

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

BEFORE THE HONOURABLE JUSTICE J. O. IGE - ACTING CHIEF JUDGE
ON THURSDAY THE 18TH DAY OF SEPTEMBER, 2008.

SUIT NO.I/2/ICPC/2007.

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

VS.

1. AJANI BABATUNDE SEGUN (M) 2. YEKEEN BALOGUN (M) 3. AFOLABI MATTHEW ADEWUMI (F)	} ACCUSED
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RULING

The three Accused persons were arraigned on 23/10/07 on an Information of two Counts to which the Accused persons pleaded not guilty. After the Prosecution had closed its case, the Prosecution was granted leave to file an Amended Information of 3 Counts dated 11/1/08 wherein the Accused persons are charged for the following offences:

STATEMENT OF OFFENCE 1ST COUNT

Impersonating Public Officer contrary to and punishable under Section 108 (1) of the Criminal Procedures Code Cap 77 Laws of the Federation 1990.

PARTICULARS OF OFFENCE

Ajani Babatunde Segun (M), Yekeen Balogun (M) and Afolabi Matthew Adewumi (F) on the 12th of January 2007 or thereabout at Oyo town, Oyo State did falsely represent themselves to officials of Silver Touch

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Filling Station Oyo town, Oyo State, as officials of the Independent Corrupt Practices and Other Related Offences Commission.

STATEMENT OF OFFENCE 2ND COUNT

Obtaining petrol at the rate of N65.00 by false pretences contrary to and punishable under Section 419 of the Criminal Procedures Code Cap 77 Laws of the Federation 1990.

PARTICULARS OF OFFENCE

Ajani Babatunde Segun (M) Yekeen Balogun (M) and Afolabi Matthew Adewumi (F) on the 12th of January 2007 or thereabout at Oyo Town, Oyo State did falsely represent themselves to officials of Silver Touch Filling Station Oyo Town, Oyo State, as officials of the Independent Corrupt Practices and Other Related Offences Commission and thereby purchased Petrol at the rate of N65.00 below the selling rate of N80.00 at that time.

STATEMENT OF OFFENCE 3RD COUNT

False assumption of office contrary to and punishable under Section 107(2) Of the Criminal Procedures Cap 77 Laws of the Federation 1990.

PARTICULARS OF OFFENCE

Ajani Babatunde Segun (M), Yekeen Balogun (M) and Afolabi Matthew Adewumi (F) on the 12th of January 2007 or thereabout at Oyo town, Oyo State without lawful authority assumed the powers of officials of the Independent Corrupt Practices and Other Related Offences Commission by Commencing investigation activities in relation to allegation of corruption Against the officials of Silver Touch Filling Station in Oyo town, Oyo State.

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Each of the Accused persons pleaded not guilty to the Amended Information after which the Prosecution closed its case having called three witnesses in proof of their case. At the close of the case for the Prosecution, the Defence Counsel made a submission of No Case.

An Investigator with the Special Duties Department of the Corrupt Practices and Other Related Offences Commission (ICPC) Mr. Nuhu Gabriel testified as PW1. He and one Olukile Olusesan were the Officers to whom the Investigation of the Petition written by one Atingisi was assigned. The allegation in the Petition was that the Accused person impersonated ICPC officials. He said he traveled to Oyo town to investigate the petition, and when they got to Oyo, they found out that the Accused persons were members of Oyo Non-Governmental Organisation with the name Anti Corruption Awareness Organization of Nigeria. He said they proceeded to a Petrol Station called Silver Touch where they found out that during the 2006/07 Nation wide fuel scarcity, the Accused persons came to the Filling Station and claimed that they are officials of the ICPC and demanded that a litre of the petrol should be sold to them at the rate of ₦65 per litre instead of the rate of ₦80 per litre, the rate the Petrol Filling Station was selling then. He said the officials of the Filling Station hearing that the Accused persons were officials of the ICPC responded by selling to them at the rate of ₦65 per litre. He stated that the Investigators also found that the Accused persons purchased fuel at the same rate for their friends at the same Petrol Station.

After this, the Witness said his team proceeded to the Office where the Non-Governmental Organization was situated in Oyo town and there they arrested the Accused persons, interrogated them and recovered some items in their office such as identity card of the Accused persons, typewriter, Attendance Register. He said they found in the course of their investigation

that the Accused persons invited the officials of Silver Touch Station to their office for Investigation that they harrassed the Station Officials until the Petitioner Atingisi intervened and threatened to deal with them before they stopped harassing them. He later tendered the Petition addressed to ICPC as Exhibit A as well as the Statements of the three Accused persons as Exhibits B, C & D respectively.

Under cross-examination the witness stated that the Organization to which the Accused persons belong is a non-governmental Organization and it is one of the Coalition of Organizations registered with the ICPC. He said the Organization to which the Accused persons belong is recognized by the ICPC to the extent to which all Rules and Regulations are being followed. He stated further that before this incident the ICPC had communicated in writing with the organization to which the Accused persons belong. The witness said he knows that ICPC and EFCC have something to do with the issue of Corruption. He said he cannot remember whether it came out during their investigation that the Accused persons provide Information to Law Enforcement Agents like the Police. Later he told the Court that he agreed that the Accused persons through their statements inform him that they normally pass Information to Law Enforcement Agents. The witness admitted that they never mentioned to the Police Area Commander at Oyo the statement by the Accused that they passed Information to Law Enforcement agents.

Testifying further the witness said he was not at the Filling Station to witness any of the alleged sales of petrol. Again he said the Petitioner was not present when the Accused persons were alleged to have made representation to the Filling Station staff that they were ICPC officials.

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On the Identification card recovered from the Accused persons, he said the cards bear the name – Anti Corruption Awareness Organization with an ICPC written on it in bracket. The witness stated that he took the statement of Kagbafolorun, the Manager of the Petrol Station through an Interpreter. He again repeated that the Petitioner did not witness the purchase of fuel by any of the Accused persons.

Mrs. Rasidat Adunni Okoduwa, Head of the Education Department of the ICPC testified as 2nd P.W. Her department handles all educational activities of the Commission including registration of Non Governmental Organizations (NGOs) into National Anti Corruption Coalition of the ICPC. She said she did not know the Accused persons but she knew an Organization called Anti Corruption Awareness Organization of Nigeria – NACO which obtained a membership Application Form for the Coalition from her Department. The form was filled and submitted by NACO and her Department issued to NACO a Letter of Provisional membership but subsequently they received two letters from NACO of change of name, the second Letter changed the name to Anti-Corruption Awareness Organization of Nigeria and that was how she came to know the Organization. She said the provisional registration given to Anti Corruption Awareness Organization is a temporary membership status of the Coalition until the claims by the NGO are verified and found to be correct, thereafter a confirmed membership status will be accorded the NGO. She stated that the Anti Corruption Awareness Organization has not been accorded confirmed membership status. She tendered the Membership Application form submitted by the Accused persons Organization which was admitted as Exhibit E. The Letter of Provisional Membership was similarly admitted as Exhibit F. She also tendered the two letters for change of name by NACO. She told the Court that the NGOs registered by her department are expected to carry out educational and Public

Enlightenment activities against Corruption and are not given the authority to receive and investigate reports on Corruption; that they are only authorized to report such to ICPC if they become aware of corrupt activities.

Under cross-examination, the witness admitted that the Organization to which the Accused persons belong has not been formally deregistered but they were barred in the NGO forum held on 9th August, 2007 after the Accused persons had been charged to Court. She said the verification of the Information on the Accused persons Application has not been completed. She was referred to page 2 Part 2(i) (iii) of Exhibit E on the Organizations duties "To supplement the efforts of Government established Agencies in detecting and eradication of crimes" She said it is wrong for the Accused persons to report allegations of Corruption to the Police. They are to report to ICPC and not to any Government Agencies. She said in her own opinion what the Accused persons did was outside their objectives in Part 2 1(iii) of Exhibit E. She stated further that before the charge was filed her department had been dealing with the Organization to which the Accused persons belong, and to her knowledge there was no negative report against the Organization to which the Accused persons belong made to ICPC before this case.

Iliasu Kagbafolorun the Assistant Manager of Silver Touch Petrol Station testified as PW3. He told the Court that during the time of the Nationwide Fuel Scarcity the 2nd Accused person came to their Station to buy petrol. He said he told him that they sell for ₦180 per litre whereas the official rate is ₦65 per litre, but the 2nd Accused said he could not buy at that rate hence they refused to sell at ₦65 per litre, that was when the 2nd Accused told him that they are members of an Anti-Corruption Organization. He said that because he introduced himself to them as a member of an Anti Corruption

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Organization that was why they sold to him at ₦65 per litre, the 2nd Accused was said to have dropped a note for him to report at their office.

Testifying further, he said one of their Customers one Atingisi later came as soon as 2nd Accused left. There was no fuel to sell when he came. He said he demanded to know why they were not selling fuel and they told him they had no fuel; but some people around told him that there was fuel but that some people came to the Station that was why they stopped selling. He wanted to know who the people were. He was shown the note dropped by the people. He said he knew them and that he would go and see them but that the attendant should continue to sell their fuel whenever there was fuel. He said the Anti Corruption people came around again the second time but the witness was not around. They still wanted to buy at ₦65 per litre but the attendants refused. He said the attendants sent for him and before he came the people had left. But they left a note that the people should come and see them in their office again, and as soon as he got the note, he called Atingisi who had the first note and who promised to see the Anti Corruption people. Atingisi told the Witness to meet him at the Anti Corruption office and he did. There he said the Anti corruption people and Atingisi discussed the matter and asked him to go away with the instruction that he should tell his Managing Director to see them; and when Atingisi demanded to know why he said they replied that they wanted to give him some warning. He was shown a document which he said he cannot identify whether it is the one dropped for him at the Station by the anti-Corruption people.

Cross-examined by the defence Counsel the Witness gave the name of the Petrol Station Managing Director as Muritala Oyebisi. He said he voluntarily resigned his appointment with the Station and not that he was forced out. He told Court that he did not know the difference between Anti-Corruption Organization and ICPC. When the 2nd Accused first came to buy fuel he said he did not force them to sell to him, he merely introduced himself to them. He said he was not around the second occasion when the 2nd Accused came to buy fuel but the Petrol attendant told him what happened. He stated further that when ICPC officials came, they had discussions with him and not with the attendants.

During the first visit of the 2nd Accused to the Station the witness said he was able to recognize only the 2nd Accused, but will not know whether the 1st and 3rd Accused persons were at the Station with him. He admitted knowing one TAJU Chairman of the Anti Corruption Organization who once arrested him for buying fuel in jerry can.

Addressing the Court on a No Case submission, Mr. Babalola Learned defence Counsel submitted that no case submission can be properly made and upheld where from the evidence before the Court there has been no evidence to prove an essential element of the alleged offence and when the evidence adduced has been discredited as a result of cross examination or is so manifestly unreliable that no reasonable Tribunal would safely convict on it – See Ubanafu Vs. C.O.P. (2000) FWLR (Pt 1) 138, 140.

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On Count 1, Learned Counsel submitted that the Prosecution has a duty to prove the following elements:

- (i) That the Accused falsely represented himself to be a person employed in the Public Service.
- (ii) That the Accused person assumed to do the act alleged by virtue of such employment.

He referred to evidence of PW3 – who can be described as the person with whom the Accused person had interactions. That witness told the Court that 2nd Accused person introduced himself to the Petrol attendants as a member of an Anti-Corruption Organization, that the 2nd Accused dropped a note for the Petrol attendants to report at their office, that he was not at the Station when the Anti-Corruption officials came to buy fuel the second time. Learned Counsel referred further to the evidence of PW3 under cross examination – when he said:

“I do not know the difference between Anti-Corruption Organization and ICPC”

“I have never seen ICPC identity card before”

It was therefore submitted that from the evidence of PW3 the person with whom PW3 had interactions, there is no where in his evidence where the 2nd Accused introduced himself as an official of ICPC and there is no evidence that the Accused persons falsely represented themselves as persons employed in the public service. He said PW3 referred only to the 2nd Accused. He submitted that the first element of the offence has not been proved.

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Learned Counsel also referred to the evidence of PW3 who tendered Exhibits E & F and stated that it was based on Exhibit E – document that spelt out the functions of the Organization that Exhibit F was issued part of the objectives of the Organization is to supplement efforts of Government established Security Agencies. It was submitted that the non governmental Organization as the name implies is not on Government payroll.

Reference was again made to the evidence of PW1 who confirmed that they normally pass Information to Law Enforcement Agencies. It was therefore submitted that from the facts before the Court the elements of Count have not been proved. He urged the Court to discharge the Accused on that Count.

On Count 2, it was submitted that the Prosecution is bound to prove by evidence the false either by word or conduct that the Accused persons have guilty knowledge in making the false representation, they must prove content to defraud, that throughout evidence of PW1 – PW3 there was no iota of evidence that there was false representation by the Accused persons.

Learned Counsel referred to the evidence of PW1 about the various items recovered from the office of the Accused's persons Organization e.g I.D. Card, that none was tendered to show that they represented themselves as officials of ICPC to obtain the petrol, that there was even no sign of compulsion that is to say that the Accused persons did not force the Petrol attendants to sell petrol to them, and PW3 who was on ground said he was not around when the Accused persons came the second time to buy fuel. It was therefore submitted that the element of fatal representation falsity of the representation has not been proved and there is also no evidence to defraud because the rate of petrol then was ₦65 per litre and that was what the Accused persons paid.

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On Count 3, Counsel adopts his arguments on Count 1. To prove Count 3 it was submitted that the Prosecution must first prove that the Accused persons have represented themselves as persons employed in the Civil Service before they can be charged for committing offence in Count 3. Referring to Section 107 (2) of the Criminal Code, it was submitted that there was no evidence led of what the Accused persons were alleged to have done at the petrol Station which falls within the assumption of authority, that is there is no evidence from the Prosecution of what the ICPC officials would have done at the Petrol Station which the Accused persons did especially when Exhibit E & F are considered. He urged the Courts to hold that in the absence of the elements of the offences charged, the Accused persons cannot be called upon to give any explanations, that is that the Prosecution has failed to make out a prima facie case and in that situation the Court will uphold the No Case submission.

Finally on Exhibit A, the Petition, it was submitted that the Petition constitutes hearsay evidence, and it is the bedrock of the Prosecution's case. He submitted that the author of Exhibit A was not present at the scene and was not called to testify. It was submitted that Exhibit A was therefore hearsay evidence – See Osaghide Ojo Vs. Dr. Charoro (2006) 25 NSCQ, 712, 715. It was therefore submitted that the whole trial of the Accused persons was based on hearsay evidence. Counsel urged the Court to hold that the Prosecution has failed to prove the essential elements of the offence.

In his reply, Mr. Taiwo Learned Counsel for the Prosecution submitted that the Prosecution has succeeded in proving Count 1; that from evidence of PW1 – PW3, the Prosecution has led enough evidence to show that all the three Accused persons represented themselves to be persons employed in the Public Service, that is ICPC.

He referred to the evidence of PW2 that NGO Officials particularly the one the Accused persons belong to are not public officers. He also referred to the evidence of PW3 that 2nd Accused told the Petrol attendants that they were from Anti-Corruption Organization and because of that introduction they had to sell petrol at ₦65 per litre to them instead of ₦80 the rate at which they were selling. Learned Counsel submitted that what the Court will look at this stage is that when 2nd Accused dropped a note for 3rd PW and asked him to report at their office, a person in the standing of the 3rd P.W will believe that he is dealing with ICPC officials. He urged the Court to take judicial notice of the fact the two major bodies dealing with Corruption are EFCC and ICPC, and P.W.3 was right in believing that he was dealing with ICPC when he heard Anti-Corruption.

Still on count 1 Counsel submitted that the Letter inviting officials of the Petrol Station to the office of the Accused person is a Summons that can only be issued by a Public Officer; by calling for documents in the Invitation Letter the Accused persons are carrying out duty of Public Officers which Exhibits E and F do not confer on them.

On Count 2 it was submitted that there must be a false pretence and inducement. He argued that the representation by the Accused persons that they are from Anti-Corruption Organization satisfies the requirements of Section 418 of the Criminal Code. According to Learned Counsel, on the element of inducement, he submitted that since 3rd P.W said he cannot read or write, but that the statement by the 2nd Accused to 3rd P.W to sell Petrol to them because they were from Anti-Corruption Organization was what P.W.3 believed that he was dealing with a Government Official from the Anti-Corruption body whereas the 3rd P.W. would not have sold to him if he told

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the 3rd P.W that he was from say Ministry of Agriculture. He further submitted that for initiating and commencing investigation to an offence that is by asking P.W.3 to report with waybills etc the Accused persons have gone beyond the scope of their power.

On Count 3 Learned Counsel adopts his argument on Count 1 that by virtue of the attachment to Exhibit A – Letter of Invitation the Accused persons have gone beyond their scope as official of NGO by summoning 3rd P.W to their office with documents they want to verify.

Addressing the Court further, Counsel argued that by saying that they were from Anti Corruption Organization satisfied the falsity element of the offence in Count 3. On Exhibits E and F, Counsel submitted that the two documents do not give power to Anti-Corruption Organization to receive petition and investigate it like they have done in this case because Exhibit F gives them only provisional power; and rather than making a report to any Security Organization they opted to commence investigation on their own instead of reporting to the appropriate Authority, and therefore by presenting themselves to P.W.3 as officials of Anti-Corruption satisfied the requirement of false representation by the Accused persons. On failure to tender ID Cards etc, Counsel submitted that the Prosecution does not need to bring the whole evidence, all they need is enough evidence to sustain the charge. Still on Count 2, it was submitted that what that Count implies is that the Accused persons presented themselves as Anti-Corruption officials and thereby inducing P.W.3 to sell petrol at ₦65 per litre instead of ₦80 they were selling at that period, and application of force is not a requirement under Section 419 of the Criminal Code. The requirement is false representation and the victim believed the falsity.

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On Exhibit A – Petition which was described as hearsay evidence, Learned Counsel referred to Section 76 of the Evidence Act and submitted that Exhibit A is not hearsay because the Author wrote down what he heard and what he was told. It was his argument that a report of crime by Exhibit A and failure to call its Author is not fatal. What the Prosecution is supposed to do is to call enough evidence to sustain the charge. Finally, he submitted that the Prosecution has led enough evidence to warrant the Accused persons being called upon to make some explanation.

At the close of the case for the Prosecution a submission of no case to answer may be made on behalf of the Accused person. A no case submission postulates one or two things namely:-

Firstly, such a submission tantamounts to saying that there does been throughout the length and breadth of the case presented in Court by the Prosecution, no legally admissible evidence led against the Accused person on behalf of whom the submission was made to connect him in any way with the commission of the offence with which he has been charged which would compel his being called upon to defend himself or second it may mean that whatever evidence there was which might have linked the Accused person with the commission of the offence has been so discredited through cross examination that no reasonable Tribunal can be called upon to act on it as establishing the guilt of the Accused person or that evidence is so manifestly unreliable that no reasonable Tribunal can safely convict on it. These are the two conditions one of which and even both can sustain a no case submission – See Godwin Chianugo & Ors Vs. The State (2002) 2 NWLR (Pt.750) 225.

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Because of the ingredients which are common to the two offences charged in Counts 1 and 3, and in view of the facts revealed in evidence in the case, it might be appropriate to consider the two Counts together. In Count 1, the Accused persons are charged under section 108 (1) of the Criminal Procedure Code for impersonating public officers that is falsely representing themselves to officials of Silver Touch Filling Station Oyo town as officials of ICPC, and in Count 2 for offence of assumption of office under section 107 (2) of the Criminal Code; that the Accused persons falsely assumed the powers of officials of ICPC.

Under section 108 (1) of the Criminal Code to institute an offence under the section two ingredients are necessary. The first is that the Accused must have falsely represented himself to be a person employed in the public service. The second is that the Accused should have assumed to do the act alleged by the virtue of such employment. For the offence under section 107 (2), the Prosecution has to prove the act which the Accused persons assumed to do as if they were public officials.

In Exhibit F – Letter dated 31/7/06 by the National Anti-Corruption Organization of Nigeria, that is Accused persons' Organization, the Accused person's Application for registration was given Provisional approval. In the Application Exhibit E ICPC membership Application form, it is provided in Part II (iii) major objectives as follows:-

“To supplement the efforts of government established security Agencies in detecting and eradication of crimes”.

That is one of the objectives for which the Accused persons Organization was set up, and that was what it presented to the ICPC office before they were granted provisional approval.

In what way is the Accused persons Organization to supplement the efforts of Government established security Agencies? 3rd P.W. under cross examination said:

"When the 1st Accused person first came to buy fuel, he did not force us to sell to him, he merely introduced himself to us. . . I was not around on the second occasion when the 2nd Accused came to buy fuel but the attendant told me what happened".

The question is – How did the 2nd Accused introduce himself to the Petrol attendant. According to the 3rd P.W. the attendants sold the Petrol to 2nd Accused at ₦65 instead of ₦80 per litre because he introduced himself as a member of Anti-Corruption Organization not as an official of ICPC.

Testifying further under cross examination, the 3rd P.W. said "I know one Taju. He is the Chairman of the Anti-Corruption Organization to which the Accused persons belong. He has never arrested me for bunkering. He only arrested me for buying fuel in Jerry Can and took me to the office of the Area Commander".

The evidence of 3rd P.W. is not that because they sold fuel free to 2nd Accused because of that introduction, rather they sold fuel to him at ₦65 the official rate instead of ₦80 per litre rate occasioned by fuel scarcity. Again through the efforts of the Accused persons, people have been arrested and handed them over to the Police in the past. Again, following the invitation by the 2nd Accused person to their office, the invitation was honoured but Atingisi with whom 3rd P.W. went to the office of the Accused persons held discussions with them at the end of which the 3rd P.W. was asked to tell his Managing Director to call back.

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It has been alleged that the Note dropped for the Attendants to call at Accused's office is a summons. A summons is a document served from the office of a Court of Justice, calling upon the person to whom it is directed to attend before a Judge or officer of the Court – see Concise Law Dictionary by Osborne. The note given to the Petrol attendant to call at their office is not a Summons or an Order to appear in a Court of law, at best it is a mere invitation. So far I cannot see any evidence of false representation as an official of ICPC by the Accused persons or false assumption of office. The Prosecution has failed to prove the essential ingredients of Counts 1 & 3. The Accused persons are accordingly discharged on the two Counts.

Now on Count 2 which is for obtaining petrol at the rate of ₦65 by false pretence under section 419 of the Criminal Code. Section 419 provides thus:

“Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen”

The false pretence may be made by words, writing or conduct. The pretence must be proved to be false, and it must be shown that the Accused knew that the pretence was false or did not believe it to be true – see paragraph 1926, pages 852 – 853 Criminal Law and Procedure of the Southern States of Nigeria 3rd Edition by T. Akinola Aguda.

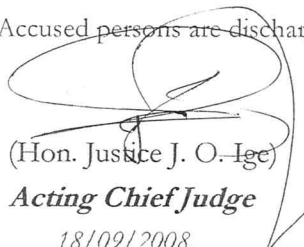
As stated earlier in the course of this Ruling, the representation made by the 2nd Accused to the petrol attendant was by words, that is that the 2nd Accused was from an Anti-Corruption organization. The witness did not say that the 2nd

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Accused told him that he would not pay for the fuel or that he would pay an amount less than ₦65 per litre the official rate instead of ₦80 per rate during the period of scarcity. The statement would have been construed as an inducement if the 2nd Accused did not pay for fuel at all or paid less than ₦65. Again when the 2nd Accused came the second time to buy fuel the 3rd P.W was not aware of what happened whereas he was the only person with whom the 2nd Accused person had interacted therefore the element of false representation and falsity of the representation has not been proved. The Prosecution has failed to lead sufficient evidence to sustain Count 2. The Accused persons are discharged on that Count.

Before I end this Ruling, I want to say this much. When non governmental Organizations apply to ICPC to be registered as an Anti Corruption Organizations, the ICPC will do well to get such NGOs to formulate their objectives as stated in the Application forms in such a way that the nature and scope of their operational activities are clearly spelt out devoid of any ambiguity. The evidence presented by the Prosecution is not sufficient to warrant the Accused person being called upon to make any defence.

The no case submission is upheld, the Accused persons are discharged.



(Hon. Justice J. O. Ige)

Acting Chief Judge

18/09/2008.

*Bayo Taiwo Principal Legal Officer
(with Mr. C. Binga and K. Ogunniran)
for the Prosecution*

*A. Babalola Esq.,
for the Accused persons.*