

*IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE HIGH COURT OF ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU*

*BEFORE HIS LORDSHIP HON. JUSTICE A.O. ONOVO - JUDGE
ON THIS WEDNESDAY THE 20TH DAY OF FEBRUARY, 2019.*

CHARGE NO: E/165c/2015

Federal Republic of Nigeria
Vs.
Arukwe Chukwuemeka Samuel

JUDGMENT

The defendant, Engr. Arukwe Chukwuemeka Samuel is standing trial at the High Court on a 2-count charge. He is a public officer and staff of Project Development Institute (PRODA), Enugu. He is therefore in the employ of Federal Government of Nigeria. He has as the Supervising Ministry, the Federal Ministry of Science and Technology. He was brought to court on the premise that he used his office to confer undue advantage upon himself. He was alleged to have diverted ₦492,000.00 and \$6,596 for his personal use, same being funds meant for him to travel to China to attend the Train-the-Trainer programme. The 2-count charge is as follows:

COUNT 1

STATEMENT OF OFFENCE

Conferment of unfair advantage upon self contrary to and punishable under section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

ARUKWE CHUKWUEMEKA SAMUEL (m) sometime in December 19, 2011 or thereabout at Enugu while being in the employment of the Federal Ministry of Science and Technology, deployed to the Projects Development Institute (PRODA) as Principal Engineer did receive the sum of ₦492, 000.00 for air ticket, local contingency and visa fees respecting a trip to China which trip you did not embark upon and failed to return the said sum till date but rather you converted same to your personal use.

COUNT 2

STATEMENT OF OFFENCE

Conferment of unfair advantage upon self contrary to and punishable under section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

ARUKWE CHUKWUEMEKA SAMUEL (m) sometime in December 19, 2011 or thereabout at Enugu while being in the employment of the Federal Ministry of Science and Technology, deployed to the Projects Development Institute (PRODA) as Principal Engineer did receive the sum of \$6, 596 as estacode respecting a planned trip to China to undergo a Train-the-Trainer program which trip you did not embark upon and failed to return the said estacode money but rather converted same to your personal use.

The prosecution had in a bid to prove the case against the defendant, called a total of 3 witnesses namely: Julius Ogar - Pw1, Mr. Emmanuel Ilo – Pw2 and Shadrach Onyekachukwu Opeigwe – P3. The prosecution equally tendered 6 exhibits numbered as Exhibits "A" to "F".

Oga Julius Agwu testified as pw1. He is an investigating officer with the Independent Corrupt Practices and Other Offences Commission (ICPC). He knows the defendant. Sometime in late 2014, the ICPC received a Note Verbal request from the Ministry of Foreign Affairs which was assigned to his team for investigation. They invited the 4 people concerned who are staff of the Project Development Institute (PRODA) under the Ministry of Science and Technology. The request had emanated from PRODA Enugu to The Ministry of Foreign Affairs. There were initially 6 persons who were meant to travel to China and for whom the request was made to travel to China. Out of the 6 names, 2 of them were all paid estacode of \$6,596 dollars and additional ₦492, 000.00. There was additional monies provided in the course of their travel to get visas. These monies were collected in December, 2011. By the Financial Regulation, they are supposed to refund the monies at the end of the Financial year if the monies remain unutilized. The Commission sent an invitation to them. They all went to the ICPC head quarters and their statements were taken in writing. They wrote an undertaken to refund the monies received. Out of the 4 who made written undertaken to refund the monies, 2 have refunded theirs. The defendant has not. He investigated the matter. Money was approved for the defendant's trip to China, it was released, the defendant signed for his money, he collected same. Even though he did not travel, he refused to refund the money. One of them absconded from his job.

Pw2 is Emmanuel Ilo who is working with PRODA as the Director of Finance and Administration. He has been working there for 27 years. The defendant is a staff of PRODA Enugu. PRODA had an arrangement with a Chinese Company ANHUI IMPORT AND EXPORT CORPORATION CHINA for production of pencils with the Federal Government's blessing and approval of the Federal Executive Council. The cost of the machine and training were incorporated in the 2011 Capital Budget in

the Appropriation Act. The Chinese company had sent in the machinery required. What was left is installation and operation of the machines at PRODA. After delivering the machines to PRODA, the Chinese Company requested for 6 members of staff of PRODA who would go to China to be trained on the installation and operation of the machines so that when they come back they would train others. 6 members of staff of PRODA were selected, Namely:

1. Prof. Goddy Onuoha;
2. Engr. G.O.C.Ihezie;
3. Engr. Emeka Arukwe, the defendant;
4. Engr. Ochu Ismaila;
5. Engr. Shedrack Okpegbu; and
6. Emeka Aniyaorah, a technician.

They were to go to China in January, 2012. On December 19, 2011, they collected the dollar estacode and the naira equivalent which is N492, 000.00. The dollars was \$6, 596. In February, 2012, PRODA applied to the Federal Ministry of Science and Technology, the parent Ministry for travelling visas. They went to the Chinese Embassy in Lagos. Out of the 6 that applied for visas, only 2 that is, Prof. Onuoha and Engr. G.O.C Ihezie were given visas. The others were not successful and continued going to the Embassy for their own visas. It was PRODA that was funding the trips to the Embassy with Basic Travelling Allowances as different from the money meant for the overseas trip. The Embassy continued making promises to them. Though they did not get the visas, PRODA is still hopeful that they will get it and has been in touch with both the Embassy and the Chinese Company. In March 2015, he was invited by the ICPC together with the 4 who did not travel to come and explain what happened. He went to the ICPC then requested them to refund the money they had collected in 2011 so that they can be re-appropriated which

decision was based on the Financial Control Management Act of 1990 (Financial Regulation 2009). There are also yearly circulars from the Accountant General of the Federation on unspent money. The circulars are to the effect that all unspent money should be paid into the Consolidated Revenue Account of the Federal Government. When the staff were invited by ICPC, they all wrote undertakings to refund the money. Out of the 4, 3 persons have returned theirs. Those who refunded the monies include Engr. Ismail Ochu, Engr. Shedrack Okpegbu and Emeka Anyaorah. The defendant is yet to make a refund of his own which is why he is in court. Ordinarily what they do in PRODA is to either stop the staff's salary or deduct the money from the salary. The witness identified Exhibits "E". "E1" and "A" and tendered Exhibit "G". The Director General had on 15/5/2015 written to ICPC to still allow those selected and to whom moneys were released to travel to China but the request was turned down. In asking the staff of PRODA who received money to travel to China but failed to secure visas to enable them travel to refund the money, the ICPC was right.

Shedrack Onyedikachukwu Okpeigwe a public servant of the Federal Ministry of Science and Technology gave evidence as Pw3. He works with PRODA, Enugu as a Senior Technologist on CONRISS 9. The defendant is a colleague of his. In 2011, six persons were selected for a capacity building and train the trainer program in China and specifically for the machines purchased by PRODA from Anhiu for pencil making. Out of the six persons selected, only 2 attended the course. The other 4 were not granted visas by the Chinese Consulate in Lagos. He did not know the reason for that. After the first refusal to issue them with visas, they (the 4) went back to the Embassy on 3 other subsequent times. They went to the Consulate when the Ministry could not provide them visas. He received \$6,596 for estacode and local runs in China and N492,000.00 for flight ticket and local runs here in

Nigeria. Outside the above, they were usually paid their Basic Travelling Allowance for each trip to Lagos. He has not travelled because he was not given a visa. In October 2015, he gave the ICPC a bank draft. Ismaila Ochu also refunded his own to the ICPC. He is still working at PRODA but Austin Anyaorah absconded.

With the conclusion of the evidence of pw3, the defence opened its case by calling Dw1 who was the only witness that testified for the defence. Dw1 is Arukwe Chukwuemeka Samuel. He lives in Sunrise Estate Emene. He is a public servant at the Federal Ministry of Science and Technology working at PRODA Enugu. He is a Chief Engineer on CONRISS 13. He joined the Ministry in October 1982 and was the Head of the Machinery Section of Engineering Research, Development and Production Department. Sometime around 2009 to 2010, the department applied to replace some obsolete machines, some of the new machines were brought in. Some of those machines have been installed while some are yet to be installed.

There was downsizing in the place and management begged him to help train some staff which he did. Some of the machines included the CNC (Computer Numerical Control Machine which requires high skill training. Then the Institute desired to have a pencil manufacturing project. This also required a lot of machinery and skills to handle. Six of the staff were nominated to travel to China for a brief training captioned "Train the Trainee". They were to undergo the training first then, come back to train others. This will also enable them to participate in the first installation of the machines to be undertaken by Chinese experts. Since 2010/2011 some of the machines are lying there; most of them highly cannibalized. They submitted their passports to the Ministry of Science and Technology for visa. To their greatest surprise, their passports were returned. They were advised to source their visas through the Lagos axis. On 14/5/2012; they signed for the collection of money from the Institute but they were made to back-date it to December, 2011. They

were paid \$6,696 at ₦163 to a dollar. They were meant to sign for N942, 000.00 but were given one hundred and fifty thousand naira less which he was told by the cashier, Hyginus Eke, that it was for visa processing and other exigencies. It was on that day that they learnt that G.O.C Ihezue had long collected his own money. They were advised to pursue their visas. With grudges, they went to Lagos severally on 14/5/2012, 29/6/2012, 21/5/2012, 21/6/2012, 3/8/2012. No reason has been given them. They came back. However, Prof. Goddy Onuoha and the one who customized the project travelled to China. The Acting Chief Executive Officer whose name was not on the list was given visa and travelled. Several attempts have been made by them to know their fate but management kept giving them the assurance that they would still travel.

In 2015 he was told the people from ICPC were looking for them to come to their Abuja office and make clarifications on the Pencil Project. He was invited on 3/3/15 but management played it down. On 24/3/15, they then travelled to Abuja. When they got into the ICPC office they were given forms with cautionary words on which to write their statements. They were informed there is a petition written against the four of them. They were not shown a copy of that petition when they requested to see it but were given the Note Verbal which had an indication NOT CLEARED. They informed ICPC that 2 of their colleagues travelled on the Note Verbal but were informed that ICPC is not concerned with those ones but with them that did not travel and that they should refund the money. When there was a threat to keep them in the office and arraign them in court unless they wrote an undertaking, they had to write the undertaking to refund the money and thereafter report back to PRODA. On return to PRODA they contacted the C E O who, after meeting with the 4, wrote a strongly worded letter (Exhibit "G") to the ICPC Chairman. They also contacted the importer and Exporter who had arranged for

the training. He gave them a invitation for September and October, 2015 through the Management-Exhibit "H". He tendered a lot of documents in trying to justify his having to keep the money on the ground that the program billed for China has not been cancelled.

At the conclusion of evidence of the parties, the defendant raised 5 issues for consideration by the court. The 5 issues are:

***ISSUES FOR DETERMINATION RAISED BY DEFENDANT*(From case file)**

The prosecution on their part distilled a single issue for determination: "Whether the prosecution has, from the evidence laid before the Honourable Court proved its case beyond reasonable doubt as required by law"

The provisions of section 135(1) of the Evidence Act 2011 are stated thus:

"If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt". See the case of *Bakare v. State* (1987)1 NWLR (Pt.52) 579.

It has been well settled that in our system of administration of criminal justice, the burden of proof of the commission of a criminal offence or the charge against the accused is always on the prosecution. It is the duty of the prosecution to prove all the ingredients of the alleged offence(s). See *Olakunle v. State* (2014) LPELR-22519 (CA). The standard of proof required is beyond reasonable doubt. Where the standard of proof beyond reasonable doubt is not attained, any lingering doubt will be resolved in favour of the accused person. See also the case of *Abdullahi v. State* (2008) 3 NWLR (Pt.1115) 203.

The defendant had placed so much reliance of the project Development Institute where he worked in the battle to keep the money which was given to him for the trainer program in China. According to him, the money was given to him in 2012 but he was asked to date it December 2011. He did. When they were given

options by the ICPC to either refund the money received or be charged to court, he was waiting for PRODA direct him to refund the money. The PRODA as an organization was equally eager that the defendant should still travel.

According to the defendant:

“As I am sitting here (on 1/12/2016), the Institute has not written me to say: Return the money. Public office is like law. To punish an officer when there is law, due process must be followed. For there to be punishment, the Institute must query the person, he will be given time to show his defence. That is the public service rule from 0310. It is a tradition in PRODA that once one has a problem like holding money which is supposed to be returned, the one would not be promoted but will be made to face disciplinary panel. If they are compassionate, they will start cutting it from the one’s salary or stop the salary completely. I have received all my promotions from the Institute. I got one in 2013 and also in 2016. I was also given a letter for excellent performance for carrying out my duties. It was an award.

What the defendant failed to understand is that he is no longer dealing with internal matters of PRODA once he agreed he was travelling to China. He was dealing with a lot more than PRODA alone. It has gone to the level where other Ministries like Foreign Affairs are involved. The process of recovery would naturally not follow the internal arrangement obtainable in PRODA. This is an investigation by an organ established by the National Assembly in the high against corruption and impunity in the system.

Counsel to the defendant had raised issue No 1 and submitted that the defendant was charged under a repealed and dead Act-Corrupt Practices and other Related Offences Act, 2003 by s. 55 of the Corrupt Practices and Other Related Offences No 6 of 2003.

It is true that a repealed law has no life of its own because it is the Legislature that gives life to any law upon assent by the Executive, it becomes effective and operational.

Now this case is a simple and straight forward matter once the legal technicalities woven around it are removed. First, the defence raised 5 issues most of which are predicated on the repeal of the 2000 Act by s. 58 of the 2003 Act. That is correct. It is in black and white. I had expected the prosecution to make a comment on that but I did not see any. However, the 2003 Act is no longer in force having been nullified by a court which made the 2000 Act the only law on the subject.

Section 19 of Corrupt Practices and Other Related Offences Act under which the 2 counts are brought provides as follows:

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There was so much argument on the defendant's mode of employment. The counsel to the prosecution had alleged that the defendant is a public officer in the employment of the Federal Government under the Federal Ministry of Science and Technology but deployed to the Project Development Institute (PRODA) Enugu. However, counsel to the defendant had submitted that contrary to the particulars of offence, the defendant was employed by Project Development Institute (PRODA) as a Technical officer in 1982 and posted to Machinery Shop. He was not employed by Ministry of Science and Technology. According to counsel, PRODA is a creation of an Act of Parliament with a Board of Directors and Management and under the supervision of Federal Ministry of Science and Technology.

In the opening part of his testimony as Dw1, the defendant had stated:

"I am a public servant at the Federal Ministry of Science and Technology PRODA Enugu. I am a Chief Engineer on CONRISS 13 equivalent of level 14. I

joined the Ministry in 1982 and was 35 years in October. My appointment was October, 1982 but confirmed in 1984. I head a section, the Machinery Section of Engineering Research Development and Production Department, the machine section and a sub division of that department called Machine Shop”.

All arguments about his having been employed by PRODA as a Technical Officer in 1982 and being posted to the Machine Shop do not form part of the evidence. They are merely from the imagination of counsel. The defendant has given evidence, direct evidence of his place or work and it does not lie in the mouth of counsel to modify that. It has been held and severally so that address which is not supported by evidence goes to no issue. It amounts to chasing the wind.

The defendant testified and was cross examined when he stated that he has returned the money to the ICPC coffers by paying same into a bank account given to him by the officers of the ICPC. I believe him. Having paid back the money, I think, he should learn his lesson. That is what the entire investigation and prosecution was meant to achieve.

The prosecution had submitted that:

“the big question that is begging for an answer is that, can the defendant, for non procurement of appropriate travel visa to China, convert the alleged funds to his personal use? The answer is simply, No! He must refund the funds to government. Even if the defendant retained the funds till date and the visa is ready, he cannot travel with the funds because the exchange rate has gone up. This point makes it necessary for him refund the funds to enable the government adequately appropriate for the journey in line with the current economic realities. There is neither legal nor moral justification for the Defendant refusing to refund the monies. The Defendant retaining his

aspects of the funds, refusing to refund same, even after his colleagues had refunded theirs, shows clearly that he intended to convert the funds to his personal use and no more”.

Section 16 of Financial (Control & Management Act, reads:

“Subject to any express provision of an appropriation Act or supplementary Appropriation Act, Moneys appropriated thereby and not expended shall lapse and accrued to the Consolidated Revenue Fund at the expiration of the year in respect of which they are appropriated”

From the cross examination of pw1, it is clear that the “Train-the-Trainer” program which was scheduled for China and for which the defendant was given money both in dollars and in Naira has not been cancelled. According to the defendant, the equipment to be installed and for which the training was being embarked upon has been purchased, shipped to PRODA and lying waste and idle. They are yet to be installed because the people who were billed to travel to China to learn how to install and operate the machines were not able to secure visas to China for the training.

In fact to show the seriousness of the situation, while the investigation into this matter was going on, PRODA had to dispatch Exhibit “F” on the 18th day of May, 2015, to the ICPC pleading with them to stop the prosecution of those people who were meant to travel to China for the “Train-the-Trainer” program.

It would seem that while the ICPC was pursuing the unutilized money budgeted and released in 2011, PRODA was still hopeful that their staff would still go to China for the training. After all that is the hope they have to install the machines which were approved, paid for and lying idle in the store.

The prosecution had submitted that the fact that the defendant being a public officer is, from the totality of the evidence adduced in the course of this trial, not in

dispute at all. According to counsel, pw1 testified positively to the fact that the Defendant made Exhibits B and "D" to "D"2 by which he had admitted the collection of the alleged monies but that after the collection, he failed to travel. He is yet to embark on that travel till date. He has equally refused to refund the monies which are evidenced by exhibits "B" and "D2". In his view, pw2 and pw3 equally corroborated this position of pw1.

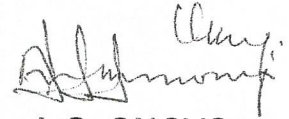
Once there was a demand made on the defendant to return the money given him for the trip to China and he hesitated or refused, he had conferred an advantage on himself. The section is not however whether there was the conferment of undue advantage. The essential ingredient of the offence created by section 9 is corrupt conferment. It was money due to him for the trip to China. He was entitled to hold on to the money once arrangement was being made for him to travel but there was an intervention by the ICPC acting on a petition written to them that the defendant and others were holding on to certain funds disbursed but not utilized. That was when he was under duty to submit the money back to the government. The money does not belong to PRODA even though PRODA handed it over to the defendant. The money belongs to the Federal Government of Nigeria.

When the defendant was invited with the others to the Abuja Office of the ICPC, he had in his own words

"On entering their office we had thought it was child's play. We were told to switch off all our phones. We did. I pleaded with the IPO that my child, a female was in school and would likely be left alone in the school that I should be allowed to go. He refused so we were there till around 6pm".

The society does not benefit from his serving a prison term while keeping the money which was not illegally acquired at the first but became illegal for him to continue holding once a demand has been made for its return.

The defendant is discharged and acquitted.



A.O. ONOVO

JUDGE

20/2/19.

REPRESENTATION:

E.O. Akponimisingha Esq appears for the prosecution.

P.S. Nwajagu Esq appears with Jovita Ibekwe Esq for the defendant.