IN THE COURT OF APPEAL
AKURE JUDICIAL DIVISION
HOLDEN AT AKURE

ON FRIDAY THE 17TH DAY OF APRIL, 2015

BEFORE THEIR LORDSHIPS

MOJEED ADEKUNLE OWOADE — **JUSTICE, COURT OF APPEAL (PRESIDING)**
MOHAMMED A. DANJUMA — **JUSTICE, COURT OF APPEAL**
JAMES SHEHU ABIRIYI — **JUSTICE, COURT OF APPEAL**

APPEAL NO: CA/AK/67CA/2014
SUIT NO: AK/33C/2006

BETWEEN:

GBENGA OJO ---------- **APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA ---------- **RESPONDENT**

JUDGMENT

(DELIVERED BY HON. JUSTICE MOJEED ADEKUNLE OWOADE, (JCA)

This is an appeal from the judgment of the Ondo State High Court sitting in Akure presided over by Hon. Justice T. O. Osoba.

The Appellant as 1st accused in the court below was charged on a one count offence of making false statement contrary to and punishable under Section 16 of the corrupt practices and other Related Offences Act 2000. He was also charged along with one Leye Adejumoye – 2nd accused on a second count of conspiracy to commit an offence of making false statement, contrary to Section 26 (1) (c) and punishable under Section 16 of the Corrupt Practices And Other Related Offences Act 2000. And, finally along with the 2nd accused on a third count of making false statement contrary to and

punishable under Section 16 of the Corrupt Practices And Other Related Offences Act 2000.

The particulars of the three (3) counts against the Appellant as shown on the Information Sheet in the court below are as follows.

1st Count

Particulars of offence.

Gbenga Ojo, (M) on or about 9th September 2004, at Akure North Local Government Area of Ondo State being an officer charged with the use of the property belonging to Akure North Local Government Area did knowingly furnish false statement in respect of the sum of ₦70,000 received by him claiming that part of the money was disbursed to security agents of the Executive Governor of Ondo State, for fueling, when no such disbursement was made.

2nd Count.

Particulars of offence.

Gbenga Ojo (M) and Leye Adejumoye in September (M) in September 2004 or thereabout at Akure North Local Government Council of Ondo State being Officers charged with use of the property belonging to Akure North Local Government Area did conspire to commit an offence under the Corrupt Practices And other Related Offences Act 2000 to wit: knowingly furnish false statement regarding of the sum of ₦1.3 m, in respect of visit of Executive Governor of Ondo Statè, claiming that the sum of ₦90,000.00 was used to purchase Ankara at Mama Butik, when no such purchase was made from Mama Butik.

3rd Count.

Particulars of Offence.

Gbenga Ojo, (M) and Leye Adejumoye, (M) in September 2004 or thereabout at Akure North Local Government Area of Ondo State being Officers charged with use of the property belonging to Akure North Local Government Area did knowingly furnish false statement in respect of the sum of ₦1.3m, in respect of visit of Executive Governor of Ondo State, claiming that the sum of ₦90,000 was used to purchase Ankara at Mama Butik, when no such purchase was made from Mama Butik.

At the material point in time, the Appellant and the 2nd accused were vice-chairman and Head of personnel respectively Chairman and Secretary of the Planning Committee of the Local Government on the visit of Government Olusegun Agagu to the said Akure North Local Government.

A total sum of ₦1.3 million was budgeted and disbursed for the visit out of which ₦70,000 was earmarked for security and N90,000 for the purchase of Ankara clothes.

The case for the prosecution against the Appellant is that he claimed to have paid out part of the ₦70,000 to aides and personal staff of the Executive Governor who denied such payments and equally denied signing for such payments. Also, the 2nd accused person in procuring the receipt of Mama Butik (PW5) for the purchase of Ankara clothes to the tune of ₦90,000 when in fact Mama Bukit denied any such sales and testified that she is not a dealer in Ankara clothes.

And, that the making of the false statement in respect of the receipt of ₦90,000.00 from Mama Butik Store was agreed to by the Appellant and the 2nd accused.

The Appellant on the other hand claimed that he fully disbursed the ₦70,000 including paying the aides and personal staff of the Executive Governor but because some of the aides and personal staff of the Executive Governor did not have time to sign as against

their names in the prepared voucher, he had to sign for the purpose of retirement as against those names.

That his wife (PW3) brought a blank Mama Butik receipt to their office (that is Appellant and 2nd accused) that he passed the receipt on to the 2nd accused and did not know when and how the receipt was filled until he later saw such receipt at the trial of the case.

The prosecution called eight (8) witnesses and tendered several documents as exhibits while the Appellant called seven (7) witnesses and testified as DW8.

At the end of the trial, the learned trial judge found the case of the prosecution proved and convicted the Appellant and the second accused person as charged.

Dissatisfied with the judgment, the Appellant filed a Notice of Appeal containing nine (9) grounds of appeal before this court on 1/4/2014.

The relevant briefs of argument for this appeal are as follows:

(a) Appellant's brief of argument dated 17/6/2014 and filed on the same day – settled by Dayo Akinlaja Esq SAN.

(b) Respondent's brief of argument dated 15/5/2014, filed on 12/9/2014 and deemed filed on 26/2/2015 – settled by Godson O. Igbadume Esq.

(c) Appellant's reply brief dated 8/10/2014 and filed on 26/2/2015 - settled by Dayo Akinlaja Esq. SAN

Learned Senior Counsel for the Appellant distilled four (4) issues from the nine (9) grounds of appeal filed. They are:-

1. **Whether the learned trial judge did not occasion a miscarriage of justice to the Appellant in the way and manner the judgment was written (Grounds 1 and 4)**

2. **Whether the learned trial judge was not wrong in convicting the Appellant on count one of the Information in this case (Grounds 2, 3, and 5).**

3. **Whether the learned trial judge was not wrong in convicting the Appellant on count two of the information in this case (Grounds 6 and 7).**

4. **Whether the learned trial judge was not wrong in convicting the Appellant on count three of the Information in this case (Grounds 8 and 9).**

Learned Counsel for the Respondent on the other hand suggested only two issues for determination, namely:

(A) Whether the Appellant knowingly furnished false statement in respect of the sum of ₦70,000.00 advanced to him for security in view of the evidence of PW1 and PW6, the investigating officers whose testimonies were strongly corroborated by the evidence of PW2, PW4 and PW5 when juxtaposed alongside the contents of Exhibit 'C6' as alleged and proven beyond reasonable doubt in count one for which he was convicted.

(B) Whether the Appellant conspired to furnish false statement and did indeed furnish false statement as can be discerned from the circumstances surrounding the sourcing and the use of Mama Twin Butik receipt for the purpose of retirement of the sum of ₦90,000.00 advanced for the purchase of Ankara from the total sum allocated to finance the Government's visit as alleged in counts two and three for which he was convicted.

On issue 1, Learned Senior Counsel for the Appellant said that the point has been well established that there are basic standards that a judgment must conform to in order to

pass the litmus test of validity even though there is no hard and fast rule about writing judgments.

He referred to the cases of **Stephen V State (1986) 5 NWLR (Pt. 46) 978 at 1001 and 1005; Onuoha V State (1988) 3 NWLR (Pt. 83) 460 at 475 to 477; Adeyeye V Ajiboye (1987) 3 NWLR (Pt. 61) 432 at 451** and **Abubakar V NASAMU (No.1) (2012) 17 NWLR (Pt. 1330) 407 at 459, 469 – 470.**

He argued that what is discernible from the above cases and others of their ilk is that a trial judge in writing judgment, in a criminal case for instance, must summarize the cases of the prosecution and the defence respectively as well as evaluate the evidence before coming to a decision.

He submitted that the learned trail judge failed to comply with this crucial and important factor in respect of the judgment in this case and thereby occasioned a miscarriage of justice to the Appellant. For example, said Counsel, at page 2 of the judgment which is at page 128 of the record of appeal, the learned trial judge had this to say in lines 18 to 24:

> **"The sum of ₦90,000.00 for the purchase of the Ankara material by the receipt of Mama Twins Boutique was sourced by both accused persons. The said receipt which was filled by the 2nd accused person. The owner of Mama Twins Boutique denied filling the said receipt or selling the Ankara material as she does (sic) not deal in Ankara materials. This in short is the summary of the facts established by the prosecution and the defence in this matter".**

Instructively, said Counsel, at the point of making the above remarks, the learned trial judge had not reviewed the facts and evidence of both parties let alone evaluating them. The fact that the evidence had not been reviewed or evaluated before the learned trial judge made the above far-reaching conclusions is corroborated by the fact

that, the evidence of parties, supposedly, were subsequently reviewed from pages 130 to page 170 of the record.

Counsel submitted that is it clear in the circumstance, that the learned trial judge had premeditated the guilt of the accused persons having conclusively found them to have committed the offences alleged in counts Two and Three of the Information before even reviewing the evidence adduced in the case.

Meanwhile, said Counsel, the injustice done to the appellant by the approach of the learned trial judge is accentuated by the fact that the Prosecution/Respondent in this case did not prove beyond reasonable doubt that the Appellant sourced the receipt in question either alone or in conjunction with the 2nd Accused person at the court below. Thus, there was absolutely no basis for the above quoted remarks of the learned trial judge either before or after the review and evaluation of the evidence.

That PW1 stated in evidence-in-chief, as recorded at pages 47 and 48 of the record of appeal, that when he went to the owner of Mama Twins Boutique for investigation on the blank receipt, the said owner denied issuing the receipt but invited a friend of hers – Oluwatoyin (PW3) to throw light on the issue of the receipt.

Counsel submitted that it is clear from the evidence of the PW3 that the assertion or conclusion by the PW1 that the Appellant and the 2nd accused collected the blank receipt from Mama Twins Boutique cannot be tenable as the PW3 who allegedly gave the receipt out testified that the Appellant knew nothing about and had nothing to do with the issue of the blank receipt.

Learned Senior Counsel submitted in any event, that as different from the evidence of the PW3 and PW5 who were directly involved with the issue of the blank receipt, the evidence of the PW1 and PW6 in respect thereof, at any event, can only amount to hearsay evidence for purpose of proving that the blank receipt was sourced for and filled by the Appellant and the 2nd accused in this case, as prejudicially concluded by the learned trial judge.

He referred to the cases of **Subramanian V Public Prosecutor (1956) 1 WLNR 965 at 970; Omorhirhi & Ors V Enatevwere (1988) 3 SC 207 at 214 and 215.**

Counsel repeated that the evidence of both PW3 and PW5 had exonerated the Appellant herein. That their evidence constituted admission against interest which fatally decimated the case of the prosecution. He referred to the cases of **Adeyeye V Ajiboye (1987) 3 NWLR (Pt. 61) 432 at 451 and Bamgbose V Ohoko (1988) 2 NWLR (Pt. 78) 509 at 518 and 519** on binding nature of admission against interest. And, added that the learned trial judge could not have picked and chosen who to believe or disbelieve among the prosecution witnesses.

He referred to **Boy Muka & Ors V The State (1976) 9 – 10 SC 193 at 205; Udo V State (1992) 2 NWLR (Pt. 224) 471 at 478.**

Learned Senior Counsel submitted that there is no evidence on record to support the prejudicial remarks of the learned trial judge, whether prior to or after the review and evaluation of the evidence adduced by the parties, that the Appellant herein and the 2nd accused person at the trial sourced the material receipt of Mama Twins Boutique. Without doubt said Counsel, the approach of the learned trial judge had occasioned a miscarriage of justice to the Appellant who could not be said to have got fair hearing or trial at the trial court.

In a similar vein, said Counsel, the learned trial judge further denied fair hearing or trial to the Appellant by holding at page 173 lines 7 to 16:

> **"One would have thought that the 1st accused person would be the one to appreciate the implication of paying out such monies and what the ICPC and the court would do to him than the recipients. It is quite evident, he appreciated this when he went ahead to procure a false and blank receipt filled it and used it to retire the sum of ₦90,000.00. he knew that the receipt was not genuine and the contents were false. 1st Accused person's Counsel has argued that if he had wanted to**

commit fraud, he would not have put his signature for the receipt of money by other persons. He could be naïve or more like it fraudulent".

Remarkably, said Counsel, the learned trial judge was in the process of resolving count one of the Information when the above statements were made. He noted that the count one has to do with alleged non-disbursement of ₦70,000.00 to some aides of the then Governor of Ondo State. It has nothing to do with the issue of the blank receipt for purposes of retiring a sum of ₦90,000.00 meant for purchase of Ankara materials.

Meanwhile, according to Counsel, the learned trial judge had previously held that the 2nd accused person filled the blank receipt only to turn round to hold as could be seen above that the receipt was filled by the Appellant.

Learned Senior Counsel submitted that there was no evidence to justify the holding that the Appellant procured a false and blank receipt to retire the sum of ₦90,000.00. Indisputably, said Counsel, the learned trial judge had merely premeditated the guilt of the Appellant. And, that, it was that premeditation that informed the conclusion that the Appellant procure a false and blank receipt to retire ₦90,000.00. that the same premeditation of guilt was responsible for the position of the learned trial judge that the list of the Appellant in respect of the other issue of ₦70,000.00 was false. The Appellant did not pass his signature as the signature of either all or any of the concerned beneficiaries on the list.

Counsel submitted that it could be easily seen that the learned trial judge had convicted the Appellant on counts Two and Three prior to review and evaluation of evidence and also convicted the Appellant on all counts while still supposedly resolving issue relating to count one of the information.

Again, that the prejudicial conclusions drawn by the learned trial judge before the review of evidence which were tantamount to finding the Appellant guilty of Counts Two and Three, resulted in the bias which eventually pervaded the entire spectrum of

the judgment with t he result that the learned trial judge cannot just be said to be objective in the resolution of the issues relating to count One of the information.

Learned Counsel for the Respondent on the other hand submitted on issue 1 that the manner in which the learned trial judge wrote the judgment has not occasioned any miscarriage of justice to the Appellant.

He referred to the cases of **Peterside V Fubara (2012) 52 NSCQR (Pt. 2) 866 at 895 and Onuoha V State (2007) 5 ACLR 490 at 500** and submitted that no legal wrong was ascribed to his lordship on the ground of the manner in which the judgment was written and that the art of writing judgment is a matter of individual style as no standard format is prescribed.

There are two main points which form the fulcrum of Appellant's Issue 1. One allegation from the issue is that the learned trial judge did not properly evaluate the evidence before him and indeed came to perverse conclusions in the trial of the Appellant. With respect to the Learned Senior Counsel for the Appellant, this allegation should properly not be part of issue 1 as it has been duplicated and/or appropriately covered by Appellants grounds 2, 3, 5, 6, 7, 8 and 9 which form the basis of Appellants issue 2, 3, and 4.

The more distinct allegation by the Appellant in relation to issue I is that the learned trial judge came to some damaging conclusions against the Appellant before and after the review and evaluation of evidence which tend to show prejudice or bias against the Appellant and in the opinion of Learned Senior Counsel for the Appellant affected his fair trial and led to a miscarriage of justice.

In tackling this more relevant portion of issue 1, one must quickly appreciate the point made by the Learned Counsel for the Respondent that the art of writing judgment is a matter of individual style. At the same time however, the courts have laid down guidelines for the assessment of a reasoned and good judgment. For example, in the case of **Ciroma V Ali (1999) 2 NWLR (Pt. 590) 317** it was said that a good judgment should set out the nature of the action before the court and the issue in

controversy; review the case for parties, consider the relevant laws raised and applicable to the case, make specific findings of fact and conclusion; and give reasons for arriving at those decisions.

See also, **U.B.A. Plc V S.A.E.P.U. (2004) 3 NWLR (pt. 861) 516; Idakwo V Nigerian Army (2004) 2 NWLR (Pt. 857) 249.**

Similarly in a criminal case, the trial judge in writing judgment must summarize the cases of the prosecution and the defence respectively as well as evaluate the evidence before coming to a decision. The proper approach for writing judgment in a criminal case such as the instant was elucidated by no less a jurist than Oputa JSC (of blessed memory) in the case of **Stephen V State (1986) 5 NWLR (pt. 46) 978 at 1003 and 1005**, where he said inter alia

> **"Stage 3: This is the most important and crucial stage as it deals with the perception of facts, evaluation of facts belief or disbelief of witnesses and findings and conclusions based on the evidence accepted by the trial court. At this stage, the trial court will briefly summarize the case of either party. This does not mean reproducing verbatim the evidence of the prosecution witnesses and of the defence witnesses one by one but it does mean using such evidence to tell a coherent and connected story. Having done this, the trial court will then decide which story to believe".**

Obviously in the instant case, the learned trial judge may not have followed the proper approach for the writing of a good judgment, in particular by coming to specific conclusions rightly or wrongly on the facts presented before a review and/or evaluation of the cases of the parties. Nevertheless, the pertinent question in relation to Appellant's issue 1 is whether this erroneous approach per se could be said to have led to miscarriage of justice, bias and or denial of fair hearing in all the circumstances of the case.

My answer to the above question is with respect in the negative. This is first because, a miscarriage of justice occurs whether there are substantial errors in adjudication and second because it is not every error or mistake in a judgment that will result in an appeal against it being allowed. The error or mistake must have occasioned miscarriage of justice for the Appellate court to interfere.

See **Amadi V N.N.P.C (2000) 6 SC (Pt. 1) 666; B.C.C Plc V Sky Inspection (Nig.) Ltd (2002) 17 NWLR (Pt. 795) 86; M.M. Ali Co. Ltd. V Goni (2006) 10 NWLR (Pt. 987) 88; N.B.C. Plc. V Olarewaju (2007) 5 NWLR (Pt. 1027) 255.**

Again, and contrary to the suggestion of Learned Senior Counsel for the Appellant in relation to issue 1, there is neither an issue of bias or lack of fair hearing in respect of the Appellant's case. This is because the right to fair hearing is question of being heard. The right lies in the procedure followed in the determination of a case and not in the correctness of the decision arrived at in a case.

Indeed, whether or not a party has been denied of his Right to fair hearing is to be judged by the nature and circumstances surrounding a particular case. The crucial determinant is the necessity to afford the parties equal opportunity to put their case to the court before the court gives its judgment.

See **Military Governor of Lagos State & 4 Ors V Adebayo Adeyiga & 6 Ors (2012) 2 SC (Pt. 1 68); Barrister Amanda Pam & Anor V Nasiru Mohammed & Anor (2008) 5-6 SC (Pt. 1) 83; S&D Construction Company Limited V Chief Bayo ayoku & Anor (2011) 6 – 7 SC (Pt. 11) 101.**

In the instant case, there was neither miscarriage of justice nor a breach of the Appellant's right to fair hearing or fair trial merely because the learned trial judge did not abide with the tenets of good judgment writing in particular by coming to some conclusions before review and/or evaluation of the case of the parties.

Issue 1 is resolved against the Appellant.

On issue 2, Learned Senior Counsel for the Appellant submitted that the learned trial judge agreed with the Learned Counsel to the Appellant (1st Accused person) that the prosecution must establish that the Accused person knowingly furnished a false statement or return to sustain the charge under reference. But, that, after reviewing the address of the Counsel to the 1st accused (Appellant) on this ingredient of the count one, his lordship went on to hold (at pages 172 lines 17 to 20 of the record) as follows:

> **"The sum total of the arguments in respect of the second ingredient of the offence is a full admission of the offence, that is that the 1st accused person knowingly furnished false statement or return for reasons he considered justifiable but which I find most untenable".**

Learned Counsel submitted that a calm perusal of the evidence on record in this case show that the Appellant consistently maintained that he disbursed the sum of N70,000.00, meant for the security agents/aides of the then Governor of Ondo State to them and he called witnesses to corroborate that position. The Appellant's position was that he appended his signature across the names of the security agents/aides concerned as contained in Exhibit 6c or F to show that he disbursed the money to the security agents/aides named therein who did not sign for the receipt of the money.

Counsel argued that on the pains of emphasis, the Appellant did not present his signature as the signature(s) of those beneficiaries who did not sign.

Again, said Counsel, the charge against the Appellant was not that he committed the alleged offence of furnishing false statement by falsely claiming that the security agents/aides concerned signed for the receipt of the money Exhibit 6c or F. Rather, that, the charge was that he falsely claimed he disbursed money when he did not disburse. Thus, according to Counsel, for the learned trial judge to have justifiably claimed that the sum total of the argument of the Counsel to the Appellant (1st Accused) with respect to the ingredient was a full admission of the offence, the Learned

Counsel must have admitted in his address that the Appellant (1st Accused) person did not disburse the money to the intended beneficiaries.

To the contrary, said Counsel, the gravamen of the address of Counsel on the second ingredient is that the Appellant truly disbursed the money in question to the beneficiaries thereof but signed Exhibit 6c on their behalf because they could not sign for the money because they were in hurry to leave with the Governor on that day. That, Learned Counsel added in the said address that if the 1st accused person/Appellant had the intention of committing fraud, he would not have put his signature on Exhibit 6c. Without doubt, said Counsel, there is nothing in the address of the said Counsel (before the court below) to suggest an admission of the allegation that the Appellant (1st accused) knowingly furnished false statement by claiming that the sum of ₦70,000.00 was partly disbursed to aides/security agents of the Governor when he did not. That, the learned trial judge, therefore misconstrued the import of the address of the Counsel to the Appellant herein at the trial. This, he said has occasioned a miscarriage of justice in this case in that the misconception that the Counsel to the 1st accused (Appellant) had admitted the critical ingredient of the offence, ostensibly, did not allow for a proper and objective evaluation of the defence of the Appellant (1st accused) by the trial court.

Counsel submitted further that in a purported attempt at evaluating the defence of the Appellant on this offence, the learned trial judge held that the excuse that the recipients did not sign for the money because they were in a hurry to leave was not tenable because they were not in a hurry at the time of accepting the money.

He submitted that the lower court was wrong to have equated time for signing for the money received. By human nature, it was possible for the aides of the Governor not to be in hurry to collect the money while being in a hurry to sign for same. That, at whatever event, the learned trial judge simply embarked on speculation in holding that the aides could not have been too much in a hurry to sign after waiting to collect the money. That, there is nothing on record in this appeal to refute the position of the

Appellant that the recipients of the money did not sign because they were in a hurry to leave with the Governor.

Learned Counsel submitted that the second reason urged on the court below by the Learned Counsel to the Appellant (1st Accused) that the recipients, as Public Officers, feared the ICPC and the court and so could not admit to have taken the money was plausible. That, however, without further evaluating that line of reasoning in the light of the evidence on record, the learned trial judge simply went on to reject it without explanation. This, he said, occasioned a miscarriage of justice to the Appellant because the learned trial judge did not painstakingly and objectively consider the defence of the Appellant on this leg of his defence to the offence alleged.

Counsel submitted that contrary to the verdict of the learned trial judge, the prosecution did not prove beyond reasonable doubt that the Appellant did not disburse money to the security agents/aides of the Government of Ondo State. That the verdict of the trial court was reached for no other reason than that the learned trial judge did not properly evaluate the evidence adduced by the parties in respect of this particular count. He submitted further that in purported proof of the said count one, the Prosecution/Respondent called PW1, PW2, PW3, PW4, PW6, PW7 and PW8.

The PW1, PW6 and PW8 were police investigators from the ICPC. PW8 only tendered some documents. Thus, out of the trio, according to Counsel, only PW1 and PW6 gave oral evidence bearing on the first count and the totality of their evidence was that although the Appellant claimed to have disbursed money to the security agents/aides of the Governor, the alleged recipients denied collecting such money.

Counsel submitted that PW2, PW4 and PW7 were the security agents/aides of the Governor involved in the matter of disbursement. They denied collecting the money. On his own part, the Appellant in defence to the alleged offence called DW2, DW3 and DW7. He himself gave evidence as DW8. That, DW2 and DW3 testified that the Appellant gave money to the concerned personnel. They maintained that position under cross-examination. The learned trial judge did not find their evidence

discredited. DW7, said Counsel, testified at pages 83 and 84 of the record to the effect that he accompanied the Appellant to the office of the PW4 (P.A. to the Governor). And, that PW4 confirmed in his presence that he (PW4) collected money from the Appellant during the visit of the Governor.

Remarkably, said Counsel, the Appellant corroborated the evidence of DW7 on the visit to the office of the PW4 in connection with the invitation of the Governor's aides to Abuja. That the Appellant said in no equivocal terms that the PW4 said that he (Appellant0 was naïve to have reduced the money disbursed into writing and that he (PW4) was going to Abuja with Afolabi (PW7) to deny collection of the money.

Counsel submitted that strangely enough, the learned trial judge did not evaluate the evidence of both parties as indicated above before convicting the Appellant. It cannot be safely said that the Prosecution/Respondent succeeded in proving this count one beyond reasonable doubt in the light of the evidence. This, Counsel said, is especially on the standpoint that the Appellant, as DW8, was never cross-examined by the prosecution. That it is trite that when a witness is neither challenged nor contradicted by way of cross-examination, his evidence must be taken as proof of the relevant fact.

He referred to the cases of **Modupe V State (1988) 9 SC 1 at 5 and Oforlette V State (2000) FWLR (Pt. 12) 2081 at 2098 and 2099.**

He urged us to hold that count one was not proved beyond reasonable doubt.

Learned Counsel for the Respondent, on the other hand submitted in relation to issue 1 that the relevance of Exhibit 'C6' or 'F' is that it carries the purpose and amount each named officer who benefitted from the sum of N70,000.00 was purportedly paid as claimed by the appellant. That speaking to Exhibit 'C6' of Exhibit 'F' in the course of evidence at the trial, PW6 said ***"----------it is on letter headed paper of Akure North Local Government, first three persons signed individually, 4 to 10 was signed by one person whose signature looked like that of the 1st accused (Appellant) and he certified the document".***

Respondent's Counsel submitted that PW6 as well as Exhibit 'C6' or 'F' gave a clear account of how the Appellant disbursed the ₦70,000.00 advanced to him for the purpose of ***'security'*** during the visit of the Governor to Akure North Local Government Council Area. That the testimonies of PW2, PW4 and PW7 who all denied payment by the Appellant were not shaken under cross-examination and corroborated the testimonies of PW1 and PW6.

Respondent's Counsel reminded us that the charge against the Appellant in count one is that he knowingly furnished false statement in respect of the sum of ₦70,000.00 received by him claiming that part of the money was disbursed to security agents in the entourage of the Governor of Ondo State for fuelling, during the visit of the Governor to Akure North Local Government Council Area, when no such disbursement was made.

He submitted that the Appellant was not charged with forgery or for passing his signature off as that of the security agents in the entourage of the Governor, i.e. PW2, PW4 and PW7, but for making the statement expressed in Exhibit C6 and Exhibit F as well as his extra judicial statement, Exhibit 'A' which clearly meant that he disbursed ₦70,000.00 to security aides/agents who all denied same thereby making his claim false.

Counsel referred to page 2 of the supplementary record and submitted that under cross-examination of the Appellant as DW2, he stated that the security agents did not authorize him to sign for them. And, therefore, that the Appellant knowingly signed Exhibit 'C6' or Exhibit 'F' to sustain the misrepresentation contained in the false statement made by asserting that he disbursed the money to them.

He submitted that assuming without conceding that the security aides/agents collected the money and could not sign during the visit because they were in a hurry as claimed by the Appellant, there is no where it was led in evidence by the Appellant that he afforded them further opportunities to sign for the money after the afore referenced visit before he retired his expenditure of the sum of money advanced to him.

Again, that under cross-examination at page 2 of the supplementary record, the Appellant admitted that the signature on Exhibit C6 or Exhibit F which is signed across numbers 4 – 10 is his signature.

He submitted that the false statement in Exhibit 'C6' or Exhibit 'F' was to the effect that the entire ₦70, 000.00 represented in that Exhibit was disbursed for the purpose of fuelling of official vehicles but PW2, PW4 and PW7 all ih unequivocal terms denied collecting or receiving any money from the Appellant for the purpose of fuelling.

Respondent's Counsel noted that in the entire testimonies of DW2, DW3 and DW7, they said nothing to corroborate the fact that the Appellant gave money to PW7. He argued that the Appellant had the option of leaving the space for signature blank or processing for retirement with a ***'Honour Certificate'*** as allowed by Public Service Rules. He urged us to accept that the learned trial judge came to a just conclusion in convicting the Appellant on count one.

In deciding issue two, it may be appropriate by noting the remark by the Learned Senior Counsel in his Reply Brief (page 4) that ***"the Fall-out of the situation is that the resolution of count one turns out on the evidence of the Governor's aides (PW2, PW4 and PW7) and the Appellant (DW8) with his own witnesses (DW8) with his own witnesses (DW 2, DW3 and DW7) ---------".***

However, I think the resolution of count one indeed takes more than the above suggestion of the Learned Senior Counsel to the Respondent. The justification for the learned trial judge in convicting the Appellant on count one goes beyond the oath for oath of witnesses and that of the prosecution Respondent and its witnesses. With due respect, to the Learned Senior Counsel for the Respondent, the resolution of count One equally goes beyond the remarks of the learned trial judge to the effect on page 172 lines 17 to 20 of the record that ***"the sum total of the arguments in respect of the second ingredient of the offence is a full admission of the offence, that is that the 1st accused person knowingly furnished false statement or return for reasons he considered justifiable but which I find most untenable"***

The first real justification for the decision of the learned trial judge in relation to count one is that the oath against oath of the parties to the case and their witnesses on whether or not the aides of the Governor received money from the Appellant lie in the realm of mere evidence or better still the tendering of facts in issue and/or relevant facts in accordance with the provision of Section 6 of the Evidence Act cap. 112 LFN 1990 (now Section 1 Evidence Act 2011).

However the real proof of the question whether or not the Appellant disbursed money to the aides of the Governor lies in the consideration and effect of Exhibit 6C or F. this is because there is no better proof of the fact that the Governor's aides were not paid better than the content and the representations contained in Exhibit 6C or F. the Column which was meant in Exhibit 6C to be signed by beneficiaries of the disbursement and which was actually signed by some beneficiaries was not so signed by PW2, PW4 and PW7. Rather, what was contained in the column to be signed by these witnesses is the signature of the Appellant.

Given those circumstances, the Appellant could not be heard as a matter of law or fact to say that the beneficiaries indeed received or collected their moneys.

By Section 2 of the Evidence Act cap 112 LFN 1990 (now Section 121 Evidence Act 2011)

"(2) A fact is said to be -

(a) "proved" when after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exits.

(b) "disproved" when after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, in the

circumstances of the particular case, to act upon the supposition that it does exist;

(c) "not proved" when it is neither proved or disproved"

Meanwhile, the negative denial by PW2, PW4 and PW7 shifts the evidential burden and indeed the burden of positive or affirmative proof unto the Appellant that he actually paid the said beneficiaries, the amounts slated against their names in Exhibit 6C or 7.

This is first on the basis that the particular fact that the Appellant indeed paid PW2, PW4 and PW7 shifted to the Appellant and also by reason of the more general principle that he who asserts must prove. By Section 139 of the Evidence Act cap. 112 LFN 1990 (now Section 136 Evidence Act 2011) the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in course of a case be shifted from one side to the other, in considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

See also **Yesufu V A.C.B (1981) 1 SC 74.**

In the instant case, the Appellant did not discharge the evidential burden that he paid the Governor's aides having regard to the representation contained by his signature on the column of the recipients in Exhibit 6C or F.

A variation of the above reasoning is to say that the representation contained in Exhibit 6C or F by the signature of the Appellant in the recipient column of Exhibit 6c or F raises a presumption of fact in favour of the prosecution Respondent that PW2, PW6 and PW7 did not sign and did not collect any moneys as claimed by the Appellant. For example, in relation to the present case, the court is entitled to presume that the common course of business has been followed, that is only those who received money would have signed the recipient column in Exhibit 6C or F.

By Section 149 of the Evidence Act cap. 112 LFN 1990 (now Section 167 Evidence Act2011) – **"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume ----- ---"**

(c) that the common course of business has been followed in particular cases.

Here again, the Appellant could not rebut the presumption that the common course of business has been followed when he signed the column meant for the recipients – PW2, PW6 and PW7 in Exhibits 6C or F.

In all the circumstances of the case therefore, the learned trial judge was justified to have convicted the Appellant on count one of the charge before the court below.

Issue 2 is resolved against the Appellant.

On issue 3, Learned Senior Counsel for the Appellant referred to the cases of **Abacha V FRN (2006) 4 NWLR (pt. 970) 239 at 300; Garba V C.O.P (2007) 16 NWLR (Pt. 1060) 378 at 405** and submitted that it is crucial in a charge of conspiracy that there must be proof of agreement or common intention on the part of the accused persons to commit the offence alleged. That in the instant case, the Respondent failed to prove that there was common intention on the part of the Appellant and the 2nd accused person at the trial court to furnish false statement to the Akure North Local Government Council with respect to the ₦90,000.00 meant for the purchase of Ankara. None of the prosecution witnesses gave evidence of a common intention on the part of the Appellant and the 2nd accused person at the trial to commit the offence alleged.

By a similar token, said Counsel, it is evident enough that there was no compelling or cogent evidence to show that either or both of the Appellant and the 2nd accused person furnished the receipt in respect of the ₦90,000.00 to the Local Government.

That at page 177 of the record of appeal, the learned trial judge could be seen to have held as follows:

> **"The PW3 was only a wife of the Chairman (1st accused) and not an official of the Akure North Local Government. Her role in the procurement of a blank receipt from Mama Twins Boutique can only be at the instance of her husband and the 2nd accused person used the receipt to retire the said ₦90,000.00. I find without any doubt whatsoever that the PW3 obtained the blank receipt from Mama Twins Boutique not for herself to "sell market" but on behalf of the 1st accused person (her husband for the use of the 2nd accused who used it)".**

Counsel submitted that the above findings of the learned trial judge are replete with speculations and extraneous factors. He said, to start with, the PW3 emphatically stated at page 55, lines 4, 8 and 9 of the record under cross-examination by the Counsel to the 2nd accused person as follows:

> **"My husband did not send me to collect Mama Twins Boutique receipt ------ I did not leave the first receipt because my husband told me to leave it".**

Counsel emphasized that the PW3 was the witness of the prosecution. Thus, the admission against interest made under cross-examination as quoted above was/is binding on the prosecution/Respondent. On this, he referred to the cases of **Adeyeye V Ajiboye (1987) 3 NWLR (Pt. 61) 432 at 451 and Bamgbose V Oshoko (1988) 2 NWLR (Pt. 78) 509 at 518 and 519.**

He argued that it is particularly worthy of note that the prosecution that called the PW3 as witness did not pick offence at the testimony of PW3 under cross-examination. Hence, no application was made to brand her a hostile witness. That, in the light of this situation, it is absolutely unfathomable how the learned trial judge could have held

that the procurement of a blank receipt from Mama Twins Boutique by PW3 could only have been at the instance of her husband, the Appellant after the PW3 had unequivocally stated that the husband did not send her to collect the receipt. Without doubt, said Counsel, the above finding of the learned trial judge is totally perverse.

Again said Counsel, the learned trial judge held thus in the judgment as could be seen from page 117 lines 17 to 21 of the record:

> **"I must observed (sic) that the 1st accused person has an itchy finger when it comes to handling Government money and has the criminal proclivity for dealing with such money and other crimes associated therewith, for instance he admitted signing for people he purportedly paid some illegal money which the said persons denied".**

Learned Senior Counsel submitted that the issue of the Appellant signing for the aides of the Government alluded to in this part of the judgment is completely extraneous to the count of conspiracy that was being considered by the learned trial judge. Furthermore, that the prosecution did not present a case of payment of illegal money to the learned trial judge. Thus, said Counsel, the reference to payment of illegal money in respect of count one while considering conspiracy under count two of the information is undeniably extraneous and speculative. Aside from the above, said Counsel, the learned trial judge equally relied on hearsay evidence in finding the Appellant and the 2nd accused person guilty of conspiracy as charged. That the learned trial judge at page 175 to 176 had this to say.

"The PW5 is the owner of the receipt and said in court that she does (sic) not know the accused persons and Mrs. Fagoriola. She stated further that:

> **"It was Toyin that collected blank receipt that some customers wanted to buy goods from her. I gave her the receipt" she stated further that " she told me she used the receipt to "sell market".**

It was this same PW3 – Toyin Ojo Rufus who had denied issuing the receipt. She is the same person who collected the blank receipt to ***"sell market".***

Counsel submitted that from the above quoted portion of the judgment, the learned trial judge placed so much premium on the evidence of PW5 that PW3 told her that she used the blank receipt obtained from her to ***"sell market".***

That, however, the PW3 who could have given direct evidence of what she used the blank receipt for gave evidence in this case and never said that she used the receipt to ***"sell market".*** The evidence of PW5, said Counsel, was clearly hearsay and should not have been given probative value. Surprisingly, according to Counsel, the learned trial judge heavily relied on it to find the Appellant and his co-accused guilty of conspiracy. He submitted that the learned trial judge wrongly applied the testimonies referred to in this part of the judgment to convict the two accused persons of conspiracy.

Along the same vein, said Counsel, the learned trial judge had held in the judgment as contained at page 117 lines 13 to 16 of the record of appeal as follows:

> **"The two accused persons in my view conspired together to give false statement in respect of government funds in their care in respect of ₦90,000.00 for the purchase through the commission of forgery of the receipt and uttering the forged receipt to the treasury/Auditor".**

On this, Learned Counsel submitted that none of the prosecution witnesses gave any evidence which can be said to have established conspiracy between the Appellant and his co-accused at the trial.

Finally, on this issue, that the evidence of DW1, DW5, 2nd accused and that of the DW2 for the 2nd accused person put it beyond peradventure at the trial that the Ankara materials were purchased and distributed for purposes of the visit.

On issue 3, Learned Counsel for the Respondent submitted that ₦90,000.00 was retired with Exhibit C24 and it is this Exhibit that contains the false statement for which the Appellant was charged and convicted for conspiracy and furnishing false statement in counts Two and Three of the information respectively. That the use of the receipt, Exhibit 'C24' for the retirement of the sum of ₦90,000.00 shows the fact that the transaction for the expenditure in the sum of ₦90,000.00 meant for the purchase of Ankara was carried out at Mama Twins Butik which is the owner of the receipt. Exhibit 'C24' is the receipt issued for the purchase of Ankara from Mama Twins Butik. PW5 (the owner of Mama Twins Butik) stated that she does not deal in the sales of Ankara materials and she is not the one who made the entries in the receipt or issued the receipt but recalled giving a blank receipt to one Toyin to ***"sell market".***

Counsel also submitted that Toyin Ojo Rufus testified as PW3, she stated that she sold Guinea Brocade to Akure North Local Government Council for which they requested for receipt and she had to include a blank Mama Twins Butik receipt (Exhibit 'C24') in the receipts she submitted to the council and that when she subsequently requested for the return of the blank receipt from the 2nd Accused person, he replied that the receipt was lost.

Respondent's Counsel then made reference to the Appellant's statement Exhibit 'A' where he stated inter alia that PW3 forgot a blank receipt in his office but that when he (Appellant) asked the 2nd Accused person about it, he said he could not trace the receipt again. That he now later saw the said receipt used in retirement for payment.

Respondent's Counsel further referred to Exhibit B, the extra judicial statement of the 2nd Accused at page 41 of the record where he said inter alia ***"I want to say that the Mama Twins Butik receipt No. 0022 was brought by the vice-chairman (Appellant) dully filled---".***

Respondent's Counsel referred to the cases of **Magaji V Nigerian Army (2008) NWLR 338 at 375; Awosika V State (2011) (pt. 560) 1237 at 1263 and Sule V State (2009) NWLR (pt. 1169) 33 at 63 – 64** and came to the conclusion that by

the circumstances surrounding the sourcing and the use of the Mama Twins Butik Receipt (Exhibit C24) for the retirement of the sum of ₦90,000.00 advance for the purchase of Ankara, the Appellant is proved to have conspired with the 2nd Accused to knowingly furnish false statement and did knowingly furnish false statement in respect of the said sum.

In deciding Appellant's issue 3, it seems to me that there is no iota of evidence in the gamut of evidence offered by the prosecution Respondent direct, indirect or circumstantial to infer an agreement in between the Appellant and the 2nd Accused person to furnish false statement in respect of the retirement of ₦90,000.00 via Exhibit 'C24' as claimed by the Learned Counsel for the Respondent. None of the star prosecution witnesses on this issue that is PW3 or PW5 said anything implicating the Appellant as to sourcing of exhibit 'C24' for the making of a false statement. To the contrary Exhibit 'A' the statement of the Appellant, as well as the evidence of PW3 are exculpatory as to any role or involvement of the Appellant in the 'Sourcing' of Exhibit 'C24'.

Learned Counsel for the Respondent himself would concede that the statement in Exhibit B, by the 2nd Accused that the Appellant brought in Exhibit C24 filled was worthless as against the Appellant in all the circumstances of the case. The most important reasons for this are that (a) Exhibit A, the Appellant's statement was substantially corroborated by the evidence of PW3 and (b) it was established at the trial by a comparison of Exhibit 'O' and Exhibit 'C24' that the latter was filled in the writing of the 2nd Accused.

In the instant case, neither the **actus veus** nor the **mens rea** of an offence of conspiracy was proved against the Appellant. Recall, that the essence of the offences of both statutory and common law conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made. The **actus reus** in a conspiracy is therefore the agreement to execute the unlawful conduct, not the execution of it. It is not enough that two or more persons pursued the same

unlawful object at the same time or in the same place, it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose.

See, **R.V. Walker (1962) Crim. LR 458 CA; R. V Mills (1963) 1 QB 522, 47 CR App. R. 49 CCA.**

The **mens rea** of conspiracy on the other hand is an intention that the requisite course of conduct shall be pursued or that consisting in the intention of executing the unlawful elements in the conduct contemplated by the agreement, in the knowledge of those facts which render the conduct unlawful.

See. **Kamara V D.P.P (1974) AC 104 at 119 57 CR. APP. R. 880 at 895; HL (Per Lord Hailsham of St. Marylebone LC); R. V Allsop (1976) 64 CR APP. Rep. 29, CA.**

In the instant case, all that the prosecution/Respondent was able to establish in relation to the offence of conspiracy was that PW3 collected a blank receipt from PW5, that PW3 left the receipt unfilled and unused with the Appellant and the 2nd Accused, that PW3 wanted the receipt back but 2nd Accused said it could not be traced – and then the receipt was found filled and used to retire the sum of ₦90,000.00 for the purchase of Ankara materials.

In this circumstance, neither an agreement nor an intention to pursue any unlawful purpose/conduct was traceable to the Appellant. Again, conspiracy consists not merely in the intention of two or more persons but rather in the agreement of two or more persons to do an unlawful act, or by unlawful means.

Oduneye V The State (2001) 13 WRN 88.

Therefore, there cannot be a conspiracy unless there is a concluded agreement. Mere negotiations are insufficient, the offence is complete as soon as the parties agree.

R. V Hobbs (2002) 2 CR. APP. Rep. 324 CA.

Unfortunately, in the instant case, the learned trial judge convicted the Appellant on the charge of conspiracy to furnish false statement on two or perhaps three sets of conjectures, speculations and extraneous factors totally outside of the purview of the evidence offered at the trial of the case. The first, at page 177 of the record:

> **"The PW3 was only a wife of the Chairman (1st accused person) (sic) and not an official of the Akure North Local Government. Her role in the procurement of a blank receipt from Mama Twins Boutique can only be at the instance of her husband and the 2nd accused person used the receipt to retire the said sum of ₦90,000.00.**
>
> **I find without doubt whatsoever that the PW3 obtained the blank receipt from Mama Twins Boutique not for herself to "sell market" but on behalf of the 1st accused person (her husband for the use of the 2nd accused person who used it). I hold that the blank receipt was used by the 2nd accused person".**

Secondly, and still at page 117 of the record that:

> **"The two accused persons in my view conspired together to give false statement in respect of Government funds in their care in respect of N90,000.00 for the purchase through the commission of forgery of the receipt to the Treasury/Auditor - -------".**

And finally on the same page 177,

> **"I must observed (sic) that the 1st accused person has an itchy finger when it comes to handling Government money and has the criminal proclivity for dealing with such money and other crimes associated therewith, for instance he admitted signing**

for people he purportedly paid some illegal money which the said persons denied.

From all the foregoing I find both accused persons guilty of the second count that is conspiracy to knowingly furnishing false statement in respect of ₦1.3m by claiming that the sum of ₦90,000.00 was used to purchase Ankara when no such purchase was made from Mama Twins Boutique".

I do agree with the Learned Senior Counsel for the Appellant that the above passages/decisions by the learned trial judge are perverse.

In the cases of **Zabusky V Isreal Aircraft Ind. (2008) 2 NWLR (Pt. 1070) 109 at 133 and Ejezie V Anuwu (2008) 6 MJSC 86 at 120** the Supreme Court held that a court of law has no jurisdiction to speculate or conjecture. A court of law must confine itself to the evidence before it and give judgment on the evidence alone.

Furthermore, in the case of **Osuji V Ekocha (2009) 16 NWLR (Pt. 1166) 81 at 117** the same apex court held that a decision will be held to be perverse where-

(a) It is speculative and not based on credible evidence.

(b) The court took into account matters which it ought not to have taken into account; or

(c) The court shut its eyes to the obvious.

See also **Ebba V Ogodo & Anor (1984) NSCC 255 at 259**.

From the foregoing, it is clear that there was a miscarriage of justice in relation to the conviction of the Appellant on count Two of the Information for the offence of conspiracy to furnish false statement.

Accordingly, issue 3 is resolved in favour of the Appellant.

On issue 4, Learned Senior Counsel for the Appellant reminded us that the third count of the information is that the Appellant claimed that a sum of ₦90,000.00 was used to purchase Ankara from Mama Twins Boutique when no such purchase was made.

He submitted that for there to be valid conviction on this count, the prosecution had the onus to prove that the Appellant was given the responsibility of buying the Ankara materials and that he didnot buy them but falsely procured receipt to evidence the purchase. He submitted that there was evidence before the trial court that the Appellant was not given the responsibility for supplying Ankara for the event of the visit of the Governor. That, for instance, the PW1 stated under cross-examination by the Counsel to the 1st Accused Appellant that the purchase of Ankara was raised in the name of the 2nd Accused. That, under further cross-examination by Counsel to the 2nd Accused, PW1 restated that the ₦90, 000.00 for the Ankara was collected by the 2nd Accused. (Page 51 of the record).

Similarly, said Counsel, at page 82 of the record, the DW5 could be seen to have stated under cross-examination that the Ankara was bought by the wife of the Chairman of the Council. And, that the Appellant as DW8 had this to say at page 88 of the record:

"Adeola Fagoriola (Chairperson) handled Ankara. ₦90, 000.00 was released to her for the purchase of Ankara Exhibit H5. I did not collect any money in respect of the Ankara". And, that, he (Appellant) added at page 89 of the record as follows:

> **"There was no controversy between me and the 2nd accused. I was Chairman of the Committee, he was Secretary and while sharing responsibility we were not given money to purchase Ankara".**

Learned Counsel recalled that the Appellant was not cross-examined at the trial with the import that the above evidence and all others from him are deemed admitted in law.

Counsel submitted that on his own part, the 2nd accused person at the trial corroborated the fact that the Appellant was not the one who took money for the purchase of the Ankara. Also, that the second witness for the 2nd accused at the trial sealed the fact that Appellant was not responsible for the purchase of the Ankara when she stated in her evidence-in-Chief at the last line of page 97 of the record that her own Ankara was given to her by the Chairperson Mrs. Fagoriola (wife of the Local Government Chairman).

Apart from the foregoing, said Counsel, the Respondent failed to establish at the trial that the Appellant procured the receipt involved in the ₦90, 000.00 issued from the Mama Twins Boutique in whatever regard, let alone beyond reasonable doubt.

Learned Senior Counsel for the Appellant again reviewed the evidence of PW1, PW3 and PW5 on the issue of the receipt from Mama Twins Boutique and pointed out that from there testimonies no name was mentioned as an official of the Local Government to when the receipt was allegedly given and that PW1 does not know who filled the receipt.

Counsel noted that only the PW3 and PW5 could have given direct or primary evidence of the person who sourced the receipt in question and yet the two of them gave evidence which exonerated the Appellant.

He summed up that the testimonies of the prosecution witnesses did not provide the needed nexus between the Appellant and the receipt from Mama Twins Boutique. He said, they were, without doubt, worthless to the proof of the count Three and should have been discountenanced peremptorily.

Counsel submitted that evidence that himself and the 2nd Accused were not given the responsibility to purchase Ankara and therefore they could not have had to procure receipt to cover up the alleged purchase of Ankara from Mama Twins Boutique.

He concluded that against the backdrop of the above, there was no basis for the trial court to have convicted the Appellant on the count Three.

The submissions of the Learned Counsel for the Respondent on Appellant's Issue 3 was virtually the same for Appellant's Issue 4.

Counsel emphasized the fact that the Appellant and the 2nd Accused person by virtue of the fact that they were the chairman and secretary of the planning committee for the Governor's visit had the common purpose and intent to ensure that the money allocated and released was justifiably retired.

Respondent's Counsel also submitted that the testimony of PW3 and Exhibit 'O' which was written by the 2nd Accused proved that it was the 2nd Accused who filled the entries in the receipt Exhibit 'C24'. However, that the 2nd Accused did not deny collecting the receipt from the Appellant.

It is rather curious how the learned trial judge in this case came to the conclusion that the Appellant was guilty of count Three when all evidence pointed to exonerate the Appellant from any complicity either on the responsibility to purchase the Ankara, the receipt of the money for the Ankara, the filling of Exhibit 'C 24' the receipt for the Ankara and indeed the actual act of retirement of receipt for the Ankara which was done by the 2nd Accused.

In this respect, I do agree with the Learned Counsel for the Appellant that there was indeed no nexus between the acts of the Appellant and the filling and retirement of Exhibit 'C 24'.

Incidentally, it was the same perverse findings and conclusions of the learned trial judge based on speculations and conjectures which accounted for the trial court's conviction of the Appellant on count Two of the information that also accounted for the Appellant's conviction on count Three of the information.

Clearly, from the available evidence, the prosecution/Respondent did not prove that the Appellant knowingly furnished false statement in respect of ₦1.3m, in respect of visit of executive Governor of Ondo State, claiming that the sum of ₦90,000.00 was used to

purchase Ankara at Mama Butik, when no purchase was made from Mama Butik in terms of count Three of the information.

Issue 4 is accordingly resolved in favour of the Appellant.

In this appeal, Issues 1 and 2 were resolved against the Appellant.

Issues 3 and 4 were resolved in favour of the Appellant.

Consequently, this appeal is allowed in part.

The consequence of the resolution of issues 1 and 2 against the Appellant and issues 3 and 4 in favour of the Appellant is that the conviction of the Appellant on count One of the information is affirmed while the conviction on counts Two and Three of the information are quashed.

MOJEED ADEKUNLE OWOADE
JUSTICE, COURT OF APPEAL

COUNSEL

Dayo Akinlaja SAN for the Appellant with Amos Fadoju, Ibukun Fasanmi G.U. Okoye (Mrs.) and John Daramola

G.O. Ogbadamu Chief Legal Officer I.C.P.C. for the Respondent.

APPEAL NO: CA/AK/67C/A/2014
(MOHAMMED AMBI-USI DANJUMA, JCA)

GBENGA OJO

VS

FEDERAL REPPUBLIC OF NIGERIA

Having read before now, the leading Judgment just delivered, I agree entirely with the reasoning and conclusion of My Lord, Mojeed A. Owoade, JCA, that the appeal should be allowed in part and the conviction and sentence on count one of the information be affirmed; while counts 2 and 3 be quashed and the appeal in respect there to be allowed. I have studied the well reasoned and crafted Judgment that, I cannot add anything more than to agree and adopt same.

I so adopt same as my view and Judgment. Appeal allowed in part.

MOHAMMED AMBI-USI DANJUMA
JUSTICE, COURT OF APPEAL.

APPEAL NO: CA/AK/67^{CA}/2014
JAMES SHEHU ABIRIYI
JUSTICE, COURT OF APPEAL

I read before now the draft of the judgment just delivered by my learned brother **MOJEED ADEKUNLE OWOADE, JCA.** He has exhaustively dealt with the issues for determination. I have nothing more to add.

Although the style adopted by the lower court in writing the judgment appealed against was rather clumsy in that he came to some conclusions before the evaluation of the evidence before him, this did not amount to denial of fair hearing to the Appellant and the Appellant did not thereby suffer any miscarriage of justice.

There was no evidence of agreement between the appellant and the 2nd accused to furnish a false statement in respect of the sum of ₦90,000. The offence of conspiracy was therefore not proved beyond reasonable doubt.

However, as the Appellant failed to prove that the money was collected by those he alleged collected same by receipts exhibits 6^{C} and F the conviction on count 1 should be sustained.

There was no evidence implicating the Appellant on count 3.

For the reasons contained in the lead judgment, I too allow the appeal in part.

The conviction of the Appellant on count 1 is affirmed by me. However the conviction on counts 2 and 3 is hereby quashed.

JAMES SHEHU ABIRIYI
JUSTICE, COURT OF APPEAL