IN THE HIGH COURT OF JUSTICE
ONDO STATE OF NIGERIA
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE
BEFORE HIS LORDSHIP: O. A. ADEGBEHINGBE, J.
THIS 18TH DAY OF DECEMBER, 2019

SUIT NO. AK/109C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT

AND

1. OLUFEMI ABIODUN OMOTOSO (M)]
2. SUNDAY DADA ADEBAYO (M)] ... DEFENDANTS

JUDGMENT

The defendants in this case were arraigned on 20/02/2019. At their arraignment, the 1st defendant pleaded not guilty to the 1st, 3rd, 4th and 5th counts, in the charge. The 2nd defendant pleaded not guilty to the 2nd and 3rd counts in the charge. The five count charge, filed on 20/10/2014, to which the defendants pleaded, are stated as follows:

"1. STATEMENT OF OFFENCE: COUNT ONE

The use of office to confer corrupt advantage upon self contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Olufemi Abiodun Omotoso (m) on or about the 21st day of January, 2010 or thereabout, while being a Public Officer used his office as the Medical Director Federal Medical Centre [FMC], Owo, Ondo State to confer corrupt advantage upon himself when he received the sum of One Million, Five

Hundred Thousand Naira (N1, 5000, 000.00) only, paid to him from the Centre's coffers for the purpose of the hosting of the visit by the Minister of (State) Health in January, 2010 when no such ministerial visit had been either scheduled nor convened.

STATEMENT OF OFFENCE: COUNT TWO

Doing an act in furtherance of the commission of an offence contrary to Section 26(1)(b) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 19 of the same Act.

PARTICULARS OF OFFENCES

Mr. Sunday Dada Adebayo (m) in January, 2010 or thereabout whilst being the Chief Accountant of the Federal Medical Centre, Owo, Ondo State in furtherance of the commission of the offence of use of office to confer a corrupt advantage upon self applied to the Medical Director, Olufemi Abiodun Omotoso for his approval for the provision and payment of the sum of One Million, Five Hundred Thousand Naira only (N1, 500, 000.00) from the coffers of the Centre purportedly for use in the hosting of the visit by the Minister of Health [State] on the 21st day of January, 2010 when no such ministerial visit was either scheduled nor convened.

STATEMENT OF OFFENCE: COUNT THREE

Conspiracy to commit an offence contrary to Section 26(1)(c) and punishable under Section 19 of the Corrupt Practices Act, 2000.

PARTICULARS OF OFFENCE

Olufemi Abiodun Omotoso (m) and Sunday Dada Adebayo (m) on or about the 20th day of January, 2010 or thereabout, did conspire with each other to commit a criminal offence to wit: the use of office to effect the conferment of a corrupt advantage upon Dr. Olufemi Abiodun Omotoso (m) in the sum of N1, 500, 000.00 (One Million, Five Hundred Thousand Naira only) paid to him from the coffers of the Centre for the purpose of facilitating the hosting of the visit of the Minister of [State for] Health on the 21/1/10 to the Federal Medical Centre, Owo, Ondo State when no such visit was either scheduled nor convened.

STATEMENT OF OFFENCE: COUNT FOUR

Causing the making of a statement which is false contrary to 25(1)(a) and punishable under Section 25(1)(b) of the The Corrupt Practices And Other Related Offences Act, 2000

PARTICULARS OF OFFENCE

Olufemi Abiodun Omotoso (m) on or about the 20th day of January, 2010 or thereabout, at Owo, being the Medical Director, Federal Medical Centre [FMC], Owo, caused Sunday Dada Adebayo (m), the Chief Accountant of the FMC, to make a false statement by applying to him for the grant of his approval for the provision of funds from the coffers of the Centre in the sum of One Million, Five Hundred Thousand Naira only (N1, 500, 000.00) being the amount purportedly needed for facilitating the hosting of the visit of the Minister of [State for] Health on the 21/1/10 to the Federal Medical Centre, Owo, Ondo State when no such visit was either scheduled nor convened.

STATEMENT OF OFFENCE: COUNT FIVE

Spending sum of money allocated for a particular service on another service contrary to and punishable under Section 22(5) of the Corrupt Practices and Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Olufemi Abiodun Omotoso (m) on or about the month of January, 2010 or thereabout, while being a Public Officer and the Medical Director, Federal Medical Centre [FMC], Owo, Ondo State, expended as imprest, the sum of One Million, Five Hundred Thousand Naira (N1, 500, 000.00) only, received by him from the Centre's coffers specifically for the purpose of the hosting of the visit by the Minister of (State) Health on 21st day of January, 2010."

The prosecution called two witnesses at the trial.

PW 1 gave his name as Henry Akpala, a staff of First Bank of Nigeria Limited. He confirmed that there was payment of the sum of N1.5 million into the 1st defendant's account kept with his bank on 21/01/2010. He tendered, documents pertaining to account opening in his bank by the 1st defendant, as follows:

a. Exhibit P1 - Certificate of compliance signed on 06/07/2015.
b. Exhibit P2 - Signature verification sheet.
c. Exhibit P3 - Statement of account no. 2002843991 kept with First Bank in the name of Omotosho Olufemi Abiodun for the period 04/01/2010 to 27/06/2015.
d. Exhibit P4 - Certificate of compliance signed on 13/10/2015.

e. Exhibit P5 - Received items details report with session date 21/01/2010.

PW 1 identified exhibit P3 - the statement of 1st defendant's account - as showing the transaction date for the sum of N1.5 million as 21/01/2010, which is described as "hosting of HMH for State". The witness was not cross-examined.

PW 2 gave his name as Ephraim C. Otti. He is an investigator with the Independent Corrupt Practices Commission (I. C. P. C.). He investigated the case before the court within a team of other investigators. The evidence of PW 2 is to the effect that he was among a team of investigators detailed to investigate a petition against the 1st and 2nd defendants. The petition is exhibit P7 in these proceedings. At all times material to this case, the 1st defendant was the Medical Director of Federal Medical Centre, Owo (FMC), while the 2nd defendant was the Chief Accountant. The 1st and 2nd defendants were accused of mismanagement and misappropriation of some funds in FMC, Owo in the course of their service to the institution. In the course of investigation, PW 2 and his team, obtained statements from the 1st and 2nd defendants, as well as, took possession of and analysed a number of documents. He testified that the investigation found the 1st and 2nd defendants culpable in respect of some allegations against them and they were charged to this court. The offences alleged against the 1st and 2nd defendants concern the purpose and manner of the payment of a certain sum of N1.5 million from the purse of FMC, into the personal account of the 1st defendant, which was said to have been meant for hosting the visit of the Honourable Minister of State for Health to FMC, Owo on 21/01/2010.

He tendered:

a. Exhibit P6 - Certified true copy of letter dated 13/07/2015, signed by Rotimi Olorunfemi Esq., addressed to the Chairman of I. C. P. C.

b. Exhibit P7 - Petition against the defendants, which initiated investigation leading to this suit, dated 04/01/2011, signed by Dan B. Kolawole.

c. Exhibits P8 and P8A - Respectively, Federal Medical Centre Payment Voucher, dated 20/01/2010, with no. P. V. No. 069/10 in favour of Mr. S. D. Adebayo/Dr. O. A. Omotosho and an attached memorandum, dated 20/01/2010, signed by S. D. Adebayo.

d. Exhibit P9 - Letter dated 24/02/2011 signed by Shehu Mohammed, addressed to the Permanent Secretary, Ministry of Health, Abuja.

e. Exhibit P10 - Letter dated 19/04/2011, signed by R. A. Osarumwese, addressed to the Permanent Secretary of the Ministry of Health, Abuja.

f. Exhibit P11 - Letter dated 09/05/2011, signed by L. N. Awute, Permanent Secretary, addressed to the Chairman of I. C. P. C.

g. Exhibit P12 - Statement made by the 2nd defendant - Adebayo Sunday D. on 07/02/2011.

h. Exhibit P13 - Statement made by the 1st defendant - Olufemi Abiodun Omotosho on 18/03/2011.

PW 2 was cross-examined by learned counsel for the 1st defendant (Emodamori Esq.) and learned counsel for the 2nd defendant (Ayoola Esq.).

The 1st defendant - Dr. Olufemi Abiodun Omotosho - testified as DW 1. He admitted that he was the Medical Director of FMC, Owo when the issues in this case arose. His evidence was a denial of the allegations

against him. He testified that the money paid to him was justifiably paid and meant for the hosting of the Honourable Minister of State for Health on 21/01/2010 and that he applied part of the funds for the purpose it was meant until it became apparent that the visit would no longer take place. He claimed to have converted the sum of N1.5 million paid to his personal account to imprest. He also testified that he has refunded the sum in issue to FMC, Owo.

The witness was cross-examined by Ayoola Esq, for the 2nd defendant and West Esq., for the prosecution.

The 1st defendant called Mrs. Olateju Olatigbe as DW 2. She is a staff of the Federal Medical Centre, Owo., where she serves as Reconcilliation Officer. Her evidence was that FMC, Owo's account with First Bank Plc. was funded in the sum of N1.5 million, on 12/11/2014, by the 1st defendant, which was understood to be a refund of money. The witness tendered documents to that effect.

The witness tendered:

a. Exhibit D1 - Summons to witness issued by this court on 02/08/2019.

b. Exhibit D2 - Certified true copy of First Bank statement of account no. 2002841399 for FMC Owo for 12/11/2014-30/12/2014.

Ayoola Esq., for the 2nd defendant, declined to cross-examine the witness. The prosecutor, West Esq., cross-examined the witness.

The 2nd defendant, Sunday Dada Adebayo, testified as DW 2. His evidence is that he was the Chief Accountant at the time issues in this suit arose. He claimed to have acted in respect of the release and payment of

the sum of N1.5 million under the instruction of the 1st defendant. He denied culpability for the offences alleged against him. He admitted being the author of the memorandum (exhibit P8A), which initiated the process of payment of the sum to the 1st defendant. The sum paid was meant to cover the expenses of the proposed visit of the Honourable Minister of State for Health scheduled for 21/01/2010.

DW 2 was cross-examined by Emodamori Esq., for the 1st defendant and by West Esq, prosecuting.

The 1st defendant filed a written address on 30/08/2019. Femi Emmanuel Emodamori Esq signed it. The sole issue pointed out for determination of this suit is whether the prosecution proved counts 1, 3, 4 and 5 against the 1st defendant beyond reasonable doubt.

In respect of count I, learned counsel argued that there is evidence before the court to prove that payment of the sum of N1.5 million into the personal account of the 1st defendant was proper and a usual practice in FMC, Owo where officials are required to execute projects. According to learned counsel, the 1st defendant adduced credible evidence on the planned visit of the Minister to FMC, Owo. Reference was made to exhibit P13, which is the statement of the 1st defendant to ICPC, and exhibit P6, a letter from the 1st defendant's Solicitor to ICPC. It was submitted that the prosecution did not challenge the evidence of the 1st and 2nd defendants on their expectation of the visit of the Minister, which negated the criminal intention insinuated by the prosecution.

It is the view of learned counsel that the 1st defendant did not confer any corrupt advantage on himself. He also advised that the prosecution did

not disprove the evidence of the 1st defendant on conversion of the sum into imprest, which the 2nd defendant testified about in court, as a permissible act, provided the advanced sum is retired. Learned counsel submitted that the conversion of the sum of N1.5 million to imprest for the 1st defendant's office did not amount to his conferring corrupt advantage on himself. He urged the court to discharge 1st defendant on the 1st count.

On the third count, learned counsel relied on his submissions in respect of the first count and proceeded to state that there was genuine expectation of the visit of the Minister to FMC, Owo and the subsequent processing, approval and payment of the sum of N1.5m into 1st defendant's account is merely an order or directive from 1st defendant as Medical Director and corresponding compliance by the 2nd defendant, a subordinate., in the usual course of business. In the view of learned counsel, the crime of conspiracy was not proved.

On the fourth count in the charge, it is the position of learned counsel that the false statement envisaged to be made under the provision of the law, creating the crime, cannot be made to the same person who is accused of initiating it. It has to have been made to another person. He submitted that the charge against the 1st defendant in the fourth count is not sustainable. The false statement alleged to have been made regarding the visit is actually not false, because evidence was adduced about the expectation of the visit. Learned complained that the prosecution had advance knowledge of the assertion that notice of the visit came through a phone call (exhibit P6) long before trial began and could have investigated it or verified that assertion.

Not calling the vital witness, who made the phone call to the 1st defendant, in the view of learned counsel is fatal to the prosecution's case. The attention of the court was pointed to its power under section 167 of the Evidence Act, 2011 in that regard.

On the fifth count, it was contended that exhibits P8 and P8A prove that the sum of N1.5 million was allocated for the hosting of the Minister of State for Health. It is a fact that the Minister did not visit FMC, Owo as intended. He accused the prosecution of failing to "debunk" the evidence of the 1st defendant on how he spent part of the N1.5 million before he was informed that the Minister would no longer be visiting FMC, Owo. He accused the prosecution of failing to prove that the expenditure was inconsistent with the purpose for which money was initially allocated. He submitted that the court is bound to act on unchallenged evidence. He further accused the prosecution of not investigating the assertion of the 1st defendant that the money was converted into imprest. Learned counsel submitted that there is no conclusive evidence that it was not used for that purpose.

It is the view of learned counsel that the necessary *mens rea* or common intention was not established by the prosecution at the trial on the question of spending the money on imprest. Learned counsel recalled that the 1st defendant took up the responsibility and made a full refund even before he was arraigned (exhibit D2) as he was in a difficult position after the visit was cancelled, as there was no writing evidencing notification of the visit. He reckoned that his refund is a personal loss.

Learned counsel accused the prosecution of being out to persecute the 1st defendant and to secure his conviction at all cost, even in the absence of

credible evidence. He urged the court to discharge and acquit the 1st defendant.

On behalf of the 2nd defendant, a final written address was filed on 27/08/2019. N. A. Ayoola Esq. signed it. Learned counsel noted that the 2nd defendant is only involved with the 2nd and 3rd counts in the charge and asked whether the prosecution led evidence to prove any of the charges against the 2nd defendant.

In the view of learned counsel, before a defendant may be charged under section 26(1)(a) and (b) of the Act, he must have been charged for one of the offences under sections 8-19 of the Act. He pointed out that the 2nd defendant has not been charged with any of such offences. He insisted that the 2nd defendant was not charged under section 19 of the Act. He is of the view that the charge is bad in law and it is not the duty of the court to redraft it.

In case the court does not agree with the above submission, learned counsel proceeded to submit that the defendant was under a duty to act on the instruction of the 1st defendant, being a subordinate officer to the 1st defendant. He argued that the prosecution did not lead evidence to show that releasing the money in issue, which the 2nd defendant had a duty to release as Chief Accountant, as directed, was unlawful. The point was made that at the time the fund was released to the 1st defendant, the 2nd defendant was not aware that the Minister would not be visiting FMC, Owo. Learned counsel highlighted the fact the 2nd defendant demanded a refund from the 1st defendant but the 1st defendant said he had converted it to imprest, which evidence was confirmed by PW 2 and the 1st defendant at the trial. In the view of learned counsel, that fact is evidence

that there was no agreement with the 1st defendant before the memorandum for payment (exhibit P8A) was raised by the 2nd defendant. Learned counsel submitted that the prosecution had a duty to prove common intention under section 26(1)(b) of the Act and that such evidence was not adduced.

Concerning the offence charged under section 26(1)(c) of the Act, he said that the prosecution had a duty to prove conspiracy and there was no evidence of conspiracy or common intention between the 1st and 2nd defendants at the time the memorandum was raised. He is of the opinion that the charge against the 2nd defendant under section 26(1)(c) is inappropriate because the 2nd defendant was not charged with the substantive offence, though conspiracy is a distinct offence. He insisted that conspiracy will follow the substantive offence.

He urged the court to discharge and acquit the 2nd defendant.

The final written address of the prosecution was filed on 04/11/2019. O. A. Ikupolati Esq. signed it. The sole issue found for determination is whether the prosecution proved the five counts beyond reasonable doubt to warrant convicting the defendants.

In his argument, learned counsel opened with the third count. He explained that investigation of the matter revealed that the two defendants' representation to the effect that the sum of N1.5 million was meant for hosting the Minister of State for Health is nothing, but a hoax. In his opinion, the visit was not contemplated or scheduled and none was undertaken. He accused the defendants of deceptively using the visit as decoy for their fraud. He accused the 2nd defendant, by his acts, of

facilitating and actively conniving to use his office to confer corrupt and/or unfair advantage on the 1st defendant. He submitted that criminal conspiracy could be inferred from the actions of the defendants, taking into consideration the speed with which exhibits P8 and P8A were generated, leading to payment the next day, without due process. He is of the opinion that excuses in exhibits P12 and P13 are not tenable in law. The attention of the court was drawn to the fact that at the time exhibit P8A was generated, no document was attached to it, which makes it obvious that the defendants knew that no such visit was contemplated.

On the submission that the third count for conspiracy is bad made by the 2nd defendant, learned counsel directed the attention of the court to section 26 of the ICPC Act and the point was made that it does not matter if the principal offence was committed or not by the defendant to charge for conspiracy. The related offence to the conspiracy alleged, according to learned counsel, is conferment of corrupt or unfair advantage on the 1st defendant contrary to section 19 of the Act. The fact that the sum involved has been refunded would not be a ground to hold that the offence was not committed.

On the first count, which concerns only the 1st defendant, a public officer, it is the view of learned counsel that the prosecution proved all ingredients of the offence, going by the evidence of PW 1 and exhibits tendered at the trial, on which oral evidence should be hung. He insisted that no ministerial visit was anticipated or scheduled as falsely represented. In the view of learned counsel, it is not the payment of sums into private accounts which is in issue, it is the fact the purpose for the sum being paid into the private account of the 1st defendant was non-existent. Rather than give account of what happened to the money, the 1st

rely on the statement of the 1st defendant in exhibit P12 on the nature of imprest.

Learned counsel urged the court to discountenance the evidence of the 2nd defendant to the effect that he was merely obeying instructions, even if unlawful, when he is the financial adviser to the 1st defendant, as Chief Accountant of FMC, Owo. The 2nd defendant was also said to have contradicted himself when he testified.

With respect to the fourth count, it was argued that the evidence of PW 2 proved ingredients of the offence charged. It was proved that the 1st defendant fits the description of a person who is a public officer at times material to this case. He is of the view that contrary to the submission of 1st defendant's counsel, the false statement could be made to anybody, including the person who induced it in the first instance. Learned counsel reminded the court that the 1st defendant did not mention any phone call when investigators interviewed him and that the assertion regarding a phone call by an unnamed personal assistant is afterthought. The prosecution could not be expected to investigate such an assertion concerning an unnamed person without a telephone number while the matter was pending in court. It was submitted that the evidence of PW 2 is not hearsay and exhibit P11 corroborates it. He submitted that exhibit P8A is false and made to the 1st defendant who caused it to be made to him. It was submitted that the fourth count was proved beyond reasonable doubt.

With regard to the fifth count, learned counsel pointed at exhibit P3 which proves payment to the 1st defendant on 21/01/2010 and submitted that evidence of PW 2 proved all ingredients of the offence alleged along

with documents tendered in evidence. The provision of section 22(5) creates a strict liability offence, it was submitted, and the prosecution only needs to prove the physical aspects of the offence charged. Learned counsel repeated arguments earlier presented for other counts.

Learned counsel insisted that the 1st defendant did not refund the sum in issue to the FMC, Owo. The court was urged to convict the 1st defendant.

The 1st defendant filed a reply address on 08/11/2019. A. A. Solagbade-Amodeni Esq. signed it.

On the limit of approval for Medical Directors, the attention of the court was drawn to Rule 2915(i) of the Financial Regulations of the Federal Republic of Nigeria, 2006, concerning Chief Executives of parastatals, which is pegged at upper limit of N7, 000, 000.00. Reference was also made to the Bureau of Public Procurement's (BPP) Approved Revised Thresholds for Service-Wide Application, made pursuant to Public Procurement Act, 2007 accessible on-line, according to learned counsel stated the 1st defendant's upper limit of approval as N2.5 million.

On lack of information about the source of information on the ministerial visit by the 1st defendant, to FMC, Owo, at the time exhibit P13 was made, learned counsel argued that ICPC had the responsibility to verify and/or disprove the source of the 1st defendant's information to that effect based on a provision of the Evidence Act, 2011 which was not provided. He insisted that the prosecution did not disprove the fact that it was the personal assistant to the then Minister of State for Health who made the contact and provided information to the 1st defendant, vide a phone call "inspite of Exhibit P6 stating the source of that information".

On evidence led that Mr Christopher Olawale (Director of Administration), stating that he did not know about the visit, learned counsel warned that the named person was not called to testify at the trial, while the prosecution is relying on his extra judicial statement, for him to be examined on the issue.

On inconsistencies of the 1st defendant on the sum of N1.5 million, learned counsel submitted that the 1st defendant's evidence is clear and not inconsistent. Learned counsel then proceeded to do a recap of the evidence of the witness. It was stressed that the 1st defendant did not testify that he gave the sum in issue to the Minister at Ikaram Akoko, as stated erroneously by the prosecution.

With respect to the alleged late demand for refund by the 2nd defendant, after commencement of investigations, learned counsel referenced the evidence of the 2nd defendant that he made the demand about two months after the failed visit. And that the petition, which precipitated the investigation (exhibit P7), was written almost nine months after the request was made.

The court was urged to hold that the case against the 1st defendant was not proved beyond reasonable doubt.

Having narrated the evidence led at the trial and the issues raised and argued by learned counsel on behalf of the parties, the issue the court is called upon to resolve is whether each of the five counts in the charge laid before the court have been proved beyond reasonable doubt. It is settled that in a criminal trial, it is the duty of the prosecution to prove its

case beyond reasonable doubt, and a general burden to rebut the presumption of innocence constitutionally guaranteed to the citizen. The burden on the prosecution is only discharged when the essential ingredients of the offence charged have been established and the accused person is unable to bring himself within the defences or exceptions allowed under the law generally or the statute creating the offence. See Oteki v. Attorney-General of Bendel State [1986] 2 NWLR (Pt. 24) 648.

The burden on the prosecution is discharged upon the proof of the elements of the offence beyond reasonable doubt. The phrase proof beyond reasonable doubt does not mean proof beyond a shadow of doubt, but, simply means that there is credible evidence upon which the court can safely convict, even if it is upon the evidence of a single witness. See the case of Afolalu v. State (2010) 6-7 MJSC 187. The determinant index in arriving at that standard of proof expected is the quality and not the quantity of evidence adduced by the parties with the main pointer being the discretion of the prosecution. In assessing the quality of evidence what would be at play are the admissibility, credibility, positivity and the value of the evidence. It follows therefore that the proof beyond reasonable doubt is not predicated on the number of witnesses called by the prosecution. See Musa v. State [2017] 5 NWLR (Pt. 1557) 43 at 57-58.

The guilt of an accused person may be proved by:

a. confessional statement; or
b. circumstantial evidence; or
c. evidence of eye witnesses.

See Emeka v. The State [2001] 14 NWLR (Pt. 734) 666 at 683.

The case of the prosecution is embedded in the oral testimony of PW 1 and PW 2 and several documents tendered as exhibits. Put in a capsule, the prosecution's case is that the 1st and 2nd defendants, who were both Medical Director and Chief Accountant, respectively, in the Federal Medical Centre, Owo (FMC) at times material to this suit, caused the payment of the sum of N1.5 million from the coffers of FMC into the personal bank account of the 1st defendant, purportedly for the purpose of hosting a visit of the Minister of State for Health, which visit did not take place or was never planned, in actual fact.

In the third count, which brings the two defendants together, they are accused of conspiring with each other to commit a criminal offence, which is to use the office to effect the conferment of corrupt advantage upon Dr. Olufemi Abiodun Omotoso (m) in the sum of N1, 500, 000.00 (One Million, Five Hundred Thousand Naira only) paid to him from the coffers of FMC, Owo for the purpose of facilitating the hosting of the visit of the Minister of State for Health on the 21/1/10 to the Federal Medical Centre, Owo, Ondo State when no such visit was either scheduled nor convened. The conduct complained about is said to be an offence contrary to section 26(1)(c) and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

Section 19 of the Act provides that any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer 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**. The offences created by section 19 of the Corrupt Practices and Other Related

Offences Act, 2000 are not a strict liability offence and as such for the prosecution to succeed in proving the guilt of the defendant, it must prove both *actus reus* and *mens rea*. See Abah v. FRN (2017) LPELR-43373(CA).

Section 26(1)(c) provides that any person who abets or is engaged in a criminal conspiracy to commit any offence under the Act shall be guilty of an offence and shall, on conviction, be liable to the punishment provided for such offence. Thus, the law is that conspiracy to commit ANY offence provided under the Act amounts to an offence committed. In the third count in the charge, the defendants are alleged to have conspired to commit the offence of use of their office or position to gratify the 1st defendant or confer any corrupt or unfair advantage upon him, being a public officer.

The 1st and 2nd defendants were, undoubtedly, public officers at the times material to this suit having served at those times as Medical Director and Chief Accountant, respectively, of FMC, Owo. Section 2 of the Act defines public officer as meaning a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes Judicial officers serving in Magistrate, Area or Customary courts or Tribunals.

The question to ask at this point is whether the defendants conspired to commit the offence in section 19 of the Act. Conspiracy as an offence is an agreement by two or more persons to do or cause to be done an illegal

act or a legal act by illegal means. The actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed. See Obiakor v. State [2002] 10 NWLR (Pt 776) 612 at 628. Conspiracy is accepted as an agreement of two or more persons to do an act, which is an offence to agree to do. Evidence of the plot between the conspirators is hardly capable of proof. The courts establish the offence, as a matter of inference, to be deduced from certain criminal acts of the parties concerned. The bottom line of the offence is the meeting of the minds of the conspirators to commit an offence, and the meeting of the minds need not be physical. The offence of conspiracy can be inferred. The offence of conspiracy is complete when two or more persons agree to do an unlawful act or do a lawful act by unlawful means. Concluded agreements can be inferred by what each person does or does not do in furtherance of the offence of conspiracy. See Adejobi v. State [2011] 12 NWLR (Pt. 1261) 347. In Iboji v. State [2016] 9 NWLR (Pt. 1517) 216 at 229, the Supreme Court stated as follows:

> "The crime of conspiracy is usually hatched with utmost secrecy and the law recognizes the fact that in such a situation, it might not always be easy to lead direct and distinct evidence to prove it. Thus, it is always open to the trial Judge to infer conspiracy from the facts of the case. Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties, it is rarely capable of direct proof, it is invariably an offence that is inferentially deduced from the acts of the parties thereto which is focused towards the realization of their common or mutual criminal purpose."

In the case cited above, the Supreme Court stated that an accused person can be convicted for the offence of conspiracy even when the substantive offence is not proved. The offence of conspiracy is separate, distinct and independent of the actual commission of the offence to which conspiracy is related. Mere agreement to commit an offence is sufficient; its commission is not necessary.

It is common knowledge that it is impossible to know a man's intention until it is manifested. A man's intention can only be established by circumstances and facts leading to the commission of the crime, with which he is charged. It is very difficult to know what a man intends without resorting to chains of events that culminated into the events complained of. It is only God and perhaps the devil whose powers are beyond human comprehension that is capable of knowing a man's intention. Intent is defined as a mental attitude, which can seldom be proved by direct evidence but must ordinarily be proved by circumstances from which it may be inferred. Intent is defined as a state of mind existing at the time a person commits an offence and may be shown by acts, circumstances and inferences deducible therefrom. The law presumes that a man intends the natural and probable consequences of his acts. The test to be applied is an objective test namely the test of what a reasonable man would contemplate as the probable result of his act. See Usman v. State [2018] 15 NWLR (Pt. 1642) 320 at 337.

From the conduct of the 2nd defendant in his handling of the generation of exhibit P8A, it is not difficult for this court to find that the parties conspired together to confer a corrupt advantage on the 1st defendant. In actual fact, under cross-examination by the prosecutor, the 1st defendant testified that:

> "During the process of request, approval and payment of N1.5 million, I did not have a frosty relationship with the 2nd defendant. I carried the 2nd defendant along throughout the transaction."

Indicators of the fact that the defendants conspired together to give undue benefit to the 1st defendant are to be found in the evidence before the court. The 2nd defendant testified that the 1st defendant invited him to a meeting, where a third official was allegedly present, on 20/01/2010, where the plan to host the Honourable Minister of State for Health was mooted by the 1st defendant to the 2nd defendant and information passed that the visit would take place on 21/01/2010. It was at that meeting that the defendants agreed to proceed with their plan to make the sum of N1.5 million available to the 1st defendant.

a. The 2nd defendant wrote exhibit P8A without referencing or mentioning the fact that it was the 1st defendant who instructed him to do so. The 2nd defendant wrote exhibit P8A without mentioning the fact that it was the 1st defendant who told him that the Honourable Minister of State for Health would be visiting FMC, Owo. The 2nd defendant wrote exhibit P8A in a manner to suggest that he is the person who possessed primary knowledge of the visit, which is not true. Implicitly, the 2nd defendant hid or deliberately omitted these facts from the records, which would have revealed the source of his instruction (1st defendant).

b. The 2nd defendant was supposed to be the recipient of the fund requested in exhibit P8A and wrote his name on the document as such in the first instance. However, the 2nd defendant included the name of the

1st defendant as alternate recipient of the fund mentioned in exhibit P8A (N1.5 million) meant for the hosting of the Honourable Minister of State for Health in FMC, Owo. This the 2nd defendant did so to ensure that the fund, if released, would thereby fall into the hands of the 1st defendant.

c. The 2nd defendant knew or ought to have known that there was no factual basis for the request put up in exhibit P8A, when there was no official communication from the Honourable Minister of State for Health that he would visit FMC, Owo on 21/01/2010, which should be the basis of exhibit P8A.

d. The 2nd defendant, admitted under cross-examination, that his duty included advising the 1st defendant, in his capacity as Medical Director of FMC, Owo, on issues of finance. The 2nd defendant testified as follows:

> On 20/01/2010, the 1st defendant, as Medical Director called me to his office along with Mr. C. O. Abiodun, the Director of Administration. The 1st defendant informed us about the impending visit of the Minister of State for Health to FMC in Owo, scheduled for 21/01/2010. The 1st defendant directed me to put a memorandum for the sum of N1.5 million for the 1st defendant's approval. The sum was to cover logistics associated with the visit.

The 2nd defendant refrained from advising the 1st defendant about lapses in the procedure adopted for accessing the funds.

e. The uncanny manner that exhibit P8A was written, submitted to the 1st defendant and approval given the same day leading to payment of the sum of N1.5 million to the personal account of the 1st defendant, the same day (20/01/2010) when the 1st defendant informed of the visit.

f. The 2nd defendant did not demand for a refund immediately it became apparent that the alleged visit of Honourable Minister of State for Health would not happen or the official did not make the visit. Under cross-examination from the prosecutor, the 2nd defendant testified as follows:

> After two months of the failed visit, I met with the 1st defendant and requested that he should refund the sum cash advanced to him on account of the visit.

Interestingly, the alleged request that the 1st defendant should refund the money was not made in writing by the 2nd defendant and thus, not documented. There is no permanent record of the demand made by the 2nd defendant and none was presented to this court at the trial.

All the while, the 1st defendant did not provide any official communication to show that there was a visit proposed by the Honourable Minister of State for Health, but made his personal account available for the payment of the sum of N1.5 million into it. The 1st defendant also approved the application for funds the same day it was made to him by the 2nd defendant, who had hidden or omitted the fact that it was the 1st defendant who gave him the idea or information about the impending visit of the Honourable Minister of State for Health to FMC, Owo from his memorandum (exhibit P8A).

In the face of these facts, this court deduces that the 1st and 2nd defendants were acting in concert or in conspiracy, following an agreement to confer corrupt advantage on the 1st defendant (a public officer), while using their respective offices, as public officers, for that purpose. The manner the defendants acted enabled this court to arrive at the unavoidable and obvious conclusion that they had an agreement to commit the crime alleged in the third count in the charge.

Indeed, exhibit P8A, states as follows:

> "The Honourable Minster of state for Health will be visiting the Centre on 21st January, 2010.
> The sum of One million, five hundred thousand naira (N1, 500, 000.00) only could be needed for hosting and other logistics during the visit.
> You may therefore wish to give approval for the release of the sum of N1, 500, 000.00.00
> Submitted for further directives please."

The 2nd defendant signed exhibit P8A. Exhibit P8A obviously falls short of a informed formal request because the sum requested was not broken down, for justification, in terms of proposed heads of expenditure and amounts to be expended on specific items or subjects. Yet, the 1st defendant approved it, in a circumstance that suggests that the motive is simply to get out the sum involved in exhibit P8A from the coffers of FMC, Owo and not to host any visit of the Honourable Minister of State for Health.

At this point, it is apt that the court states that it finds that there was no visit scheduled or planned, contrary to the attempt of the 1st defendant to state such a fact. The 1st defendant claimed to have received a phone call from a Personal Assistant to the Honourable Minister of State for Health. However, the 1st defendant did not give or mention the name or telephone number of such a person, even in this trial. The 1st defendant did not provide any official communication on the subject of notice of the visit and it was his duty to do provide evidence of his source of information, not for the prosecution to prove. The prosecution will only be required to disprove what is primarily proved by the 1st defendant in this regard. The 1st defendant is the person who has peculiar knowledge of the person who purportedly gave him information about the purported visit of the Honourable Minister of State for Health and no other person. Section 140 of the Evidence Act, 2011 provides that when a fact is peculiarly within the knowledge of any person, the burden of proving that fact is upon him. This court holds that there is no truth to the fact that the 1st defendant was informed of any impending visit by the Honourable Minister of State for Health to FMC, Owo by any person and the assertion of the 1st defendant in this regard is an afterthought and an unfortunate fabrication. This court does not also believe the evidence of the 2nd defendant that the 1st defendant instructed him to put up exhibit P8A because exhibit P8A does not contain such a fact on its face. The 2nd defendant acted on his own volition.

In addition to the above, when there is a verbal instruction, in government or public service, it is customary or a matter of practice that an officer who is a recipient of a verbal instruction will confirm such oral instruction in his own memorandum, in writing, by which he seeks requisite approval. See section 167 of the Evidence Act, 2011. PW 2

testified that it is the practice in public service that where prior oral instruction is given such will be confirmed in writing by an executing officer. This court holds that the defendants agreed and conspired to confer a corrupt advantage or benefit on the 1st defendant with the intended payment of the sum of N1.5 million to the 1st defendant, when it was apparent that there was no planned visit to FMC, Owo by the Honourable Minister of State for Health scheduled for 21/01/2010, for which the payment was purportedly made. See exchanged correspondences in exhibits P9, P10 and P11, for example.

It is the view of this court that the prosecution has succeeded in proving the offence of conspiracy against the 1st and 2nd defendants beyond reasonable doubt. This court therefore finds the 1st and 2nd defendants guilty of the third count in the charge.

In the first count of the charge, the 1st defendant is accused that on or about the 21st day of January, 2010 or thereabout, while being a Public Officer used his office as the Medical Director Federal Medical Centre [FMC], Owo, Ondo State to confer corrupt advantage upon himself when he received the sum of One Million, Five Hundred Thousand Naira (N1, 5000, 000.00) only, paid to him from the coffers of the FMC, Owo for the purpose of the hosting of the visit by the Minister of State for Health in January, 2010 when no such ministerial visit had been either scheduled nor convened. The offence alleged is said to be contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

In order for the prosecution to succeed in a charge of conferring corrupt advantage upon oneself, under section 19 of the Act, the ingredients to prove are as follows:

1. That the defendant is a public officer
2. That he used his position to:
a. gratify himself,
b. confer any corrupt advantage upon himself or
c. confer any unfair advantage upon himself.
See FRN v. Usman (2018) LPELR-43894 (CA).

This court has held, above, that the 1st defendant is a public officer. This court held above that the 1st defendant, being a public officer participated in a scheme, along with the 2nd defendant, to receive payment from the coffers of FMC, Owo in the sum of N1.5 million into his account as shown in exhibit P3. This court has held that the visit of the Honourable Minister of State for Health was not scheduled or planned and the sum received by the 1st defendant was paid to him in his capacity as the Medical Director of FMC, Owo. It is the holding of this court that the 1st defendant utilized the position of his office to facilitate the conferment of this unearned and fraudulent benefit on himself. The payment of the sum of N1.5 million into the personal account of the 1st defendant (exhibit P3) from the accounts of FMC, Owo is evidence of the 1st defendant gratifying himself or conferring corrupt advantage on himself, for no just cause. Exhibit P3 is the statement of account no. 2002843991 kept with First Bank in the name of Omotosho Olufemi Abiodun for the period 04/01/2010 to 27/06/2015. The entry for 21/02/2010 shows that on that day, the 1st defendant received payment in the sum of N1.5 million,

which was transferred from the account of FMC, Owo for "HOSTING OF HMH FOR STATE".

Circumstantial evidence is the proof of circumstances from which, according to the ordinary course of human affairs, the existence of some fact may reasonably be presumed. In other words, it is that evidence of surrounding circumstances, which, by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is the narration of surrounding circumstances, which by undesigned coincidence is capable of proving with a clear-cut accuracy, the guilt of the person. For it to support a conviction in a criminal trial, such circumstantial evidence must be cogent, complete and unequivocal. Indeed, it must be compelling and must be such that leads to only one irresistible conclusion that it is the prisoner and no one else who is the offender. Those facts narrated, as being the base of circumstantial evidence, must be incompatible with the innocence of the accused and must be incapable of proffering any explanation of any other reasonable hypothesis than that of the guilt of the prisoner. Arguably, circumstantial evidence is often the best evidence in establishing a case. See Mohammed v. State [2007] 11 NWLR (Pt. 1045) 303 at 327-329. Circumstantial evidence is always admissible to prove any issue in controversy, provided that such circumstantial evidence irresistibly point to and had established positively, the issue in controversy. See Brown v. State [2017] 4 NWLR (Pt. 1556) 341 at 371.

An examination of exhibit P3 will clearly show that the 1st defendant did not receive the money for any other purpose other for him to keep the money. First, the sum of N1.5 million paid into his account was paid the same day (21/01/2010) the alleged visit of Honourable Minister of State

for Health was supposed to take place. Secondly, one Omotosho withdrew the sum of N1.4 million from the same account on 21/01/2010 when the visit was supposed to take place. The 1st defendant did not give evidence of what he spent the sum of N1.4 million, or part thereof, on, in terms of receipts, items of expenditure and cost, name of vendors or suppliers etc. The 1st defendant did not give or seek to give any account on what he spent the money on, despite vaguely asserting that he spent it on disparate items like gifts but without prices of such items and the source of the items. This court holds that the 1st defendant did not prove that he spent the money for the benefit of FMC, Owo.

The 1st defendant also testified that he later converted the sum of N1.5 million into imprest for his office. It is curious to note that there is no evidence that a formal application for that conversion was made by the 1st defendant, which should ordinarily be in writing. There is no evidence to the effect that the conversion was approved or effected by any authority in FMC, Owo. No record of the conversion was presented to the court at the trial by either the prosecution or the 1st defendant. The evidence of the 2nd defendant, under cross-examination by the prosecutor, in this regard is as follows:

> "I did not convert the sum of N1.5 million to imprest as requested by the 1st defendant. I was sent on suspension before I could act on the request. I do not know what happened thereafter.
>
> ...
>
> In the case of the 1st defendant, he did not write to request for conversion of the sum of N1.5 million to imprest. There was no way such a request may be made orally. There was

> no way I could have processed oral conversion. It is the written approved request that the Auditor will vet before conversion can take place."

This court holds that there was no conversion of the sum N1.5 million to imprest for the 1st defendant's office and the 1st defendant did not tender any document to prove his assertion, which this court holds as not proved.

The 1st defendant also tendered exhibit D2, through his witness (DW 2) as the statement of an account kept in the name of FMC, Owo into which the refund was made. It has to be remarked that the payment, tagged as refund was made on 12/11/2014, while this suit was filed on 20/10/2014. It is the view of this court that the refund of the sum of N1.5 million into the account of FMC, Owo does not obliterate the fact that a crime was committed in January, 2010 and that the refund was made after this suit had been filed and more than four years after the act complained of in this case. In the view and holding of this court, payment shown in exhibit D2 is a loud evidence that the 1st defendant admitted his guilt in respect of the sum mentioned in the charge and sought to either diffuse the allegation against him or seek atonement for sin already committed. It remained a sin anyway or nevertheless.

In the circumstance of this suit, this court is of the view that the prosecution proved the guilt of the 1st defendant for the offence alleged in the first count, beyond reasonable doubt. The first defendant is therefore found guilty of the first count in the charge.

With respect to the second count in the charge, the 2nd defendant is accused that in January, 2010 or thereabout, whilst being the Chief Accountant of the Federal Medical Centre, Owo, Ondo State in furtherance of the commission of the offence of use of office to confer a corrupt advantage upon self applied to the Medical Director, Olufemi Abiodun Omotoso for his approval for the provision and payment of the sum of One Million, Five Hundred Thousand Naira only (N1, 500, 000.00) from the coffers of the Centre purportedly for use in the hosting of the visit by the Minister of Health State for Health on the 21st day of January, 2010 when no such ministerial visit was either scheduled nor convened. The offence alleged under the second count in the charge is alleged to be contrary to section 26(1)(b) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 19 of the same Act.

Section 26(1)(b) of the Corrupt Practices and Other Related Offences Act, 2000 (the Act) provides that any person who does any act **preparatory to or in furtherance of the commission of any offence under the Act** commits an offence under the Act and shall be guilty of an offence and on conviction, be liable to the punishment provided for such offence. It should be noted that the section 26(1)(b) of the Act under which the first count is brought has two arms. The first arm is the provision regarding acts done in preparation for the commission of an offence under the Act. That is not what the defendant was charged for in this case. The second arm of the provision concerns acts done in furtherance of the commission of any offence under the Act, which is the allegation against the 2nd defendant. The implication of the dichotomy identified above is that, by the tenor of the specific allegation against the 2nd defendant in the second count of the charge, there must have been an

offence already committed under the Act by the defendant, upon which subsequent criminal acts alleged in the first second count would be grafted, which are acts done in furtherance of the offence already committed.

It is the view of this court that at the time exhibit P8A was written by the 2nd defendant, the 1st and 2nd defendants had formed an agreement to confer corrupt advantage on the 1st defendant using their offices. Exhibit P8A was therefore the first step in achieving the unlawful purpose aimed at by the parties. Conspiracy, which is made an offence under the Act, is a matter of agreement of the conspirators. An unlawful agreement having been reached by the 1st and 2nd defendants, exhibit P8A is an act in furtherance of an offence already committed. This court holds that the 2nd defendant is guilty of the offence charged under the second count of the charge. The prosecution has proved ingredients of the offence charged in the second count beyond reasonable doubt.

In the fourth count in the charge, the 1st defendant is accused that on or about the 20th day of January, 2010 or thereabout, at Owo, being the Medical Director, Federal Medical Centre [FMC], Owo, he caused Sunday Dada Adebayo (2nd defendant), the Chief Accountant of the FMC, to make a false statement to him (the 1st defendant) for the grant of his approval for the provision of funds from the coffers of the Centre in the sum of One Million, Five Hundred Thousand Naira only (N1, 500, 000.00) being the amount purportedly needed for facilitating the hosting of the visit of the Minister of State for Health on the 21/1/10 to the Federal Medical Centre, Owo, Ondo State when no such visit was either scheduled nor convened.

The offence alleged is said to be contrary to section 25(1)(a) and punishable under section 25(1)(b) of the Corrupt Practices And Other Related Offences Act, 2000. Section 25(1)(a) of the Act provides that any person who makes or causes any other person to make to an officer of the Commission or to any other Public Officer, in the course of the exercise by such Public Officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made is false, or intended to mislead or is untrue in any material particular shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

The ingredients of the offence provided under section 25(1)(a) of the Act are as follows:

a. That the defendant is a 'person' within the meaning of the word under the Act.

b. That the defendant made or caused another person to make a statement.

c. That the statement was made to a public officer in the course of the exercise of duties of such public officer.

d. That the person making the statement or causing the statement to be made knew that the statement made is:

(i) false, or

(ii) is intended to mislead, or

(iii) is untrue in any material particular.

Under the Act:

1. “Person" includes a natural person, a juristic person, or any body of persons corporate;

2. "Public Officer" means a person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations or private company wholly or jointly floated by any government or its agency including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in Magistrate, Area or Customary courts or Tribunals.

Section 25(1)(b) of the Act provides that any person who makes or causes any other person to make to an officer of the Commission or to any other Public Officer, in the course of the exercise by such Public Officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made is false, or intended to mislead or is untrue in any material particular; shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

The ingredients of the offence alleged against the defendant are:

a. That the defendant is a person within the meaning given by the Act.
b. That the defendant made a statement to an officer of the I. C. P. C. or to any other Public Officer, in the course of such officer's performance of his official duties.
c. That such statement made by the defendant is false and the defendant knew that the statement:
(i) is false, or
(ii) intended to mislead, or
(iii) is untrue in any material particular.

In this case, this court holds that the 1st defendant is both a person and a public officer within the meaning provided in section 2 of the Act. That point and conclusion was earlier made or reached in this judgment. This court also holds that the 1st defendant was acting in his official capacity, (as Medical Director of FMC, Owo), when he requested and agreed with the 2nd defendant to raise a memorandum shown in exhibit P8A and present it to him (1st defendant) for approval. This court also holds that the 2nd defendant is both a person and a public officer within the meaning for such terms provided in the section of the Act. The 2nd defendant acted in his official capacity (as Chief Accountant of FMC, Owo) when he prepared, signed and presented exhibit P8A to the 1st defendant, for the former's approval.

When the defendant admitted that he informed the 2nd defendant about the impending visit of the Honourable Minister of State for Health and requested the 2nd defendant to raise the memorandum in exhibit P8A, this court holds that the 1st defendant knew that the information he peddled to the 2nd defendant on the alleged proposed visit was false, because there was no evidence that such a visit was scheduled not planned or intended by the Honourable Minister of State for Health. The 1st defendant knew that the content of exhibit P8A was false because there was no scheduled visit by the Honourable Minister of State for Health to FMC, Owo on 21/01/2010 and the sum requested was meant for a fictitious purpose, because the alleged visit of the Honourable Minister of State for Health, it was meant for was not in contemplation or planned of anyone. The fact that the 1st defendant directed that the purported visit should be publicised among staff of FMC, Owo does not make the pretence of the visit true.

It is the view and holding of this court that the prosecution proved all the ingredients of the offence alleged in the fourth count beyond reasonable doubt. The 1st defendant is hereby found guilty of the offence charged in the fourth count.

Regarding the fifth count, the 1st defendant is accused that on or about the month of January, 2010 or thereabout, while being a Public Officer and the Medical Director, Federal Medical Centre [FMC], Owo, Ondo State, the 1st defendant expended, as imprest, the sum of One Million, Five Hundred Thousand Naira (N1, 500, 000.00) only, received by him from the Centre's coffers specifically for the purpose of the hosting of the visit by the Minister of (State) Health on 21st day of January, 2010.

The offence alleged in the fifth count is contrary to and punishable under section 22(5) of the Corrupt Practices and Other Related Offences Act, 2000. Section 22(5) of the Act provides that any public officer who transfers or spends any sum allocated for a particular project, or service, on another project or service, shall be guilty of an offence under the Act and on conviction be liable to one (1) year imprisonment or a fine of fifty thousand naira.

As already stated and held above, there is no evidence before the court, either by the prosecution or the 1st defendant (who does not have a duty to produce evidence) to prove that the 1st defendant expended money meant for the hosting of the visit of the Honourable Minister of State for Health as imprest for his office. The only evidence before the court is that the 1st defendant may have desired to so but the reality found by the court is that the 1st defendant did not make a formal request for the conversion. There is no evidence that such a conversion was approved

and enforced. There is account given how the sum involved became imprest or was used or treated as such and the exact number of months it relates to. It is the view of this court that there was no evidence that the sum of N1.5 million was ever expended for the purpose of FMC, Owo either for the purpose of the purported visit of the Honourable Minister of State for Health or as imprest. The prosecution did not prove the ingredients of the offence in the fifth count against the 1st defendant, beyond reasonable doubt. The 1st defendant is found not guilty of the fifth count. The 1st defendant is therefore discharged and acquitted on the fifth count.

Having arrived at conclusions above, this court notes that the prosecution tendered a letter as exhibit P6, which the court should comment on, though it was written after this suit was filed. The 1st defendant's counsel made reference to the letter in his summation of the case and did not raise any objection to the document being part of the evidence before the court. It is dated 13/07/2015. In the letter, the 1st defendant instructed his Solicitor to write to the Chairman of ICPC, as follows:

> "Our client was sometimes ago investigated for mismanagement of some funds belonging to the Federal Medical Centre, Owo, Ondo State allegedly running into over hundreds of millions of Naira following a petition written by an amorphous and anonymous body known as the Integrity Group at the said Centre.
>
> ...
>
> However, at the end of the interrogation of some principal officers of the Center by your Commission, it was discovered that it was only the sum of N1, 500, 000 (One

Million Five Hundred Naira Only) that was not carefully handled by our client and the then Chief Accountant to the Center, albeit explicably.

To set the record straight, the alleged sum of N1, 500, 000 was meant for the hosting of the then Minister of State for Health who was scheduled to visit the center sometimes in January, 2011. Following the verbal confirmation of the Minister's visit via a telephone call (which is often the norm) and the center management's concurrence, the said sum was therefore taken from the center's account for the hosting of the Minister including accommodation and other logistics expenditures for the Minister and his entourage. However, the Minister was unable to make the trip to the Centre, by which time some expenses had already been incurred from this sum in respect of envisaged visit.

Nevertheless, at the close of investigation by your Commission, it was disclosed that this sum was not properly explained by our client and others and our client immediately undertook to make a refund of the said sum which he eventually did vide a cash deposit into the center's account on the 12th day of November, 2014. *See attached evidence of payment marked Annexure* A. **This was done in the spirit of reconciliation of account, restitution and to put the record straight.**

However, at the time of making this refund, it was unkown to our client that a charge had already been preferred against him at an Ondo State High Court as he was battling with some heath challenges aftermath of the very tedious and rigorous interrogation by your commission and the EFCC on

another hand. Our client was eventually arraigned on the 19th day of December, 2014 and has since then been standing trial at the said Court sitting in Akure in Suit No: AK/109c/2014.

It is on the above premise therefore that we are passionately appealing to your good self, to use your good offices to intervene in this matter with a view to withdrawing the charges against our client having made full refund of the alleged mismanaged sum to center's account before his arraignment.

The essence of criminal trial is not only to punish an offender but it is also to allow for restitution where possible and to allow the offender to realize the wrongfulness of his action.

And it is our humble submission that our client having been come to this realization even before the commencement of his trial should be given soft landing in this case.

It will be in bad taste in law for a prosecution to want to secure a conviction by all means particularly against an accused person who has shown penitence as such will only amount to persecution and not prosecution for the good of the society." (Bold font for emphasis)

Exhibit P6 was signed by one Rotimi Olorunfemi Esq. It was authored when the 1st defendant knew that this case had been filed and he was already appearing before the court in respect thereof. Literally and implicitly, the 1st defendant appears to have pleaded guilty in exhibit P6. The stance of the 1st defendant in this suit is therefore contrary to his patently penitent stance or disposition in exhibit P6. More importantly,

the 1st defendant's counsel claimed that the refund of the sum of N1.5 million to the coffers FMC, Owo was made because the 1st defendant was advised to pay by a certain Prof. Olu Aina, Chairman of ICPC. The 1st defendant did not give any evidence of the status of Prof. Olu Aina, when he testified at the trial. That portion of the assertion of learned counsel for the 1st defendant is not borne out by the evidence before the court. Exhibit P6 did not also assert that the 1st defendant acted on the advise of anyone or a person by such name.

This court notes that exhibits P12 and P13, extra judicial statements of the 2nd and 1st defendants, respectively, to ICPC officials, were not shown to the 2nd and 1st defendant, respectively, when they testified at the trial. They were not confronted with their respective statements to ICPC officials. The statements in their extra judicial statements in exhibits P12 and P13 were slightly different from their evidence at the trial in regard of the circumstances of the sum of N1.5 million. It is important to note that the prosecution, through PW 2, disproved the alleged use of the money as imprest, as found by this court.

In exhibit P13, the 1st defendant is recorded as having stated:

> "The N1, 500, 000 meant for Min of States visit. The visit did not take place but the money was used as imprest for the hospital by the Medical Director. **Proper documentation was not done in error.**" (Bold font for emphasis)

In exhibit P12, the 2nd defendant is recorded as having stated:

"He Omotosho directed me to put up a memo for the hosting the Federal Minister of Health (State) who will be visiting the Centre. The money was processed and handed over to Omtosho, but the minister did not come. I asked him for the money he wrote back to me that the money should be converted to Medical Director imprest. The time I asked him was February 2010 to refund the money back up till the money was not returned by Dr. Omotosho. I left on suspension in June 2010 up till the time I left to retirement of the money I cannot remember whether I processed any letter for him before I left on imprest. I told him I could not convert it and that Omotosho should refund the money back to the Centre. I could not convert it to imprest but directed him to refund the money. **As at the time I left Omotosho is yet to refund the money.**" (Bold font for emphasis)

Before this judgment will be concluded, it is apt that the evidence of PW 2 should be understood in the context in which it was presented to the court. On the evidence of an Investigation Police Officer, the Supreme Court stated as follows in the case of Kamila v. State (2018) LPELR-43603(SC):

"Again on the quality of the testimony of PW3 who is the investigation police officer which the appellant's learned counsel called for its discountenance because according to him it is hearsay evidence. Here, I do not share the appellant's counsel's view that the evidence of an IPO amounts to hearsay evidence because as an IPO he narrates to the Court the outcome of his investigation or enquiries or

> what he recovered or discovered in the course of his duty. He must have discovered or recovered some pieces of evidence vital to the commission of the crime which trial Courts normally consider in arriving at a just decision one way or the other. The lower Court was therefore right in refusing to discountenance such evidence adduced or given by PW3." Per SANUSI, J.S.C. (Pp. 22-23, Paras. D-A)

A court is perfectly entitled to convict on the evidence of one witness if his evidence is credible, admissible and it is believed and accepted by the trial court. See Idiok v. State [2006] 12 NWLR (Pt. 993) 1 at 29. The duty of the court is, therefore, to examine the evidence presented by the prosecution to enable the court arrive at a decision whether the prosecutorial standard of proof required has been met and whether the guilt of the defendant has been established given the defence offered by the defendant, who testified for himself. This court finds the evidence of PW 2 cogent, verifiable and believable, which this court believed. The 1st and 2nd defendants were not truthful, as demonstrated above, and this court does not believe the 1st and 2nd defendants.

In conclusion, this court finds and holds as follows:

a. The 1st defendant is found guilty of the offence charged in the first count in the charge and he is hereby convicted accordingly.

b. The 2nd defendant is found guilty of the offence charged in the second count in the charge and he is hereby convicted accordingly.

c. The 1st and 2nd defendants are each convicted of the offence charged in the third count in the charge and each of the 1st and 2nd defendants is convicted accordingly.

d. The 1st defendant is found guilty of the offence charged in the fourth count in the charge and he is hereby convicted accordingly.

e. The 1st defendant is found not guilty of the offence charged in the fifth count in the charge and he is hereby discharged and acquitted, accordingly, in respect of the fifth count.

Bodeadegbehingbe J.

O. A. ADEGBEHINGBE, J.

J U D G E

Date: 18/12/2019

SENTENCE

I have given consideration to the respective submissions made by counsel for the 1st, 2nd defendants for mitigation of sentence and the submission by the prosecutor on the fact that the court should proceed to impose fines where possible. I am of the view that the fact that the 1st defendant has made a refund of the sum of N1.5 million to the coffers of FMC, Owo is an important consideration in passing sentence on the 1st defendant.

This court also notes the fact that both the 1st and 2nd defendants are above middle age in terms of age. However, this court is still mindful of the fact that other public officers must be taught by the outcome of this suit to stay true to their oath of office and fidelity to the need for piety in the discharge of their duties.

The sentences passed on the 1st defendant are as follows:

1. I respect of the first count, the 1st defendant is sentenced to five (5) years imprisonment.

2. In respect of the third count, the 1st defendant is sentenced to five (5) years imprisonment.

3. In respect of the fourth count, the 1st defendant is sentenced to payment of N100, 000.00 (One hundred thousand naira) as fine.

The sentences on imprisonment shall run concurrently in respect of the 1st defendant.

The 2nd defendant is sentenced as follows:

a. On the 2nd count, the 2nd defendant is sentenced to five (5) years imprisonment.

b. On the third count, the 2nd defendant is sentenced to five (5) years imprisonment.

Both sentences shall run concurrently in respect of the 2nd defendant.

Bodeadegbehingbe J.

O. A. ADEGBEHINGBE, J.

J U D G E

Date: 18/12/2019