

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: HONOURABLE JUSTICE I.U. BELLO
HON. JUDGE. HIGH COURT NO 4**

**COURT CLERKS: EMMANUEL O. BELLO AND SALISU IDACHE
SUIT NO; CR/7/2004
DATE: 1/8/2006**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA) COMPLAINANT

AND

UMAR MUSA) ACCUSED

Date: 1/8/06
Godson Igbadune Esq Prosecutor in Court with
Adesola Micheal and Accused now in Court,
represented by E. U. Eriba Esq.

Pros: The Case is for judgment.

JUDGMENT

The accused Umar Musa was arraigned before this Court on a two Count charge for offences contrary to the provisions of Section 19 of the CORRUPT PRACTICES AND OTHER RELATED OFFENCES ACT, 2000. The two counts charge are as stated hereunder:-

- (1) That you, UMAR MUSA, in the month of December, 2003, at Abuja, being a public Officer did corruptly use your position as a guard with the Department of State Services to confer

advantage upon yourself by removing the sum of \$10,000 US Dollars which is equivalent to the sum of N1.470,000.00 at the materials time from Alhaji Hussaini Zanuwa Akwanga, then under the custody of the Department of state services, on the pretend of conducting a search and you thereby committed an offence contrary to and punishable under section 19 of the Corrupt Practices And other Related Offences Act, 2000.

(2) COUNT TWO CHARGE:-

That you, Umar Musa, in the month of December, 2003, at Abuja, being a public officer did corruptly use your position as a guard with the Department of State Services to confer Corrupt advantage upon yourself by removing the sum of &10,000 US Dollars which is equivalent to the sum of N1.470,000.00 at the material time from Alhaji Hussaini Zanuwa Akwanga, then under the custody of the Department of State Services , on the pretend of conducting a search and you thereby, committed an offence contrary to and punishable under section 19 of the Corrupt practices And other Related offences Act 2000.

The accused person pleaded not guilty to each of the two Count charge as read and explained to him in Court. This means that the prosecution must discharge the burden of proving beyond reasonable doubt the guilt of the Accused who, is presumed innocent until proven otherwise. Section 19 of the Corrupt Practices and other Related Offences Act 2000, and under which the two Count charge was brought provides as follows:-

“Any public Officer who uses his office or position to gratify or confer any Corrupt or unfair advantage upon himself or any other public Officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine.”

It follows from the provision that for the prosecution to succeed, the following ingredients for the offence under Count (1) of the charge must be proved beyond reasonable doubt by the prosecution.

These are:-

- (a) That the accused is a public Officer.
- (b) That the accused used his position to confer corrupt advantage upon himself.

While under Count (2) of the charge the prosecution shall prove the following ingredients beyond reasonable doubt in order to succeed.

- (a) That the accused is a Public Officer.

(b) That the accused used his position to confer unfair advantage upon himself.

It is to be noted that the distinction between Count 1 and 2, of the charge is that while under Count (1) conferment of Corrupt Advantage is the issue, under Count (2) the issue is the Conferment of "Unfair advantage". In either of the two situations, it must be done by a public officer. The punishment upon conviction in either case remains imprisonment for five (5) years with no option of fine.

In order to appreciate fully, the duty of the prosecution, it is pertinent to clearly understand the operative words as used under the provision of Section 19 quoted above. These words include "Corrupt, Corruptly", Unfair and advantage.

The Blacks Law Dictionary, 7th Edition at page 348 defines the word 'Corrupt' – as follows:

"having or unlawful or depraved motive; especially influence by bribery. It goes further to relate the word – "to change in a person's morals or principles from Good to bad".

On the same page 348, Corruptly' was defined as "..... By means of corruption or bribery. It indicates a wrongful desire for pecuniary or other advantage.

On the other hand, the word "Advantage" is defined by Oxford Advanced Learners Dictionary special price Edition at page 18 as

"a condition or circumstance that push^s one in a favorable benefit or profit". By the definition of 'Advantage' as stated, it is obvious that an 'unfair advantage could mean – an unjust advantage' and therefore an illegal advantage within the provision of Section 19 of the Act under reference".

In order for the prosecution to succeed in proving the guilt of the accused, he called four (4) witnesses who gave evidence on its behalf. PW1 is Hussaini Zanuwa Akwanga, victim of the alleged offence, a former Minister and now a farmer. He testified on oath and sated as follows. That he knows the accused when between 27th and 28th 2003, he was invited by the Directory of State Security Services at the Headquarters, where he was requested to state what he know concerning National I.D. Card project at the Ministry of Internal Affairs – After making statement, PW1 was taken to a detention Centre by the operatives of the State Security Services where he was locked up in a room in which there were two beds. And that 30 minutes after he was locked up, the accused (**UMAR MUSA**) opened and entered the room and sat on one of the beds. He (Accused) told PW1 his name (**UMAR MUSA**) and that he comes from Obi Local Government of Nassarawa State He further told

PW1 that it is the practice that when ever people are brought into the detention centre, they are searched. In reaction PW1, said to accused that "They should have searched me at the Headquarters before bringing me to the detention". Upon saying this, according to PW1, the behavior of Accused changed, he became unfriendly and wild, he held the PW1 by the neck of his shirt from behind and by his trouser; then bent PW1 down and removed the sum of \$10,000.00 US Dollars and N10,000.00 Naira from the pocket of PW1. In this process the jumper and the trouser of PW1 got torn and his eye glasses got broken. Accused then said he would be taking the money to the SSS Headquarters, he left but shortly, returned and asked PW1 what to do with the money in the event that the SSS Headquarters refuses to collect the money, in reaction , PW1 told him to take the money to his Wife (PW1) and for that purpose the accused demanded for transport money and PW 1 told him to make use of the N10,000.00 with him as transport fare for the delivery of the Dollars to the Wife of PW1, whose name and address was given to the Accused. The accused left, leaving behind PW1 locked in the room with the Service Pistol of Accused forgotten behind, PW1 used one of the pillows on the bed to cover the pistol together by the accused who, closed from work at about 9.00. p.m. and another Officer took over. According to PW1, the Officer opened the door to his room in the morning on 3/12/2003 and asked if

any pistol was left behind by accused in the room, PW1 showed the pistol to the Officer who informed him that the accused came to collect the pistol but the refused him access saying that a person had collected the pistol already, and has left for the Headquarters with it. That on 9th December, 2003, PW1 was taken to the Headquarters where he met his Wife, who had brought some food for him and where upon he demanded to know from her if some money was taken to her and she said 'NO'. Meanwhile, PW1 had informed one Mr Agoro who visit those in detention on a daily basis all that had transpired between him and the accused and 11/12/2003, Mr. Agoro went to the room PW1 at the detention Centre along with three other operative of the SSS inclusive of the accused, he was asked to identify, who among them the person who collected his money and he pointed at the accused (**UMAR MUSA**). Under cross-examination, PW1 told the Court that he was taken to the detention Centre on 2/12/03 and tht he is from Nassarawa State. He re-iterated the fact that the accused held his gown from behind, bent him down and removed the money from his pocket and that at the time the accused was doing this, there was only PW1 and the accused in the room. The PW1 also re-iterated that the accused told him that he was taking the money to the SSS Headquarters. PW1 further stated that he never gave the accused both the money in Dollars and Naira (N10,000.00) respectively, it was the

accused who took the money from him. PW1 said that he first formally lodged a complain with the SSS on 6/2/2004 and a second complain on 3/3/2004 and two other complain on 5/3/2004 and 25/3/2004 respectively and he was assured by the SSS Headquarters that certain actions have been taken for instance the dismissal from service of the accused by the SSS Headquarters.

Re-examination by Prosecutor: under re-examination, PW1 said that his wife was staying at the Ministerial Quarters as at the time of arrest and detention.

PW2 the next witness to the prosecution is by name Usman Garba Saidu; who lives at Garki Village within the FCT, Abuja and works with Afri Bank PLC, in the main branch of the Bank. He gave evidence on oath and identify the accused as Customer of the Bank and that sometimes in the month of December 2003, the accused went to the Bank where he made some enquires about "FIXED DEPOSIT" accounts, accused was directed to him (PW2) being the person in charge of fixed deposits. Accordingly PW2 advised the accused on various fixed deposits but told the accused that the best investment is in the purchase of 'Treasury Bills'. The accused left promising to return and accordingly the accused returned to the Bank where he told PW2 that he had some money but not in Naira, that he had \$10,000.00 (US Dollars). PW2 advised the accused to change the Dollars

in to Naira through Bureau De Change and thus, the accused did, the Naira equivalent stood at N1 million, 470 Naira and that this amount was transferred to the bank's Headquarters for the purchase of Treasury Bills. The accused introduced himself as a businessman with Karu Market. The Draft cheque by which the money was forwarded to the bank's headquarters was admitted in evidence as Exhibit 1.

After this transaction, the SSS operatives came to the Bank demanding to know if some funds were lodged in the name of the accused and further presented a letter hand written – by accused and by which, such funds should be released and transferred to the SSS Headquarters. The letter was admitted in evidence as Exhibit 3.

While under cross – examination, PW2 told the Court that he only did to the accused what was expected of him as a banker, and that he was over 12 years in the service of the bank as at the time of the incident. He further told the Court that, the arrangement was that the bank was to trade on Treasury bills on behalf of the accused.

There was no re-examination by the prosecution.

PW3 is one Police Sgt. Habila Bako attached to ICPC. He gave evidence on oath and told the Court how he investigated the case

involving the accused as referred to him. Upon a complain lodged by ***Alhaji Hussein Jannuwa Akwanga***.

He told the Court how he recorded the voluntary statement of the accused under the words of caution. This statement was admitted in evidence as Exhibit 4 while the additional statement was admitted as Exhibit 5.

According to PW3, his investigations revealed that the accused had used his position as a guard to confer Corrupt Advantage and unfair advantage under the pretext that he was searching ***Alhaji Hussein Jannuwa Akwanga***, while in detention and removed the sum of \$10,000.00 or US Dollars from the said Akwanga, and with which the accused opened a bank account with AFri Bank, Garki Abuja. PW3 in his investigation confirmed all that was stated by PW1 regarding the investments by Accused in Treasury bills and documents as recovered in relation to the transaction were admitted in evidence as exhibit 3, A, B and C respectively.

According to PW3, money was recovered and sent to the SSS Headquarters and bank draft (Exhibit 1) before the Court duly identified by the PW3.

Under cross – examination: PW3 said that he was taken to him on 28/5/2004 and that he (PW3) got enlisted into the Nigerian Police in the year 1994 and that before he was seconded to the ICPC, he was with the Secret Department of the Police Force. There was no re-examination by prosecution.

The PW4 and the last witness to the prosecution is by name ***James Ibrahim Agoro***, a Public Servant with the Department of the SSS as a principal Staff Officer General duties in operations and investigations. He testified on oath and told the Court that he knows the accused and the reason accused is in court. That sometimes around the 2nd of December, 2004, the SSS Department was involved in the investigation of ID. CARD SCAM which involved some Public Officers amongst whom, was PW1, Alhaji Hussein Jannuwa Akwanga who was detained at the detention Centre. The accused was detailed to remain with PW1 till he is relieved by another Officer. On 7th of December, PW4 visited where PW1 was being detained on routine job and where upon, PW1 told him of the search and removal of the sum of \$10,000.00 (Dollars) and N10, 000.00 from his pocket by the accused. PW4 then reported the matter at the SSS Headquarters and he was then detailed to investigate the matter. According to PW4, the accused denied the allegation made by Alhaji Akwanga, this led PW4 to lead the accused in Company with other SSS

Operatives to where PW 1 was being detained for identification, PW1 pointed at the accused from amongst those other Operatives as the person who removed the money from his pocket through the accused, persisted in denying the allegation. Further investigations revealed on phone and number in a personal diary of the accused as recovered from him, and through the phone number, PW4 were able to reach Afri-Bank at Garki Abuja and from where the person that responded to the call identified himself as **Usman Garba Saidu** (PW2) who confirmed to PW4 that the accused had visited the bank and he is a customer to the bank who, earlier went to save \$10,000.00 US Dollars or with which, he made an investment into Treasury Bills per the advise of the PW2. PW4 went back to the Office and further asked the accused if he know anything about the substance of the allegation but the accused maintained that he knew until when PW4 confronted the accused with his findings at the Bank, the accused immediately broke down and confessed that he actually took the money from PW1 (**Alhaji Husessini Jannuwa Akwanga**). The accused pleaded with the PW4 to be lenient who prepared his report and passed to the management for necessary action. The accused later wrote a letter directing the bank to forward the money to the SSS Headquarters and the bank complied through a bank draft (Exhibit 1). PW4 identified Exhibit 1

as the draft by which the money (N1.4 million) was forwarded to the Headquarters.

Under cross – examination, PW4 told the Court that the appointment of the accused has been terminated as a result of this case. The accused was dismissed from the SSS.

At this point the prosecution closed their case and the defence opened their defence in which, they called lone witness, the accused himself who gave evidence as DW 1: The accused gave evidence on oath and told this Court that his name is **UMAR MUSA**, and that he was with the SSS but now, he is jobless. That he lives at Obi Local Government of Nassarawa State. That he joined the SSS on 27/1/2000 in the rank of Corporal and as a guard on suspects and some times served as escort. He recalled that on 4th of December 2003, he was at the SSS detention Centre when Alhaji Hussein Jannuwa Akwanga was taken there by Ibrahim Agoro (PW4) who placed and locked Akwanga (PW1) into a room. That the accused went into the room to show PW1 where the toilet was and also to switch on light in the room. That it was at that time PW1 said he was going to ask the accused for a favor which, the accused demanded to know PW1 said :

"Please my son, I have some money here, have this \$10,000.00

and kept it for me or take to my wife, **"HAUWA"**.

He (PW1) also gave me N10,000.00 as transport money. Before this, PW1 and asked for my name I told him that I am Umar Musa from Nassarawa States.

After that, the accused closed from duty and handed over Alhaji Akwanga to Mr. Vincent and to whom, the accused also handed his service pistol for use.

The accused also told the Court how he was led to the detention Centre where PW1 identified him as the Person who collected money from him, the accused further told he Court how he has detained at the SSS Headquarters and because of hardship in the cell, he told the SSS that he had lodged the money with Afri-bank. He then wrote a letter instructing the bank to release the money to the SSS Headquarters. The accused told this Court , the story told by PW2 regarding the entire transaction with the money from the Accused. Finally the accused told the Court how he was taken to ICPC and later detained at the Wuse Police Station before his arraignment.

While under cross – examination by the prosecution, the accused denied ever removing from PW1, instead, he that it was PW1 that handed the money to him. He however argued that he told the bank that he was a businessman and that he truly opened a fixed deposit account. He also agree that he is not related to Alhaji Hussein Akwanga they came from the same area. He also agree that he is not suppose to collect money for safe-keeping from suspects without notifying the Office of the SSS. The accused also agreed that (PW1) did not ask him to invest the sum of N1.4 million.

While under re-examination, the accused said, there was no one with him at the time he took the money to the bank.

The defence at this point closed their defence and this is now the case for both the prosecution and the defence. Both sides have made written submissions, as Counsel address and equally adopted same as argument for the prosecution and the defence respectively.

It is now my duty to examine the evidence as adduced by the prosecution with a view to arriving at a conclusion as to whether or not the prosecution could be said to have proved the guilt of the accused beyond reasonable doubt to warrant a conviction; if otherwise, going by

the evidence of the defence in relation to that of the prosecution, for the accused to be entitled to an acquittal.

Let me start with the examination of the written address of the defence in relation to the evidence as adduced from the prosecution and the defence. On page (3), the Learned defence Counsel made the following submissions and in the manner shown below.

"Be that as it may, the evidence of the prosecution witnesses and the Accused himself established these facts".

- (1) An amount of \$10,000.00 was collected from Alhaji Hussein

Akwanga, which as an SSS Officer the accused ought not to.

Thus he was consequently punished adequately by being detained for one month, tried and dismissed for misconduct.

- (2) The said money has long been retrieved from Afri-Bank where the Accused person save it. The relevant exhibits in the Court record and files refer. This invariably means the accused is not in any way in possession of the money neither does he have any control over same.

And on page (4), the following issues were raised:

- (a) Can a person who has an intention to commit a crime does so with the consent and free will of the purported victim who has all the right to do otherwise?
- (b) Can an accused be reasonably said to confer advantage of what is neither in his possession nor have control over on himself taking into view the fact that the money in question was earlier retrieved from him before he was charged with the offence herein?

On these two issues, the Learned Counsel for the accused made a number of submissions, which I have examine against the converse views of the prosecution on same. It is clear to me that even by the submission of Counsel as itemized on page offence of their address, the act was collecting the money from Hussein Akwanga by the accused, ought not have taken place, and that for, the accused has been punished by detention and retrieval of the money. I wonder whether Counsel is by implication raising the issue of double jeopardy in the circumstance of this trial in view of the purported punishment he alluded to in his submissions. It is carious! Let me go straight into answering the question, raised, and without missing words, it is my view which I believe is the position of the law, that parties cannot consent to Commission of crime in other words, it is not feasible that a victim of an intended crime, will consent to the

Commission of the crime and on the second question, the simple answer is that retrieval of the money from bank account does not negative conferment of unfair advantage, the question is, has the money been lodged in the personal account of the accused, it does not matter that it has not been spent. This is even more so where the intention to generate interest or investment that may yield dividends. On the other hand, the prosecution vides their written address raised one issue for the determination of this Court and that is:

- (1) "Whether the evidence adduced by the prosecution in respect of the charge against the accused person is sufficient to prove beyond reasonable doubt the case against the accused person"

The Learned Counsel for the prosecution, Mr Sanusi Kado made a number of submissions to show that the evidence before the Court is capable of granting a conviction of the accused person for the offences as charged under Section 19 of the Act.

From the evidence from both sides as well as Counsel address respectively, it is my finding of facts that:

(1) That accused was in the service of the State Security Service as at the time of the Commission of the alleged crime as argued.

This is as longer in dispute as it was because of his status as an operative of the SSS, and specifically as a guard in the rank of a Corporal going by the testimony of the accused himself; that he was detailed to maintain vigil or guard on PW1 while being detained at the detention Centre. This means therefore that the accused was a public officer then engaged in the Nigerian Public Services. It is therefore my conclusion, that the accused was a public Officer within the contemplation of Section 19 of the Corrupt Practice And Other Related Offences Act, 2000. I am satisfied that by evidence from both sides, the prosecution has proved beyond doubt, this ingredient of the offence as charged.

The next thing to consider is whether there is established by evidence before this Court, conferment of Corrupt advantage and unfair advantage which are necessary ingredients for the two Count charge respectively.

In resolving this issue, reference has to be made to the testimony of the prosecution witnesses and even that of the accused as DW1. It is clear from the story of PW1, that the money was forcibly taken away from him by the accused, the accused's testimony that the money was given to him by PW1 was a mere make belief and therefore untenable, it cannot be accept that it was voluntarily given to him for delivery to the Wife of the PW1, even then, there was no mandate for opening of bank account and in the personal name of the accused, indeed, straight into investment with nothing to show communication to the PW1 that such investment was done for him and on his behalf but in the name of the accused. There is also no such communication to either the Wife or any relation of the PW1. This clearly shows a case of Criminal misappropriate that is even on the assumption that the money as truly and voluntarily given to him by PW1 for delivery to his Wife. But that was not even the case, the testimony of PW4 (Mr Agoro) shows persistent denial by accused of ever receiving or collecting any money from the PW1 until when the accused was confronted with real facts as uncovered through the process of investigation that lodgments were made by him at Afri bank. The ignorance he was finding gave way to inevitable acceptance of the reality of the situation. This clearly shows further lack of intention to disclose the whereabouts of the money either to Akwanga, his Wife or any relation

thereto. This means that the intention to permanently put him self in advantageous position over the said Alhaji Akwanga, though the use of his position, to forcibly collect the money and caused investment with the proceeds of the misuse of such position; in Afri bank. In my view this scenario is both Corrupt and unfair, they are excellent attributes of the accused's conduct and based on that it is my most honest conclusion that there was conferment of both corrupt advantage and unfair advantage, through the use by accused of his public office/status, unhimself. The retrieval of the amount of money from Aribank PLC as alluded to by the Learned Counsel Mr. ERIBA for the accused is no defence to this misconduct under this Act or any other statute known under criminal justice delivery system . It is therefore discountenanced.

On the whole it is my well considered view that the prosecution has by evidence proved beyond reasonable doubts the guilty of the accused person who, I hereby convict as charged for the two offence under Section 19 of the Corrupt Practices and other Related Offences Act, 2000

(HON. JUSTICE I. U. BELLO)

HON. JUDGE

1/8/2006

Defence Counsel:

The convict is just 28 years old, a mere farmer in the village and first child of the family. He is just