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

BEFORE THE HONOURABLE JUSTICE MASHUD A. A. ABASS - JUDGE
THIS TUESDAY, THE 19TH DAY OF SEPTEMBER, 2017

BETWEEN: SUIT NO: I/1/ICPC/2007

FEDERAL REPUBLIC OF NIGERIA .... COMPLAINANT

A N D

1. BASHIRU AKINOLA (M)
2. SMART AJISAFE (M)
3. SEKINAT BELLO (F)

.... ACCUSED

****

Defendants are present.
A. A. Bisi-Balogun (Miss) for the Prosecution.
Tunde Oluponna for the 2nd Accused person
with Lukman Asinmi and Okechukwu Nwakaeze.
He also hold the brief of Adekunle Babalola for the
1st Accused.

JUDGMENT

In the Amended Charge filed on the 21st of June, 2013, the accused persons were charged with the following offences:-

"**STATEMENT OF OFFENCE 1ST COUNT** –

Conspiracy to commit a felony to wit: personating public officer contrary to and punishable under Section 516 of the Criminal Code, Cap. C38 Laws of the Federation of

Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) between November 2006 and January 2007 or there-about at Ibadan did conspire to commit a felony to wit, falsely represented yourselves as officials of the Independent Corrupt Practices and Other Related Offences Commission to one Mr. Kolawale Oke, the Chairman of Egbeda Local Government Area of Oyo State.

STATEMENT OF OFFENCE 2ND COUNT

Personating public officer contrary to and punishable under Section 108 (2) of the Criminal Code Cap C38 Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) between November 2006 and January 2007 or there-about at Ibadan did falsely represent yourselves as officials of the Independent Corrupt Practices and Other Related Offences Commission to one Mr. Kolawale Oke the Chairman of Egbeda Local Government Area of Oyo State.

STATEMENT OF OFFENCE 3RD COUNT

Conspiracy to commit a felony to wit, personating public officer contrary to and punishable under Section 516 of the Criminal Code Cap C38 Laws of the Federation of

Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) between November 2006 and January 2007 or there-about at Ibadan did conspire to commit a felony to wit, falsely represented yourselves as officials of the Independent Corrupt Practices and Other Related Offences Commission to one Mr. Kolawale Oyerinde, the Director of Personnel of Egbeda Local Government Area of Oyo State.

STATEMENT OF OFFENCE 4TH COUNT

Impersonating public officer contrary to and punishable under Section 108 (2) of the Criminal Code Cap C38 Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) between November 2006 and January 2007 or there-about at Ibadan did falsely represent yourselves as officials of the Independent Corrupt Practices and Other Related Offences Commission to one Mr. Kolawale Oyerinde the Director of Personnel Management of Egbeda Local Government Area of Oyo State.

STATEMENT OF OFFENCE 5TH COUNT

Corrupt demand contrary to Section 8 (1)(a) and punishable under Section 8 (1)(b)(ii) ICPC Act 2000.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello

(F) between November 2006 and January 2007 or there-about at Ibadan corruptly demanded for the sum of ₦2,000,000.00 (Two Million Naira Only) from Mr. Kolawole Oke and Mr. Kolawole Oyerinde being the Chairman and Director of Personnel Management respectively of the Egbeda Local Government Area of Oyo State on the pretext of helping to absolve them from the petition written against them to the Independent Corrupt Practices and Other Related Offences Commission.

STATEMENT OF OFFENCE 6TH COUNT

Conspiracy to commit a felony to wit, obtaining money by false pretences contrary to and punishable under Section 516 of the Criminal Code Cap C38 Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) on or about the 30th January, 2007 at Ibadan, Oyo State by false pretence and with intention to defraud did conspire to obtain the sum of ₦300,000.00 (Three Hundred Thousand Naira) from Mr. Kolawole Oyerinde, the Director of Personnel Management of Egbeda Local Government Area of Oyo State on the pretext of helping to absolve the official of the Egbeda Local Government Area from the petition written against them to the Independent Corrupt Practices and Other Related Offences Commission.

STATEMENT OF OFFENCE 7TH COUNT

Obtaining money by false pretence contrary to and punishable under Section 419 of the Criminal Code Cap. C38 Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you, Bashiru Akinola (M), on or about the 30th January, 2007 at Ibadan, Oyo State by false pretence and with intention to defraud did obtain the sum of N300,000.00 (Three Hundred Thousand Naira Only) from Mr. Kolawole Oyerinde the Director of Personnel Management of Egbeda Local Government Area of Oyo State on the pretext of helping to absolve the official of the Egbeda Local Government Area from the petition written against them to the Independent Corrupt Practices and Other Related Offences Commission.

STATEMENT OF OFFENCE 8TH COUNT

Conspiracy to commit a felony to wit, false assumption of Office contrary to and punishable under Section 516 of the Criminal Code Cap. C38 Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) between November 2006 and January 2007 or there-about at Ibadan without authority assumed the powers of officials of the Independent Corrupt Practices and Other Related Offence Commission by commencing investigation activities in relation to allegations of corruption against officials of Egbeda Local Government Area of Oyo State.

STATEMENT OF OFFENCE 9TH COUNT

False assumption of office contrary to and punishable under Section 107 (b) of the Criminal Code Cap. C38 Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

Bashiru Akinola (M), Smart Ajisafe (M) and Sekinat Bello (F) between November 2006 and January 2007 at Ibadan without authority assumed the powers of officials of the Independent Corrupt Practices and Other Related Offences Commission by commencing investigation activities in relation to allegations of corruption against officials of Egbeda Local Government Area of Oyo State".

Suffice to say that the defendants pleaded not guilty to all the charges.

At the trial of this Criminal matter, the Prosecution called four witnesses. They are:-

(1) **MRS. TAWA ABIOLA KOLAPO** (a Principal Registrar within the Oyo State High Court).

(2) **MRS. BOLANLE ODEMAKINDE** (an Accountant with the Oyo State High Court).

(3) **MRS. RASHIDAT A. OKODUWA** (Head of Department of Education, I.C.P.C. Abuja).

(4) **YUSUF OLATUNJI** (Assistant Chief Superintendent attached to I.C.P.C., Abuja).

By the Provisions of Section 135(1) of the Evidence Act, 2011, the burden of proof placed on the prosecution in any Criminal trial is proof beyond reasonable doubt. The Section provides:-

"135(1)- If the commission of a crime by a party to any

proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt."

The only way by which the Prosecution can successfully discharge the onus placed on it by law is to establish all the essential ingredient of each of the alleged offences against each of the accused persons by producing witnesses who must give credible and admissible evidence touching on the commission of the alleged offences by the Defendants.

See:-

OKORO VS. THE STATE (1988) 7 SC (PT. 11) 83

NWATURUOCHA VS. THE STATE (2011) 2-3 SC (PT. 1) 111

As I have stated earlier on, the Prosecution in this case called four witnesses. The PW1 is **MRS. TAWA ABIOLA KOLAPO**. She is a staff of the High Court of Justice, Ibadan. She was neither an eye witness nor a witness to any of the events that culminated into the prosecution of the defendants for this offence. She was only called to tender some documents that form part of the record of this case at an earlier stage before my Learned brothers. The PW2 is also a staff of the High Court of Justice, Ibadan. The prosecution applied to and was granted leave to withdraw the PW2 as a witness in the course of the hearing.

The main witnesses left with the Prosecution are the PW3 and PW4 (i.e.) RASHIDAT A. OKODUWA and YUSUF OLATUNJI. It is the evidence of these two witnesses coupled with some documents tendered by the prosecution, particularly, the previous testimonies of

some witnesses before the High Court that the Prosecution is relying upon.

The PW3, RASHIDAT A. OKODUWA was neither an eye witness to the commission of any of the offences alleged against the defendants. She only gave evidence in respect of the relationship between the Defendants' Organization and the ICPC.

For a better understanding of this case, let me quickly state the facts. The defendants formed an organization known as "National Anti-Corruption Organisation of Nigeria". The said organization, which is a private body, wrote to the ICPC in 2005, indicating its intention to work with it. When the ICPC advertised in the Newspaper in 2006 for NGO's who are interested in forming coalition with it to apply for same, the National Anti-Corruption Organisation of Nigeria applied to be in the coalition. A Provisional Letter of Registration with the ICPC was issued to the defendant's organisation as a member of the coalition. The Defendant's Company's or Organization's name was later changed to "Anti-Corruption Awareness Organisation of Nigeria".

The case of the Prosecution is that between November, 2006 and January 2007, the defendants conspired together to falsely represent themselves to Mr. Kolawole Oke, the Chairman of Egbeda Local Government Area of Oyo State and falsely represent themselves as officials of the Independent Corrupt Practices and other Related Offences Commission and demanded for a bribe of Two Million Naira (₦2,000,000.00) in order to "kill" a Petition which, they falsely alleged was written to the I.C.P.C. against Mr. Oke. The

Above facts and circumstances, the prosecution alleges, constitutes offences under the various or different provisions of the Law which forms the charges leveled against the Accused persons.

The requirement of the law, however, is that the prosecution has the duty to prove all essential elements of an offence as contained in the charge. The law places the burden on the prosecution to produce vital material evidence and witnesses to testify during the proceedings before the Court can come to the conclusion that an offence has been committed by an accused person. The Prosecution does not require to do any magic in order to attain a proof beyond reasonable doubt. All that the Prosecution is required to do is simply to put forward to the Court evidence which is strong, compelling and convincing against the accused, such that it leaves no reasonable man in doubt as to the probability of the Accused person committing the alleged offence. See:-

CHUKWUMAVS. F.R.N. (2011) 5 SC (PT. II) 84

The law provides that the prosecution who alleges crime must prove its case beyond reasonable doubt with strong evidence. See:-

AFOLABI VS. STATE (2010) 5 – 7 SC. (PT. II) 93

In discharging the burden of proof on the prosecution, the guilt of an accused can be proved by:-

(a) The confessional statement of the accused, or

(b) Circumstantial evidence, or

(c) Evidence of an eye witness of the crime.

The evidence brought by the Prosecution must cogently establish the essential elements of the offence charged.

See:-

OSENI VS. THE STATE (2012) 2 SC. (PT. II) 51

Let me add, that it is not the duty of the Accused to prove his innocence. Since the standard of proof in criminal cases is beyond reasonable doubt, it is not enough for the prosecution to suspect a person of having committed a criminal offence. There must be evidence which identified the person accused with the offence.

See:-

ADEKOYA VS. THE STATE (2012) 3 SC. (PT. III) 36

I will now proceed to examine how far the Prosecution has gone in establishing the alleged offences against each of the defendants.

The Prosecution tendered Exhibits 1 and 2 through the PW1. They are the Record of proceedings before My Lords, Honourable Justice Ige and Hon. Justice Boade who are now of blessed memory and Retired respectively. In the final Written Address of the Learned Counsel for the prosecution, he placed heavy reliance on the evidence of one **Mr. Oyerinde Olusola Kolawole** who was a D.P.M in the Office of the Chairman of Egbeda Local Government Council. **Mr. Oyerinde Olusola Kolawole** could not be called as a witness in this Court as several efforts by the prosecution to bring him as a witness proved abortive. The Learned Counsel for the prosecution submitted in his written address that the earlier evidence of the said **Oyerinde Olusola Kolawole** which formed part of the record of the previous Courts and upon which the defendants had the opportunity of cross-examining him are admissible in evidence in this present proceedings. He relied on the provisions of Sections 39 and 46 of the Evidence Act, 2011 and the cases of:-

ARCHIBONG VS. EDAK (2006) 7 NWLR (PT. 980) 485

JOHNSON VS. OSAYE (2001) 9 NWLR (PT. 719) 729

EYA VS. QUDUS (2001) 15 NWLR (PT. 737) 587, and

EGESIE VS. ELELE (2001) 8 NWLR (PT. 716) 582

In his reply on points of law on the issue of reliance of the prosecution on Exhibits 1 and 2, the Learned Counsel for the 2nd Defendant said that the condition precedent for the admissibility of the said Exhibits must be that proper efforts had been made to secure the presence of the witness whose previous evidence in an earlier proceeding is sought to be tendered in a latter proceeding. He relied on the case of:-

OKONJI VS. NJOKANMA (1999) 11 & 12 SCNJ 259 at 291

He further said that existence or non-existence of facts relating to the admissibility of evidence under these Sections are to be determined by the Court.

With due respect to the Learned Counsel for the 2nd defendant, he has missed the point entirely here. At this stage of the proceedings, the Court is no longer concerned with the admissibility or otherwise of Exhibits 1 and 2, as the issue of their admissibility has long been determined by the Court. The question here is whether or not the Court can accord the said documents with any evidential value so as to make them as part of the evidence to be considered and given appropriate weight in the determination of the guilt or otherwise of the Accused person.

Under Sections 39 and 46 of the Evidence Act, 2011, it is provided as follows:-

Section 39 –

"Statement, whether or oral of facts or relevant facts made by a person –

(a) who is dead;

(b) who cannot be found;

(c) whose attendance cannot be procured without

an amount of delay or expense, which under the circumstances of the case appears to the Court unreasonable, are admissible under Section 40 to 50".

Section 46 (1) –

"(1) Evidence given by witness in a judicial proceeding, or before any person authorized by law to take it, is admissible for the purpose of proving in a subsequent judicial proceeding or in a later state of the same judicial proceeding, the truth of the facts which it states, when the witness cannot be called for any of the reasons specified in Section 39, or is kept out of the way by the adverse party.

Provided that -

(a) The proceeding was between the same parties or their representatives in interest;

(b) The adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) The questions in issue were substantially the same in the first as in the second proceeding.

(2) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the defendant within the meaning of this Section".

The combined effect of the above provisions of the Evidence Act has been given judicial interpretation in the case of:-

ARCHIBONG VS. EDAK (2006) 7 NWLR (PT. 980) 485 at 511

the Court said:-

"It is well settled in law that Section 34(1) of the then Evidence Act, 1990 is relevant for the purpose of proving, in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states when the witness is dead as in the appeal at hand. To be admitted however same Section 34 (1) of the Evidence Act has created three conditions. The conditions are:-

(a) that the proceeding was between the same parties or their representatives in interest.

(b) the adverse party in the first proceeding had the right and opportunity to cross-examine, and

(c) the question in issue were substantially the same in the first as in the second proceedings".

Let me quickly add that the provisions of Section 34 of the Evidence Act, 1990 are the same in all material particulars with that of Sections 39 and 46 of the Evidence Act 2011.

In the instant case, the parties, (i.e.) Prosecution and the Accused persons are not only the same as in the previous proceedings in Exhibits 1 and 2, the Accused persons had the right and opportunity to Cross-examine the prosecution witness and indeed, cross-examined them. The question in issue in the previous proceedings and the present one are also the same.

I am of the view and I so hold that the evidence of Mr. Oyerinde Olusola Kolawole in both Exhibits 1 and 2 falls within the provisions of Section 40 to 46 of the Evidence Act. Such evidence is

admissible under Section 39 of the Evidence Act and may be attached with evidential value by the Court.

There are 9 (nine) Counts of alleged offences against the Defendants.

Counts 1, 2, 3 and 4 are of allegations of conspiracy to commit the offences of Personating Public Officers and actual commission of same, Count 5 is for the offence of corrupt demand, Counts 6 and 7 are for alleged offences of conspiracy to obtain money by false pretence and obtaining money by false pretence, and Counts 8 and 9 are for conspiracy of False Assumption of Authority and False Assumption of Authority.

I will first deal with the evidence led by the Prosecution in respect of the offences of Conspiracy in all the Counts of Conspiracy.

For purposes of clarity, these allegations bothering on conspiracy are in relation to:-

(a) Personating Public Officer contrary to Section 516 of the Criminal Code, the victim of which was **Mr. Kolawole Oke** (Count 1).

(b) Personating Public Officer contrary to Section 516 of the Criminal Code, the victim of which was **Mr. Kolawole Oyerinde** (Count 3).

(c) Conspiracy to obtain money by false pretence under Section 516 of the Criminal code, the victim of which was **Mr. Kolawole Oyerinde** (Count 6).

(d) Conspiracy to commit false assumption of authority contrary to Section 516 of the Criminal Code, the

1st defendant and issued a letter of authority which was given to the Area Commander of the Police before he invited the Chairman of Oyo West Local Government to appear in his office.

The actions of the two defendants who are not officials of the I.C.P.C. in inviting and causing the investigation of individuals without the authority to do so is clearly pointing to agreement between them to effect an unlawful purpose of False Assumption of Authority. The best evidence of conspiracy is usually obtained from one of the conspirators or from inferences. See:- **NJOVENS VS. STATE (supra)**. Conviction for conspiracy is in most cases predicated on circumstantial evidence. But the evidence must be of such a quality that irresistibly compels the Court to make an inference as to the guilt of the accused.

See:-

POSU VS. THE STATE (2011) 3 NWLR (PT. 1124)

The Defendants who clearly knew that they were not members or staff of any of the Law Enforcement Agencies, in the disguise of being the arrow heads of a non-governmental organisation agreed with themselves to carry out functions which are clearly out of their direct or perceived authority. To my mind, the prosecution has established a case of conspiracy to commit False Assumption against the two Accused persons. They are found guilty of the offence in Count 8 of the charges in this case. They are accordingly convicted as charged in Count 8.

In Counts 2 and 4 of the charges against the Defendants, they are charged with the offences of personating a Public Officer contrary to Section 108 (2) of the Criminal Code. The evidence of

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₦300,000.00 and was promptly arrested and same recovered from him constituted the offence of conspiracy between him and the 2nd Accused as the 1st Accused had earlier visited the Local Government Chairman with the 2nd Accused where he was introduced as an official of I.C.P.C. and the demand of ₦2,000,000.00 made. See:-

ODIJI VS. STATE (1976) 6 SC. 152

OBOSI VS. THE STATE (1965) NMLR 19

I find the 1st and 2nd Accused guilty as charged in Counts 1, 3 and 6 of the charges against them for conspiracy to impersonate a Public Officer and to obtain money by false pretence. The two Accused persons are accordingly convicted as charged under Counts 1, 3 and 6.

In Count 8, the Defendants are charged with Conspiracy to commit false assumption of authority. The allegation and evidence led in this Court are to the effect that the Defendants along with others used the formation of an Organisation known as Anti-Corruption Awareness Organisation to conspire together to assume the authority of the ICPC. The prosecution led evidence to the effect that the Accused persons printed files, ID Cards, Flags and erected sign post stating that their office of operation in Ibadan is an annex of the I.C.P.C. with its Head Quarters in Abuja. Evidence was also led to the effect that the defendants assumed all the powers of an official of ICPC and were investigating and demanding money from the people which is clearly outside the purview of the Defendant's Organization's power as Coalition of the I.C.P.C. In Exhibit 7, the 2nd Accused admitted that he caused the investigation of Oyo West Local Government by endorsing a letter brought by the

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victim of which was/were officials of Egbeda Local Government Area (Count 8).

The evidence led by the prosecution in support of these heads of offences had earlier been reviewed in this judgment. Let me however state that a perusal of the entire evidence given by the four (4) witnesses called by the prosecution in this case before this Court, as it is presently constituted, shows that none of them gave any direct or indirect evidence touching on the proof of the alleged offences of conspiracy against the accused persons. This is so as the only witness (i.e. PW4) who gave some evidence as a member of the Prosecution investigation team only gave an account of the role he played in the arrest of the 1st *accused* on the 31st of January, 2007 with the "marked money".

The main/major foundation of our Criminal Justice System which has become trite is that by virtue of the provisions of Section 135 of the Evidence Act, 2011, if commission of crime by a party to any proceedings is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. Although proof beyond reasonable doubt does not mean proof beyond shadow of doubt, the ingredients of the offence charged must be roved as required by law and to the satisfaction of the Court.

See:-

AGBACHOM VS. STATE (1970) 1 ALL NLR 69

OKPULOR VS. STATE (1990) 7 NWLR (PT. 164) 581

The ingredients of the offence of conspiracy are as follows:-

(a) there must be an agreement of two or more persons. In other words, there must be a meeting of two or

more minds;

(b) the persons must plan to carry out an unlawful or illegal act, which is an offence;

(c) bare agreement to commit an offence is sufficient;

(d) an agreement to commit a civil wrong does not give rise to the offence.

(e) one person cannot commit the offence of conspiracy because he cannot be convicted as a conspirator;

(f) a conspiracy is complete if there are acts on the part of an accused person which lead the trial court to the conclusion that he and other were engaged in accomplishing a common object or objective.

See:-

KAZA VS. STATE (2008) 7 NWLR (PT. 1085) 125

I must emphasis that the **men's rea** of the offence of conspiracy is not easy to locate as it is usually buried in secrecy. It is the **actus reus** of the offence that would draw the **men's rea** to the open and make it possible for the Court to find inculpatory evidence. See:-

KAZA VS. STATE (SUPRA)

In conspiracy cases, it is the agreement of two or more persons to do an unlawful act by unlawful means that matters. The two or more persons must be found to have combined in order to ground a conviction for conspiracy.

In the instant case, there must be proof by evidence, or it must be proved that it is possible to infer that the two defendants consented to effect an unlawful purpose. There must also be

evidence of an agreement between them which is an advancement of an intention conceived in the mind of each person secretly, that is, the **men's rea**. Most importantly, the secret intention must have been translated into an overt act or omission or mutual consultation and agreement, that is, the **actus reus**.

See:-

IDEN VS. STATE (1994) 8 NWLR (PT. 365) 719

MOHAMMED VS. STATE (1991) 5 NWLR (PT. 1920 438

The evidence led by the Prosecution in this case on this issue came from the PW4 and Oyerinde Olusola Kolawole (in Exhibits 1 and 2). The PW4 only area of evidence on this issue was when he saw the 1st Accused at the Egbeda Local Government Secretariat being escorted out by Mr. Kolawole Oyerinde. The PW4 then effected his arrest and recovered the ₦300,00.00 marked money (i.e. bribe). Under Cross-examination, he said that he never knew both Accused persons until the date of arrest of the 1st Accused. It will then appear that if there is any evidence coming from PW4 touching on the issue of conspiracy, they are evidence of what he was told by other people and not what he had direct knowledge of. This will amount to hearsay evidence. It is inadmissible in law.

See:-

OSHO VS. STATE (2012)8 NWLR (PT. 1302) 243

DOMA VS. I.N.E.C. (2012) 13 NWLR (PT. 1317) 297

The evidence of Kolawole Oyerinde as contained in Exhibit 2 is to the effect that he was called by the Chairman of the Local Government and told that a woman he met at a party informed him that the Egbeda Local Government is under investigation by the I.C.P.C. He

said that he later met the 1st and 2nd Accused persons in the Chairman's Office where the 2nd Accused was introduced as the Head of Ibadan Office of ICPC. This witness did not however say what the reaction of the 2nd Accused was when he was so introduced and whether or not the 2nd Accused took part in the negotiation of the demanded amount to the sum of ₦500,000.00K. Both the PW4 and Mr. Oyerinde admitted that the 2nd Accused was not with the 1st Accused when the 1st Accused came to collect the marked money and that it was the statement made to the ICPC Officials by the 1st Accused that led to the arrest of the 2nd Accused. It must be borne in mind that the 3rd Accused in this case was discharged based on the No case submission made by her Counsel at the close of the case for the prosecution. The question now is whether the remaining 1st and 2nd defendants have been shown to have conspired to commit the alleged offences. I remind myself here that the onus of proof of the guilt of the Accused persons is on the prosecution. The relevant evidence given by the prosecution came from the 4th prosecution witness and **Oyerinde Olusola Kolawole**. It is however the evidence of PW3, **Rashidat A. Okoduwa**, Head of Department of Education in ICPC that the Organisation belonging to the defendants was duly registered as a coalition body with the EFCC. The witnesses of the Prosecution also admitted the fact that there are occasions when the said Organisation had referred some corrupt related incidents to the ICPC and that the Anti-Corruption Awareness Organisation which was formed by the Accused persons was enjoying cooperation with the I.C.P.C. and other Federal Government bodies or agencies. Exhibits 43, 44, 45, 46,

48, 49 and 50 are documents evidencing the cordiality of the relationship which existed between the I.C.P.C., the E.F.C.C. and other governmental bodies with the defendant's organisation before the incident which brought about this case.

The evidence led by the Prosecution is that the members of the Organisation of the defendant are not staff of the I.C.P.C. and they do not have the powers of staff of I.C.P.C. which included the power of investigation and arrest of persons in respect of corruption related offences. There is evidence before the Court to the effect that the 1st Defendant approached the Chairman of Egbeda Local Government first and later brought the 2nd Defendant who then read the purported petition against the Chairman to his hearing. The DPM (i.e.) **Mr. Oyerinde Olusola Kolawole** said that he was present when the two Accused persons presented themselves as staff of I.C.P.C. **Mr. Oyerinde Olusola Kolawole** and the PW4, **Yusuff Olatunji** were at the Egbeda Local Government Office when the 1st Accused who came on the 31st January, 2007 to collect the sum of ₦300,000.00 was arrested. The prosecution's case is that the said ₦300,000.00 which was recovered from the 1st Accused was the bribe demanded by the 1st and 2nd accused who presented themselves as I.C.P.C. Staff who are investigating corruption allegations against the Chairman of Egbeda Local Government.

In the case of:-

NJOVENS VS. STATE (1973) 5 SC. 12

the Court said:-

"The overt act or omission which evidences conspiracy is the **actus reus**, and the **actus reus** of each and every conspirator

must be referable and very often is the only proof of the criminal agreement which is called conspiracy. It is not necessary to prove that the conspirators like those who murdered Julius Ceaser, were seen together coming out of the same place at the same time and indeed conspirators need not know each other. See: - **R.V. MEYRICK AND RIBUFF (1929) 21 C. App. R. 94.** They need not all have started the conspiracy at the same time for a conspiracy started by some persons may be joined at a later stage or later stages by others. The gist of the offence of conspiracy is the meeting of the mind of the Conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them and in proof of conspiracy, the acts or omissions of any of the conspirators in furtherance of the common design may be and very often are given in evidence against any others of the Conspirators".

Also in the case of:-

OLUSHEGUN HARUNA VS. THE STATE (1972) 8 – 9 SC. 108

The Supreme Court said:-

"Conspiracy as an offence is nowhere defined in the Criminal Code (which is in force in Southern States) but since the Common Law is in force in Nigeria, the word must bear the same meaning as in England. It means, under the Common Law, an agreement of

two or more persons to do an act which is an offence to agree to do. The very plot is an act of itself, and the act of each of the parties promise against promise, **actus contra actum**, capable of being enforced, if lawful, is punishable if it is for a criminal object to do an act which it is an offence to agree to do which constitutes the offence of conspiracy under the Criminal Code".

The first visit of the 1st Accused to the Chairman of the Local Government where he promised to come back with his boss, coupled with the joint visit of the 1st and 2nd Accused to the Chairman of the Local Government in the presence of Oyerinde Olusola Kolawole where the demand for ₦2M was made and the later visit of 1st Accused to the Egbeda Local Government where he went to collect the ₦300,000.00 bribe shows clearly the meeting of the minds of the two of them, not only to present themselves as officers of I.C.P.C. (which they knew, they were not) but also to impersonate as Public Officer and collect money as bribe in furtherance of their designs. Where it is proved that two or more persons acted in concert when the act or omission which constituted the offence was actually done, it is not necessary to show which of them did or made the act or omission as long as it is proved that one of them must have done so.

See:-

R. VS. UKATA (1958) 3 F.S.C. 27

The visit of the 1st Accused to the Egbeda Local Government Office of the DPM on the 31st January, 2007 where he collected a sum of

the Prosecution witnesses are to the effect that the two defendants while posing as officials of I.C.P.C. presented themselves to be Mr. Kolawole Oke and Kolawole Oyerinde respectively. The essential ingredients of an offence under Section 108 of the Criminal Code are among others that the Accused person falsely represented himself to a person employed in the Public Service and that he assumed to do any act or to attend in any place for the purpose of doing any act by virtue of such employment.

Also in Count 9, the Accused persons are alleged to have committed the offence of False Assumption of Authority contrary to and punishable under Section 107 (b) of the Criminal Code. The Section reads:-

> "Any person who without authority assumes to act as a person having authority by law to administer an Oath or take Solemn Declaration or affirmation or affidavit, or to do any other act of a public nature which can only be done by persons authorized by law to do so".

The major elements of the offence created under Section 170 of the Criminal Code are that:-

> "(a) the accused person must have without authority assumes to act as a person having authority by law and that he did any act of a public nature which can only be done by persons authorized by law to do so".

There is evidence before the Court that the two Accused persons told both the Chairman of the Egbeda Local Government

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and Mr. Kolawole Oyerinde that they are members or staff of I.C.P.C. and that the I.C.P.C. is investigating some allegations against the Local government. That is they, without authority assume to act as persons having authority of the I.C.P.C. by law.

I am however unable to see or fathom which act of Public nature was done by the accused persons which could only be done by persons authorised by law. The act of demanding for a bribe, to my mind is not an act of a Public nature which could only be done by a person authorized by law. In fact, the opposite is the case. Since there is no evidence of the fact that the accused persons either arrested or invited or moved the complainant to a place other than the meetings in the Local Government Secretariat, I am of the view that an essential element of an offence under Section 107 of the Criminal Code has not been established by the prosecution as all the ingredients of an offence must be proved beyond reasonable doubt.

See:-

OBIAKOR VS. STATE (2002) 10 NWLR (PT. 776) 612

AIGUOREGHIAN VS. STATE (1988) 3 NWLR (PT. 84) 548

YAKUBU VS. STATE (2012) 12 NWLR (PT. 1313) 131

The Accused persons are hereby discharged and acquitted on Count 9 of the charges against them.

In respect of Counts 2 and 4, I find as established by the prosecution that the accused persons did falsely presented themselves as officers of I.C.P.C. that is, as persons employed in the Public Service, knowing fully well that they were not so employed. The evidence of PW3 and 4 and that of Kolawole Oyerinde are over-

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whelming on this. There is also the evidence of the defendants' opening of an office and printing out documents which tend to show that they are acting in the capacity of staff of the I.C.P.C. and that the letters so written are emanating from an "Annex" of the ICPC that was situated in Ibadan. Evidence was led by the prosecution to show the limit of powers of the defendant's organisation as a coalition of the I.C.P.C. and to the fact that the Defendants knew that their representation to the complainants as members of staff of I.C.P.C. was false or not true. These are people who opened up an office and were inviting people for investigation as if they possess the power to do so under the law.

In a charge of false representation, the burden is placed on the prosecution to establish that the representation made by the accused person was to his knowledge, false. See:-

NWOKEDI VS. STATE (1977) 3 SC. 20

The prosecution in this case has discharged the onus placed on it by law by showing that the defendants who are not staff of the ICPC went out not only to erect Sign Post indicating that they are an annex of ICPC, but also opening case files for people and inviting them for investigation. I hold that the prosecution has established the commission of an offence under Section 108 (2) of the Criminal Code against the Defendants. I find them guilty as charged under Section 108 (2) of the Criminal code. The two accused persons are accordingly convicted as charged in Counts 2 and 4.

COUNT 5

In Count 5, the accused persons are charged with the offence of corrupt demand contrary to Section 8 (1) and punishable under

Section 8 (1) (b)(ii) of the Corrupt Practices and Other Related Offences Act, 2000. Corruption as defined under Section 2 of the Independent Corrupt Practices Act, 2000 includes bribes, fraud and some other related offences.

The evidence of Mr. Oyerinde Olusola Kolawole in Exhibit 2 is to the effect that he met the 1st Accused in the Local Government Chairman's Office and that the 1st Accused promised to come back with his boss in order to discuss the "Killing" of the Petition against the Local Government. He said that when the 1st Accused came back, he was with the 2nd accused and that the 2nd Accused was the person who read to his hearing the Petition which was alleged to be pending against the Egbeda Local Government at the ICPC. Oyerinde further said that he was present when they demanded for Two Million Naira (₦2M) bribe. The defence of the 1st Accused person is that while he admits that he was at the Local Government Office, he however stated that he never demanded for a bribe and that the ₦300,000.00 which was recovered from him was given to him by the Local Government Chairman to enable him effect the repairs of his Car.

The defence of the 2nd Defendant is that he never demanded for nor was he given any money. On this issue, the Court must weigh the words of Mr. Oyerinde to that of the 2nd Accused. But Mr. Oyerinde said that "they" demanded for money. There is no specific mentioning of the 2nd Accused. It must be noted that no other person, apart from Mr. Oyerinde gave any evidence concerning any demand for money by the 2nd Accused. There is also no evidence pointing to the fact that the 2nd Accused received any money from

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the complainant and/or anyone else. There is also no documentary evidence placed before the Court pointing to any demand for money made by the 2nd Accused. There must therefore be doubts in the mind of the Court as to whether the 2nd Accused actually committed an offence as charged under Count 5. This is so as the burden of proving that any person is guilty of a crime rests on the person who asserts it as this is the law laid down in Section 135 of the Evidence Act, 2011. It is trite law, that where an allegation of the commission of crime has not been proved beyond reasonable doubt, any and all possible doubts must be resolved in favour of the person accused of committing such crime. See:-

KALU VS. STATE (1988) 4 NWLR (PT. 90) 503

OKONJI VS. STATE (1987) 1 NWLR (PT. 52) 659

The 1st Accused has by evidence brought by the prosecution shown to be present at all material times to the offences or allegations leveled against the accused persons in this case. He first met the Local Government Chairman and told him that there is a Petition against him. He was alleged to have gone back to the same Local Government Chairman where the demand for money in order to "kill" the Petition was made. He was the same person who went to the same place to collect the money (i.e. ₦300,000.00) before he was arrested.

The 1st Accused is not denying that he collected the said sum of ₦300,000.00 from Mr. Oyerinde Olusola Kolawole, but he is claiming that it was a gift given to him by the Local Government Chairman to repair his Car. I do not believe the 1st accused. The totality of his actions and antecedents in this case before the 31st of

January, 2007 when he was arrested while in possession of the N300,000.00 marked money speaks volumes about him as a person. The Prosecution crowned the evidence of the demand by the accused persons with the prove that the 1st Accused actually collected a sum of ₦300,000.00 from Mr. Oyerinde Olusola Kolawole. The question, now is if, he never made the demand, why was he at the Local Government Secretariat on the appointed date to collect the money? I find the evidence of the 1st accused on this issue to be a tissue of lies. I hold that the prosecution has established the offence in Count 5 against the 1st Accused. I find the 1st accused guilty as charged in Count 5. I accordingly convict him of the offence while I discharge and acquit the 2nd Accused of that offence.

COUNT 7

In Count 7, the accused persons are charged with the offence of obtaining money by false pretence contrary to Section 419 of the Criminal Code. The Section provides:-

> "Any person who by 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 is guilty of a felony and is liable to imprisonment for 3 years".

One undisputed fact in this case is that there was no petition written against the Egbeda Local Government to the ICPC. The accused persons who are not staff of the ICPC in an attempt to surreptously obtain money from the Chairman of Egbeda Local

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Government went to him and lied that they, as officials of ICPC are conducting an investigation into his activities. The evidence led by the prosecution showed that there was a demand for a sum of ₦2,000,000.00 to "kill" the petition. Unknown to the Accused persons, the Complainants contacted the Officers of ICPC who told them that the accused persons are not officers of the ICPC. The PW4, said that when he was told about the escapades of the defendants, he advised the Chairman of the Local Government and Mr. Oyerinde Olusola Kolawole to play along with them. He then procured marked money in the sum of ₦300,000.00 and that when the 1st Accused came to collect the money on the 31st of January, 2007, he was promptly arrested while he was in possession of the marked money given to him by Mr. Oyerinde Olusola Kolawole.

The defence of the 1st accused is that the money he collected on the 31st of January, 2007 was the money given to him as a gift by the Chairman of the Local Government. I then ask, why was it that the Chairman could not hand over his gift to the 1st defendant personally but have to do so through a third party (i.e.) Mr. Oyerinde? I ask again, why was it that the name of the 1st Accused featured prominently in all the events that culminated into the various charges filed against the Accused person? The answer to the above questions is that the entire incidents that combined to the charging of this case to this Court are all the brain child of the 1st accused. There is little wonder then, that he was the only one who went to collect the said sum of ₦300,000.00 marked money on the 31st of January, 2007.

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I do not believe the 1st Accused person's story that the money found with him was a gift from the Local Government Chairman. I am of the view that the 1st Accused is a fraudster who do not believe in working to make a living but feels that the use of surreptous ways of making money even if he has to thread on the path of criminality, is the only and best way to earn a living.

I find the 1st accused guilty as charged in Count 7, as the Prosecution has established that he collected a sum of ₦300,000.00 which is a thing capable of being stolen from Mr. Oyerinde under false pretence that he was going to help in ensuring the "killing" of the Petition allegedly written against the Egbeda Local Government.

The 2nd Accused has not been shown by the prosecution to have taken any part in the receiving or obtaining of the said sum of ₦300,000.00 or any sum at all. The PW4 and Mr. Oyerinde confirmed the fact that it was only the 1st Defendant who showed up on the 31st of January, 2007 to collect or receive the said sum of ₦300,000.00. No iota of evidence was led pointing to the fact that the 2nd accused was with the 1st accused on that day he obtained the said sum of ₦300,000.00, or that he took any part in the collection of the money. The 2nd accused stated in his statement (i.e. Exhibit 7) that he never demanded for or received any money from the Complainant.

I am inclined to hold that there is doubt in the case of the prosecution as to the probability that the 2nd accused who is said not to be at the scene on the 31st of January, 2007 could be held responsible for obtaining or receiving under false pretence the sum of ₦300,000.00 which was collected by the 1st accused on that date.

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Apart from the fact that the onus of proof is to establish the guilt of an accused person, I find in this case that there is no iota of evidence to link the 2nd accused with the offence of obtaining by false pretence. I find the 2nd accused not guilty as charged in Count 7 of this case.

Having found the 2nd Accused guilty as charged in Counts 1, 2, 3, 4, 6 and 8, he is hereby convicted on the counts.

ALLOCOTUS:-

MR. OLUPONNA:- The 2nd Accused is a first Offender. He has never had any Criminal Record. The trial in this case was commenced in 2007. He has consistently appeared in Court. I plead with the Court to see that the 2nd Accused has learnt his lesson. I urged the Court to be passionate in sentencing. I urged the Court to award options of fine.

On the part of the 1st Accused, I conceded that his case appeared so bad. I urged the Court to temper justice with mercy.

MISS BISI BALOGUN:- I thank the Court.

COURT:-

I have taken into consideration the Allocotus made by the Counsel to the Defendants.

Having found the 1st Accused guilty as charged in Counts 1, 2, 3, 4, 5, 6, 7 and 8, he is hereby convicted as charged and sentenced as follows:-

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COUNT 1 (ONE):- One (1) year imprisonment with ₦20,000.00 (Twenty Thousand Naira) option of fine.

COUNT 2:- Two (2) years imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

COUNT 3:- One (1) year imprisonment with ₦40,000.00 (Forty Thousand Naira) option of fine.

COUNT 4:- Two (2) years imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

COUNT 5:- Three (3) years imprisonment with ₦40,000.00 (Forty Thousand Naira) option of fine.

COUNT 6:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

COUNT 7:- Two (2) years imprisonment with ₦40,000.00 (Forty Thousand Naira) option of fine.

COUNT 8:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

The 2nd Accused having been found guilty of offences under Counts 1, 2, 3, 4, 6 and 8 is hereby convicted of the offences and sentenced as follows:-

1ST COUNT:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

2ND COUNT:- Two (2) years imprisonment with ₦40,000.00 (Forty Thousand Naira) option of fine.

3RD COUNT:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

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4TH COUNT:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine

5TH COUNT:- Three (3) years imprisonment with ₦40,000.00 (Forty Thousand Naira) option of fine.

6TH COUNT:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

8TH COUNT:- One (1) year imprisonment with ₦30,000.00 (Thirty Thousand Naira) option of fine.

HON. JUSTICE MASHUD A. A. ABASS
JUDGE
19/09/2017.

COURT:-

The sentences (i.e. imprisonment) are to run concurrently while the Fines are to run consecutively.

HON. JUSTICE MASHUD A. A. ABASS
JUDGE
19/09/2017.