit:

- a) Whether the allegations against the defendants relating with the Public Procurement Act which are directly or impliedly in issue in the case are not outside the statutory jurisdiction of this court.
- b) Whether, in any event the prosecution has proved its case against the defendant beyond reasonable doubt as required by law.

The counsel submitted from the onset that the 2<sup>nd</sup> defendant having extensively cross examined and elicited useful evidence from the witnesses called by the prosecution and the 1<sup>st</sup> defendant is deemed to have given evidence in law. He cited **OMISORE VS AREGBESOLA (2015)15 NWLR (PT 1482) 205 @321**



On issue one counsel submitted that the offence allegedly committed by the defendants contained in the charge before this court were brought under the Corrupt Practices & Other Related Offences Act, 2000 but it is however clear from evidence led by the prosecution that the allegations against the 2<sup>nd</sup> defendant substantially relates to non compliance with the Public Procurement Process as stipulated in the Public Procurement Act 2007. Counsel stated that PW2 both in his evidence in chief and cross examination asserted that the procurement of the Perkins generator and firearms did not follow the public procurement process. Counsel argued that even though this court has the power to try offences under the Corrupt Practices & Other Related Offences Act, this court does not have jurisdiction to make any finding relating to the alleged non compliance with the Public Procurement Act, 2007 by any public officer.

He stated that only the Federal High Court has jurisdiction by virtue of section 58(1) &(2) of the Public Procurement Act, 2007. He further submitted that evidence relating to non compliance with the public procurement Act which the prosecution proffered through PW2 was wrongly admitted by this court and should ipso facto be expunged from the record.

He urged the court to resolve issue 1 in favour of the 2<sup>nd</sup> defendant.

On issue 2, he submitted that it is trite law that the prosecution has the duty to prove its case beyond reasonable doubt in order to secure a conviction. He cited the following cases **JOHN VS STATE (2017) 16 NWLR (PT1591)304 @ 331; STATE VS SANI (2018) 9 NWLR (PT 1624) 278 @295**. He urged the court to hold that any doubt as to the guilt of the accused must be resolved in favour of the accused person with reference to the case of **ADELEYE VS STATE (2018) 3 NWLR (PT1446) 229 @251**.

He further submitted that except in offences which are strict liability offences, the prosecution must prove two fundamental elements of an alleged offence in order to establish the guilt of an accused person which are actus reus and mens rea. He cited **OLAIYA VS STATE (2018) 10 NWLR (PT1626)1@24 PARA H**

In relation to charge 1, Counsel submitted that the prosecution failed to prove that the 2<sup>nd</sup> defendant conferred any gratification or undue advantage on himself or any of his relations or associates or any other public officer as envisaged in section 19 of ICPC Act. He further argued that Exhibit P8 categorically stated that a sum of #2,200,000 was used to purchase gift for the Board of the Federal



Medical Centre, Owo. This, counsel submitted was not rebutted as the prosecution failed to show that the money was used otherwise; more so when this assertion was corroborated by the statement of Mr Ogunleye in exhibit D2 who stated that the sum was duly approved by the management of Federal Medical Centre for the purchase of gifts to some dignitaries for Christmas.

He argued that the prosecution failed to prove that the 2<sup>nd</sup> defendant's statement to the effect that the #2,200,000 was used for the purchase of the gifts was false within the context of S. 28(1)(a) of ICPC Act as contained in count 3. He cited **ORISA VS STATE (2018) 11 NWLR (PT 1631) 453 @472 PARA A-B** that the court of law are courts of facts and law and should not decide a case on mere conjecture or speculation, he urged the court to dismiss counts 1 and 3 of the charge.

Counsel elucidated further that the prosecution failed to prove that the 2<sup>nd</sup> defendant conferred any corrupt advantage on himself or his relation or associate in receiving the sum of #2,464,000 from FMC Owo for the purchase of a Perkins 27KVA generator for his residence. Counsel submitted that the prosecution through its witnesses claimed that the 2<sup>nd</sup> defendant received money for the purchase of a generator but never did. The 2<sup>nd</sup> defendant however in exhibit P8 stated that the generator was the property of FMC and would be returned to the Centre at the expiration of his tenure. He argued that the 2<sup>nd</sup> defendant is statutorily empowered to award contract not more than 7 million naira without the prior approval of the Board which was corroborated by exhibit D1 and that by the nature of the contract, being a direct purchase, it must be in the name of an officer of the Centre.

Counsel urged the court to hold that the prosecution has failed to prove count two having established that the generator was purchased and in the absence of any evidence that the 2<sup>nd</sup> defendant conferred any corrupt advantage on himself or any of his relatives or associates in the purchase of the generator.

On count four, counsel adopted the argument in relation to count 1 & 2 to the effect that the prosecution has the duty to prove that the 2<sup>nd</sup> defendant gratified or conferred undue advantages on himself or any of his relatives or associates as envisaged in S.19 of ICPC Act. Counsel submitted that the prosecution in one breath alleged that there was no purchase of firearm by the evidence of PW2 under cross examination when he said "there is no purchase of such fire arms, even the store record did not reveal the issuance of any firearms as procured" in



another breath, he alleged the 2<sup>nd</sup> defendant of having purchased the firearms in his personal name.

Counsel contended that the 2<sup>nd</sup> defendant in exhibit p8 stated that the firearm was procured as approved but that it was a mistake that its supply was not routed through the store department of Federal Medical Centre.

Counsel further submitted that the investigating Officer never asked to see the firearm as it is the prosecution who has the burden to prove that the 2<sup>nd</sup> defendant did not purchase the firearm and not the 2<sup>nd</sup> defendant that has the burden to prove that he purchased it. Counsel argued further that by section 7 (2) (a-e) of the Fire Arms Act , only natural persons and not artificial entities can apply for firearms licence, hence it could not have been licenced in the corporate name of FMC, OWO.

He submitted that on the premise of the totality of the above arguments, the allegation of conspiracy against the 1<sup>st</sup> and 2<sup>nd</sup> defendants in count 6 is unfounded, biased, and/or unsubstantiated and urged the court to so hold and finally prayed the court to discharge and acquit the 2<sup>nd</sup> defendant as prosecution failed to prove its allegations against the 2<sup>nd</sup> defendant beyond reasonable doubt as required by law.

While adopting his written address on behalf of the prosecution, the Learned Prosecution Counsel, G P West formulated one issue for determination to wit, whether from the evidence adduced in the course of the trial before the court, the prosecution has proved its case beyond reasonable doubt as required by the provisions of sections 135 & 139 of the Evidence Act, 2011.

Counsel addressed the sole issue based on the seven count charge.

On count one, he referred to exhibits P3& P4 pointing to the fact that the 2<sup>nd</sup> defendant received the sum in question in his personal account which was not used for the purpose claimed as evidenced in exhibit P9&P10 and P11. Thus, he submitted that the 2<sup>nd</sup> defendant conferred on himself a corrupt advantage by receiving the sum in his account and not used for the claimed purpose which does not exist and no refund was made to the Centre.

He argued that the claim by the 2<sup>nd</sup> defendant that the sum was used as Christmas gifts to members of the Board in exhibit P8 was untrue and unfounded and there is no evidence to support this.



He submitted that contrary to this, the Board secretary, Abiodun O. Christopher in Exhibit D3 said he was not aware of the #2,200,000 for any Board meeting as at the time the sum was disbursed. He opined that Mr Ogunleye S. A. a senior accountant at the FMC stated that he made payment in respect of voucher 185/09 despite the fact that the documents were not complete for fear of being sacked as this was the instruction given by his boss, Mr. S.D. Adebayo and Dr. O. A. Omotosho.

A sum of #2,200,000 was paid into the Medical Director's account to be distributed to Kabiyesi and other dignitaries in Owo and the decision was taken in the meeting by Mr Adebayo S.D, Mr Abiodun C.O and the MD. Counsel submitted that by a careful perusal of exhibit P3, the sum in contention reflected in the 2<sup>nd</sup> defendant's account on 29/12/09 which sum was later drawn down between 31/12/09-21/01/10. He concluded that the above shows the 2<sup>nd</sup> defendant to be the sole beneficiary of the payment of the sum rather than its intended user.

Counsel submitted that if the claim by the 2<sup>nd</sup> defendant that the sum was subsequently spent on Christmas gift is perceived to be true, it is in itself wrongful as it goes contrary to S.22(5) ICPC Act prohibiting the expenditure of funds earmarked for the execution of a specific project or service for any other purpose. He urged the court to consider exhibits P8,P9,P10,P11,P12,P3 and P4 as reliable as held in the case. of **AKINBISADE VS STATE(2007) 2 NCC 76@86.**

He contended that the evidence of PW2 that the 2<sup>nd</sup> defendant used his office to confer a corrupt advantage upon himself was not challenged and urged the court to order the 2<sup>nd</sup> defendant to retribute and forfeit the sum of #2,200,000 as provided in S.47 of ICPC Act.

On count 2, counsel submitted that a combined perusal of exhibits P6, P14, P14a, and P14b show the fact that a sum of #2,464,000, which was not in the Centre Budget was paid to the 2<sup>nd</sup> defendant for the purchase of a 27KVA generating set which purchase never took place.

He urged the court to rely on the admission of the 2<sup>nd</sup> defendant when he stated that the Generating set was purchased in his name and that it was an error that it did not go through the stores. He referred to the case of **AKINMOJU VS STATE (2000) 4 SC (PT 1)64 @67.**



He argued that the court should not avail the 2<sup>nd</sup> defendant the defence of error since he acted in bad faith against Rules 1401, 1402, 2101, 2106, 2110, 2111, 2122, 2129, 2208-2214 of the Extract Federal Government of Nigeria Financial Regulations, 2009. He contended that ignorance of the law is not a defence in law and referred to **OKPE VS FAN MILK PLC (2017) 2 NWLR (PT 1549) 282 @ 310.**

Learned counsel referred to the Federal Government Treasury Circular with ref no try/A2 and B2/ 2009OAGF/CAD/026v to show that the 2<sup>nd</sup> defendant went beyond his limit. He urged the court to invoke S. 47 ICPC Act 2000 by directing the 2<sup>nd</sup> defendant to forfeit the sum fraudulently received.

On count 3, counsel relied on the evidence adduced by PW2 in submitting that the 2<sup>nd</sup> defendant made statement which he knew not to be true to the Investigating Police Officers when he said the sum of #2,200,000 received from FMC was used for the purchase of Christmas gift. He submitted that by investigation, there was no record of any gift bought with the sum as same was not received nor disbursed by the store unit. Same claim could not be substantiated by any existing records kept at FMC, Owo. He submitted that the claim by the 2<sup>nd</sup> defendant in exhibit P8 was not only false but equally untrue in every material sense and had been made conscientiously with the intention to mislead the investigating officers in the course of the performance of their duties. He said this is corroborated in exhibit P9.

On count four, counsel referred to exhibits P2, P3, P4, P6, P8, P9 and P13 in submitting that the sum of #430,000 was paid to the 2<sup>nd</sup> defendant private account for the purchase of firearms which were never procured. He referred to the case of **ABIODUN VS FRN (2018)11 (PT1629) 80@ 103**; he submitted that by exhibits p9, p9a, p10, there was no deliberation on the purported firearms and licensing at the Board meeting. He stated that the purported firearms procurement and its licence for security coverage at the 2<sup>nd</sup> defendant's house was done in breach of rules 1401-1402 particularly rules 1402(11) of chapter 14 as well as Federal Treasury Circular which set limits.

He further opined that the purchase of firearms and its licensing was a capital item which was not budgeted for nor found captured in the Appropriation for Federal Medical Centre, Owo, as reflected in Appropriation Act, 2009.

Counsel referred to Exhibit p8 and urged the court to rule on the admission of the 2<sup>nd</sup> defendant to have used the #430,000 to purchase firearm and its licence



as an error not to have passed the FMC store which will be returned after his tenure as conclusive.

He urged the court to invoke section 47 ICPC Act in directing the defendant to forfeit the sum of #430, 000.

On count 5, counsel submitted that the content of exhibit P14 shows that the 1<sup>st</sup> defendant prepared the 2<sup>nd</sup> defendant in the commission of the crime by the 1<sup>st</sup> and 2<sup>nd</sup> paragraphs which referred to a Board meeting which approved the use of the sound proof generator and a market survey when none of the above actually took place. He further referred to exhibits P9 and P10 in buttressing his point that none of the meetings held at the time the memo was put up contemplated such decision for purchase.

Counsel further urged the court to discountenance the testimony of the 1<sup>st</sup> defendant both on oath before the Honourable court and his extra judicial statement. He referred to exhibits 9&10 and the case of **ANYANWALE VS ATANDA (1988) 1 NWLR (PT 68) 22** and **EZEMBA VS IBENEME (2000) 10 NWLR (PT 674)61 @ 74**.

Counsel argued that the 1<sup>st</sup> defendant has admitted that exhibit 14B was received at the 2<sup>nd</sup> defendant office before it was minuted to him. This, counsel submitted shows a preparatory act by the 1<sup>st</sup> defendant for the commission of the offence by the 2<sup>nd</sup> defendant as both of them only knew about the market survey to the exclusion of other staff. He urged the court to hold that the 1<sup>st</sup> defendant having put up exhibit P14 admits the content and intendment and the court should conveniently take same as established and act on it as held in **ADEGBUYI VS APC (2015) 2 NWLR (PT 1442) 1**.

Counsel argued that the 1<sup>st</sup> defendant was guilty of the offence as the price of the 27KVA generator was not a capital item in the FMC Appropriation as contained in the FMC Budget.

Counsel referred to the extract in the Appropriation Act, 2009 and juxtaposed same with approved appropriation for similar expenditure by Sister FMC centres in Ekiti, Lagos and Bayelsa and submitted that the 1<sup>st</sup> defendant facilitated the 2<sup>nd</sup> defendant in the commission of the offence having knowingly put up exhibit P14. He prayed the court to enter a verdict of guilt against the 1<sup>st</sup> defendant as charged.



On count six, counsel cited the cases of **ODUNEYE VS STATE (2001)SC (PT1) 17& NJOVENS & ORS VS STATE (1993) NSCC 257,280** in defining what is conspiracy.

He stated that based on the two defendants prior agreement as at the time the 2<sup>nd</sup> defendant directed the 1<sup>st</sup> defendant to put forward to him the request contain in exhibit P14, no such purchase was either contemplated, purchased or delivered to the Centre's store or the private residence of the 2<sup>nd</sup> defendant.

Counsel further submitted that the proof by the 1<sup>st</sup> defendant that he received no pecuniary benefit from the sum disbursed cannot avail him as this is immaterial in proving his commission of the offence. He therefore referred to **BABALOLA VS STATE (1989) 4NWLR (PT115) 264@ 293**

He contended that the defendants by exhibits P7, P7B and P8 had admitted their individual roles in the entire transaction culminating in their commission of the said offences. He argued that the 2<sup>nd</sup> defendant lack the power to award contract up to #7,000,000 naira and urged the court to find the defendants guilty as charged.

On count Seven, Learned Counsel submitted that conspiracy is different from abatement. In conspiracy, the crime consist simply in the agreement or confide to do some act, no matter whether it is done or not while in abatement, the intention to do same is acted upon. **KAZA VS STATE (2008) 7 NWLR (PT 1085) 154.**

He further argued that the content of the 1<sup>st</sup> defendant's internal memo in exhibit P14 facilitated and assisted the 2<sup>nd</sup> defendant in bringing to fruition the commission of the offence of his use of office to confer a corrupt advantage upon himself.

He urged the court to hold that the prosecution has proved its case and should enter a verdict of guilt against the 1<sup>st</sup> defendant as charged.

He further contended that the 1<sup>st</sup> defendant should not escape liability on his assertion that he carried out the orders of his superior which were grossly and manifestly illegal.

The 1<sup>st</sup> defendant, he said is only bound to obey and comply with lawful orders as he is responsible for the consequences of any illegal act. He cited **NWAOGA VS STATE (1972) 1 ALL NLR (1) 149 AND NIGERIAN AIRFORCE VS KAMALDEEN (2007) 7 NWLR (PT 1037) 164.**



Counsel stated that the act of the 1<sup>st</sup> defendant was a reciprocal gesture on his part for the deed of the 2<sup>nd</sup> defendant for appointing him as head of special duties department.

Counsel frowned at the 1<sup>st</sup> defendant's defence for the 2<sup>nd</sup> defendant citing **UMANI VS STATE (1988) 19 NSCC (PT1) 137** in stating that a co-accused cannot put up a defence for another accused person.

He maintained that the 2<sup>nd</sup> defendant through his counsel wrongly relied on the authority of **OMISORE VS AREGBESOLA (SUPRA)** when he submitted that the 2<sup>nd</sup> defendant should be presumed to have given evidence in law during the cause of this trial when he chose to rest his case on that of the prosecution. He cited **ADEKUNLE VS STATE (2015)14 NWLR (PT1000) 717** where the court held that where the prosecution has by credible evidence of its witness(es) proved its case beyond reasonable doubt, then the accused person cannot turn around to complain that the court did not consider his defence where he opts not to testify and rest his case on that of the prosecution.

The Counsel further submitted that the postulation by the defendant's counsel that it is Federal High Court that can exercise jurisdiction on this matter based on the assertion of PW2 during his evidence when he said the 2<sup>nd</sup> defendant breached the Public Procurement Act is misconceived.

He maintained that the law imposes upon the prosecution a duty and a discretion to choose which court to initiate criminal prosecution against any defendants. He therefore submitted that the assertion by the defendant's counsel that this Court lacks jurisdiction is misconceived. He cited **LAYINWOLA & ORS VS R (1959) NSCC 95**.

The 1<sup>st</sup> defendant in addressing the court on points of law submitted that the prosecution failed in proving his case against the 1<sup>st</sup> defendant particularly on the charge of conspiracy having failed to prove the requisite ingredients. He cited **KAZA VS STATE SUPRA**

The above represents the conspectus of evidence adduced as well as the written addresses of counsel.

The issue, whether or not the prosecution has proved the charges against the Defendants beyond reasonable doubt capture all the issues identified by both parties.

He maintained that  
discretion to choose  
defendants. He there



By way of prologue to the consideration of extant issue, let me pay a visit to the 1<sup>st</sup> issue raised by counsel to the 2<sup>nd</sup> defendant on the jurisdiction of this court to entertain this suit before addressing the main issues.

This is because jurisdiction is the pillar upon which a case stands and once a defendant shows that the court has no jurisdiction, the foundation of the case crumbles.

Consequently, parties cannot be heard on the merit of the case and this puts an end to the litigation.

Where a court takes upon itself to exercise jurisdiction which it does not have, its decision amounts to a nullity. See **ATTAH VS. IDI (2015) 2 NWLR PT 1443,385@391, OSADEBAJ VS, A.G BENDEL (1991) 1 NWLR (PT169) 525**

The 2<sup>nd</sup> defendant's counsel had submitted that this court lacks jurisdiction to entertain this matter as evidence led by the prosecution substantially relates to non-compliance with public procurement which should ordinarily be tried at the Federal High Court by virtue of section 58 (1&2) of the Public Procurement Act.

I am of the firm opinion that the charges before me against the defendants as could be gleaned from the Information and evidence led, were brought pursuant to The Corrupt Practices And Other Related Offences Act, 2000 which by virtues of section 61(3) of the Act provides as follows:

The Chief Judge of a State or the High Court of the Federal Capital Abuja shall, by order under his hand, designate a court or Judge or such number of courts or Judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud, or other related offences arising under this Act or any other laws prohibiting fraud, bribery or corruption; a court or Judge so designated shall not, while being so designated, hear or determine any other cases provided that all cases of fraud, bribery or corruption pending in any court before the coming into effect of this Act shall continue to be heard and determined by that court'



On the literal interpretation of the above provision, this court is empowered to try the matter before the court in this case.

It is also worthy of note that there is nowhere in the charges in this case where the Public Procurement Act featured.

See the cases of **EHINDERO VS. FRN (2018) 5 NWLR PT 1612@318 AND AWETO VS. FRN (2018) 8 NWLR PT 1622@538.**

I accept the views expressed by the court in **Onatorio Oil& Gas Ltd vs. FRN (2018) 13 NWLR PT 1636@226** where it was held that the additional jurisdiction vested in the Federal High Court by section 251(3) of the Constitution of the Federal Republic of Nigeria, 1999 as amended is not to oust the jurisdiction vested in the State High Court to try Federal Offences by other provisions of the Constitution as there cannot be room for a situation of Federal Justice and State Justice; there can only be justice according to the Laws of Nigeria.

One of the rules of interpretation is expression unius est exclusion alterius (the express mention of one thing, is the exclusion of the other). Unlike section 251 (1) of the 1999 Constitution, as amended, which excludes the jurisdiction of the High Court in Federal Revenue matters, same is not the situation under section 251 (3) of the 1999 Constitution as amended.

Section 286(2)(b) of the 1999 Constitution, (as amended) unambiguously vests in the State High Court of a state jurisdiction with respect to the investigation, inquiry into or trial of persons charged with federal offences. Thus, what the constitution has expressly vested in the High Court of a state, nobody by whatever altruistic or opportunistic argument can take away.

I find the decision in the case of **ADEKANYE KOMOLAFE VS. FRN (2018) 15 NWLR PT 1643@507** of great importance to the above issue when the court held that by the provision of section 6 of the Corrupt Practices And Other Related Offences Act, 2000, it is the duty of the Independent Corrupt Practices Commission to prosecute offenders and by section 26(2), every prosecution for an offence under the Act shall be deemed to have been initiated by the Attorney General of the Federation.

It follows therefore that any criminal case initiated by the commission (ICPC) is in fact initiated by the Attorney General of the Federation. Thus, criminal proceedings can be initiated in any court of the federation other than a court



martial in respect of offences created by the Corrupt Practices And Other Related Offences Act, 2000.

The AGF derives his power under section 174 of the constitution (as amended) as an Agency of the Federal Government. The court cannot control the manner he exercises his powers so conferred nor can he be prevented from exercising his functions on the grounds that his jurisdiction does not extend to any particular state in Nigeria. Section 174 of the constitution does not impose such limitations.

On the strength of the above submission, I therefore hold that this court has jurisdiction to entertain this matter.

Therefore, the submission by the 2<sup>nd</sup> defendant's counsel to expunge exhibits tendered by the prosecution witnesses relating to Procurement process for lack of jurisdiction has no merit in view of my decision above that this court has jurisdiction. And I so hold.

The prosecution counsel also submitted that the court should hold that the 2<sup>nd</sup> defendant did not challenge/ contradict the evidence before this court when he rested his case on that of the prosecution and also failed to give evidence for himself nor call any witness on his behalf.

It is trite that one of the options available to a Defendant in a criminal proceeding when called upon to open his defence is by resting his case on that of the prosecution.

The 2<sup>nd</sup> defendant in this case has therefore acted within his right by resting his case on that of the prosecution and all exhibits tendered.

This is in tandem with the decision of the court in the case of **BLAISE VS. FRN (2017) 6 NWLR PT 1560@128** wherein it was decided that by resting his case on the prosecution's case, the accused adopts the evidence led by the prosecution in its entirety and declines to give evidence or call witness in his defence which must succeed or fail upon such evidence adduced by the prosecution.

The court further held that where this procedure is adopted, the accused or his counsel is to address the court on all relevant matters raised; the effect of which is that the accused cannot subsequently have an opportunity of calling witnesses in the course of the proceedings and the court is to deliver a final judgment.



It is therefore my opinion that the 2<sup>nd</sup> defendant in this case having cross examined the prosecution witnesses and also filed a written address by his counsel has acted within his right, it is therefore for the court to decide whether the 2<sup>nd</sup> defendant can succeed or fail upon the evidence adduced by the prosecution.

I will now proceed in my decision by addressing the seven count charge before the court in line with the adopted issues in resolving this judicial discourse.

The evidence alluding to the sum of #2,200,000.00 is found in exhibits P3&P4 which reveal the outflow of the sum from FMC, Owo into the 2<sup>nd</sup> defendant's account. I also take judicial notice of Exhibit P8 which is the extra judicial confessional statement of the 2<sup>nd</sup> defendant admitted into evidence without objection when he (2<sup>nd</sup> defendant) stated inter alia....

***.....THE 2,200,000 IN 22<sup>ND</sup> DECEMBER 2009 WAS USED TO PURCHASE GIFTS FOR THE BOARD OF MANAGEMENT OF FMC, OWO FOR CHRISTMAS GIFTS.....(EMPHASIS MINE)***

It has long been established that the prosecution is duty bound to prove its case beyond reasonable doubt as there is never a duty on the accused to prove his innocence under any circumstances.

Indeed, section 135 of the Evidence Act provides:

- 1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.
- 2) The burden of proving that anybody has been guilty of a crime or wrongful act is, subject to section. 139 of this Act, on the person who asserts it, whether the commission of such act is or not directly in issue in the action.
- 3) If the prosecution proves a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on the Defendant.

See the case of **GANA VS. FRN (2018) 12 NWLR PT 1@302.**

A careful perusal of evidence before the court corroborated the above when Ogunleye S.A (the then Senior Accountant) stated that the 2<sup>nd</sup> defendant distributed the sum under contention to the Kabiyesi and other dignitaries in Owo as Christmas gift which decision he said was taken in a meeting attended by Mr. S.D Adebayo (the then Assistant Director of Finance and supplies), Mr. C.O. Abiodun (the then Director of Administration) and the 2<sup>nd</sup> defendant.



The prosecution referred to Exhibit D3 wherein he submitted that Abiodun O. - Christopher said he was not aware of any Board meeting as at the time the #2,200,000 was disbursed.

I however observe the evidence before me that the same Abiodun O. Christopher was among the trio mentioned in Exhibit D2 to have taken the decision on the purchase of Christmas gifts; this the prosecution did not prove otherwise.

The court held in the case of **OKE VS. FRN (2017) 4 NWLR PT 1556@501** that two major ingredients must be proved in establishing the offence in section 19 of The Corrupt Practices And Other Related Offences Act, 2000; to wit:

- (a) That the accused is a public officer
- (b) That the accused person used his office or position to confer corrupt advantage upon himself or any relation or associate of the public officer, or any other public officer.

In the instant case, although it was established that the 2<sup>nd</sup> defendant is a public officer within the context of Section 2 of The Corrupt Practices And Other Related Offences Act, 2000, it was not however proved that the 2<sup>nd</sup> defendant conferred corrupt advantage upon himself or any relation or associate of the public officer or any other public officer. This finding square up with the evidence led in respect of this charge.

It is therefore my view that the second essential ingredient of the offences under section 19 of The Corrupt Practices And Other Related Offences Act, 2000 has not been proved as required by sections 135&139 of the Evidence Act, 2011.

I am further of the opinion that the submission by the prosecution that if the claim by the 2<sup>nd</sup> defendant that the sum was subsequently spent on Christmas gift is perceived to be true, the defendant is prohibited by section 22(5) of The Corrupt Practices And Other Related Offences Act, 2000 to have used the funds earmarked for another purpose does not hold water as this is not the case before this court

I refer to the previous case of **OKE VS. FRN (Supra)** where the Supreme Court held that the trial Judge missed the point when he convicted the accused on a charge not before him. In this instant case, the charge in count 1 never alleged the 2<sup>nd</sup> defendant to have used the funds earmarked for another purpose (which allegation was not proved) but rather on conferment of corrupt

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advantage upon himself which I hold has not been proved by the prosecution beyond reasonable doubt. Though the court note with concern the lodgement of the money spent which were originally lodged in 2<sup>nd</sup> Defendant's Account as evidenced in Exhibits P2 and P3, nonetheless, the prosecution has not satisfactorily proved that those items were not purchased.

On the second count, I find exhibit P8 instructive in throwing light on the resolution of this charge.

The prosecution through its witness, PW 2 (the investigating officer) and by the prosecution written address argued that a sum of #2,464,000 was never used by the 2<sup>nd</sup> defendant for the purchase of the 27KVA sound proof Perkins Generator and in another evidence/submission argued that the 2<sup>nd</sup> defendant went beyond his limit in purchasing the generator which should have been through the award of contract and prayed the court to rely on the admission of the 2<sup>nd</sup> defendant in exhibit p8 that he bought the generator which is the property of the Federal Medical Centre, Owo and same will be returned after the expiration of his tenure as the Medical Director. What more need be proved?

The court has held in plethora of cases that admitted facts should be taken as established. See the case of **CHUKWUNYERE VS. STATE (2018) 9 NWLR PT 1620@269.**

I am therefore of the opinion that the Prosecution has failed in establishing the offence of conferment of corrupt advantage as provided in section 19 of The Corrupt Practices And Other Related Offences Act, 2000.

The 1<sup>st</sup> Defendant who is also a staff of FMC had testified that the 2<sup>nd</sup> defendant had the power to award a contract up to #7,000,000 without the prior approval of the Board; this the prosecution did not also proffer any contrary evidence to rebut the assertion by the 1<sup>st</sup> Defendant.

I also find the provision of the Federal Treasury Circular Ref No TRY/A2&B2/2009 OAGF/CAD/036V cited by the prosecution in proving that the 2<sup>nd</sup> defendant went beyond his limit in the purchase of the generator to be at variance with the issue at hand as the law relates to approval of funds to imprest holder.

I further refer to the case of **OKE VS. FRN (supra)** where the court laid down two major ingredients that must be proved in establishing the offence in section 19 of The Corrupt Practices And Other Related Offences Act, 2000; to wit:



- (a) That the accused is a public officer
- (b) That the accused person used his office or position to confer corrupt advantage upon himself or any relation or associate of the public officer or any other public officer.

By virtue of section 135 of the Evidence Act, the onus is always on the prosecution to prove the guilt of the accused by ensuring that all necessary and vital ingredients of the charge are proved. See the case of **CHUKWUNYERE VS STATE (SUPRA)**

Even though the 1st ingredient of count 2 was proved being a public officer, I hold that the prosecution failed to prove the 2<sup>nd</sup> essential ingredient of the 2<sup>nd</sup> count charge against the 2<sup>nd</sup> defendant beyond reasonable doubt.

On count three, I believe by the evidence before the court that the statement by the 2<sup>nd</sup> defendant to the investigating officers of ICPC that the sum of #2,200,000 received by him was used for the purchase of Christmas gifts to some Owo dignitaries can only amount to a position by the 2<sup>nd</sup> defendant which the prosecution has a duty to rebut by evidence.

The statement made by the 2<sup>nd</sup> defendant to my mind, was not untrue nor intended to mislead in any material particular.

To succeed on this count charge, the prosecution by section 25(1) of The Corrupt Practices And Other Related Offences Act, 2000 must show that the statement made was not consistent with any other statement previously made to any other person having authority. This was not proved by the prosecution.

The evidence by PW2, Exhibit P8, Exhibit D3 and 2<sup>nd</sup> defendant's counsel submission all point to one claim and there was no inconsistency whatsoever.

The law is trite that suspicion, no matter how strong, cannot take the place of legal proof. Items of evidence raising suspicion which puts together, do not have the quality of being corroborated evidence to ground any conviction for a criminal offence. See the case of **UDOR VS. STATE (2014) 2 NWLR PT1422.**

I therefore hold that prosecution failed to prove count 3 against the 2<sup>nd</sup> defendant.

On count Four, I find that there were contradictions in the evidence of the Prosecution witnesses before this court when he said the 2<sup>nd</sup> defendant did not



purchase the firearm and stated in another vein that the 2<sup>nd</sup> defendant licensed the Firearm in his own name which should have been so licenced in the name of Federal Medical Centre, Owo.

The 2<sup>nd</sup> defendant had admitted in Exhibit p8 that he purchased the firearm and licensed it in his name which is the property of The Federal Medical Centre, Owo and same will be returned at the end of his tenure as the Medical Director of the Centre.

It is also before the court that the 2<sup>nd</sup> defendant is empowered to award contract below #7,000,000 which was not otherwise proved by the prosecution.

I however find that the purchase of the firearms may not have been discussed in Exhibits p9, p9A & P10 being within the limit of the Medical Director's power.

I therefore adopt my decision in Counts 1 & 2 above to the effect that even though the 1st ingredient of count 4 was proved (that the 2<sup>nd</sup> defendant is a Public Officer), I hold that the prosecution failed to prove beyond reasonable doubt the second essential ingredient of the 4<sup>th</sup> count charge against the 2<sup>nd</sup> defendant that he used his office or position to confer corrupt advantage upon himself.

The next point of call is count five.

The prosecution counsel had submitted before this court that the content of Exhibit p14 shows that the first defendant had prepared the 2<sup>nd</sup> defendant in the commission of the crime.

The prosecution did not further prove the preparatory act alleged against the 1<sup>st</sup> defendant. I am of the opinion that the putting up of exhibit p14 by the 1<sup>st</sup> defendant cannot amount to preparing the 2<sup>nd</sup> defendant for the commission of crime.

It is on record that the 1<sup>st</sup> defendant was a subordinate to the 2<sup>nd</sup> defendant at the Federal Medical Centre, Owo.

The prosecution had however argued that the 1<sup>st</sup> defendant is to be liable for any illegal instruction carried out in the course of his duty.

From the facts/ evidence before this court, I hold the view that the 1<sup>st</sup> defendant carried out a lawful duty by putting up exhibit p14. The prosecution did not show that it was not normal to have first received correspondences at the Medical Director's office before minuting it to the appropriate officer to act



upon it and I therefore hold that the submission by the prosecution's counsel that the act of minuting Exhibit p14B to the 1<sup>st</sup> defendant after it was first received by the 2<sup>nd</sup> defendant amounted to a preparatory act by the 1<sup>st</sup> defendant was not proved.

I hold on the strength of the above that count 5 has not been proved against the 1<sup>st</sup> defendant.

Furthermore, on count six of the information, the prosecution counsel submitted that the defendants by Exhibits P7, P7B, P8 (which are the confessional statements of the defendants) had admitted their individual roles in the entire transaction culminating in their commission of the criminal offence of conspiracy.

I have carefully perused the said exhibits and it is my humble view that such admissions as claimed by the prosecution do not exist.

It was held in the case of **ERIN VS THE STATE (1994) 5 N.W.L.R. (364) 525 @ 534** that conspiracy is generally a matter of inference from the collateral circumstances of the case. Sometimes, there may be no direct evidence of an agreement between the accused persons, in such circumstances, the inference of conspiracy can only be made from the facts and circumstance of the commission of the substantive offence.

I totally agree with the decision of the court in the case of **FRN VS. MAGAJI IBRAHIM AND IBRAHIM GANGYIBENSO (2015) 4 NWLR PT 1450@436** when the court held that inference can be made for the offence of conspiracy. However, inference cannot be made in vacuum, but by considering the evidence before the court.

In this instant case, there was no circumstantial evidence, Viva Voce or documentary which allows the drawing of inference of conspiracy against the defendants. See the case of **FRN VS SANI (2014) 16 NWLR PT 1433@331**.

Furthermore, to prove conspiracy which is a criminal offence, the proof must be beyond reasonable doubt. There must be a chain of causation which must not be broken. See the case of **HAMZA AL-MUSTAPHA VS. STATE (2013) 17 NWLR PT 1383**.

I totally agree with the decision of the court in the case of **IBRAHIM AND IBRAHIM**

**1450@436** when the court held that inference can be made for the offence of conspiracy.



It is therefore my view that the prosecution has also failed to prove beyond reasonable doubt the offence of criminal conspiracy against the defendants.

On count Seven, Ipso facto, the prosecution had however argued that Conspiracy is different from abatement.

The prosecution did not prove that the content of Exhibit p14 facilitated or assisted the 2<sup>nd</sup> defendant in the commission of the offence of the use of office to confer corrupt advantage.

Having decided that the prosecution failed to prove the offence of criminal conspiracy against the defendants, I hold that count 7 on abetment has not also been proved.

In the light of the foregoing, this court holds that the prosecution had failed to prove each of the seven count charge against the defendants beyond reasonable doubt and as such, failed to discharge the burden of proof required by sections 135&139 of the Evidence Act.

Before rounding up this judgment, it is pertinent to point out that the facts and circumstances of this case also have shown beyond conjecture that the Defendants herein have not been sufficiently linked to the Criminal intent associated with the information before the court.

Although it is not essential to prove the case with absolute certainty, the ingredients of the offence charged must, however, be proved as required by law and to the satisfaction of the court. See **OBIAKOR VS. STATE (2002) 10 NWLR (PT 776)612,627; NWOKEDI VS. COP (1977) 3 SC, 35,40; AMEH VS. THE STATE (1973) 7 SC,27; KALU VS. THE STATE (1988) 4 NWLR (PT 90) 503 AND ARUNA VS. THE STATE (1990) 6 NWLR (PT 155)125.**

These authorities, find expression in the latin maxim '**iudicis officium est de iudicis est iudicare secundum allegata et probata**' which, simply means that it is the duty of a judge to decide according to facts alleged and proved.

From the examination of the prosecution's allegation as evidenced in the charge against the defendant(s) before this court and my meticulous consideration of the totality of the evidence in proof thereof as per the testimonies of PW1, PW2 and all the exhibits, I harbour grave and genuine doubt about the story of the prosecution as it failed to lead compelling evidence in proof of the ingredients of the offences which the defendants allegedly committed.

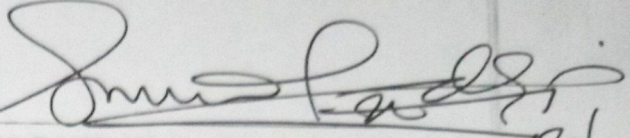
Although it is not essential to prove the case with absolute certainty, the ingredients of the offence charged must, however, be proved as required by law and to the satisfaction of the court.

NWLR (PT 776)612,627



The only verdict, in the circumstance, is that of the discharge and acquittal. See **POSUY V. THE STATE (2011) LPELR 196P (SC) 17-18 (2011, 3 NWLR(PT 1234); ALONGE V. IGP (1959) SCNLR.**

It is based on the above findings and conclusions that I hold that the charges against the Defendants herein have not been proved beyond reasonable doubt; the defendants herein, Yusuf Saka Olanrenwaju and Olufemi Abiodun Omotosho are hereby discharged and acquitted.

  
HON. JUSTICE W.R. OLAMIDE  
JUDGE

9/12/1

**APPEARANCE**

**Prosecution**

1. G P West (CLO) – for the Prosecution

**Defence**

1. Usman Shehu Obanimoh Esq. - for the 1<sup>st</sup> Defendant
2. Femi Emmanuel Emodamori Esq. – for the 2<sup>nd</sup> Defendant

**APPEARANCE**

**Prosecution**

1. G P West (CLO) –

**Defence**

1. Usman Shehu Obanimoh Esq. - for the 1<sup>st</sup> Defendant
2. Femi Emmanuel Emodamori Esq. – for the 2<sup>nd</sup> Defendant