IN THE COURT OF APPEAL
KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON THE 23RD DAY OF JULY, 2015
BEFORE THEIR LORDSHIPS

UWANI M. ABBA AJI	**JUSTICE, COURT OF APPEAL**
ABDU ABOKI	**JUSTICE, COURT OF APPEAL**
I.O. AKEJU	**JUSTICE, COURT OF APPEAL**

CA/K/499/C/2013

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .... APPELLANT

AND

1. BEN MATAMAKI

2. HON. PATRICK STEPHEN MAIGARI .... RESPONDENTS

JUDGMENT

(DELIVERED BY ISAIAH OLUFEMI AKEJU, JCA)

This appeal is against the judgment of the High Court of Kaduna State holden at Kaduna delivered on 3rd July, 2013 in respect of charge No. **KDH/1/ICPC/2009.**

The two respondents in this appeal were initially charged with one **Ibrahim Gajere** who was dropped therefrom when the 14 Counts charge was amended and substituted with an

amended charge of 15 counts wherein the two respondents were alleged of commission of offences under sections 19 and 26 of the Corrupt Practices And Other Related Offences Act, 2000 (the Act). The first respondent was charged in Counts 1 – 7 while the 2nd respondent was charged in Counts 8 – 14. The two accused persons were alleged jointly in count 15 of conspiracy among themselves and with each other to gratify and or confer corrupt and or unfair advantage upon themselves by agreeing to authorize and did withdraw the sum of One Million Nine Hundred Thousand Naira from the coffers of Kajuru Local Government Council of Kaduna State.

The 1st respondent was solely alleged in Counts 1 – 7 of the charge that he being a public officer, used his position or office as the Chairman Interim Management Committee of Kajuru Local Government Council, Kaduna State to gratify and or confer corrupt and or unfair advantage upon Hon. Patrick Maigari, (the 2nd accused), allegedly a public officer by authorizing the payment of the amounts of N300,000.00 specified in Counts 1, 2 and 3 and N250,000.00 stated in Counts 4, 5, 6 and 7 as security allowance to him which he was not entitled to not being a staff of the Local Government Council.

In Counts 8 – 14 of the charge, the 2nd Respondent solely was alleged of using his position or office being a public officer as a member of Kaduna State House of Assembly representing Kajuru Local Government Council of Kaduna State to gratify and or confer corrupt and or unfair advantage upon himself by receiving the sum of N300,000.00 stated in Counts 8, 9 and 10 and N250,000.00 stated in Counts 11, 12, 13 and 14 respectively as security allowance to which he was not entitled not being a staff of the Local Government Council.

On arraignment at the High Court of Kaduna State, the respondents pleaded not guilty to the various Counts whereupon the appellant as prosecutor called two witnesses at the trial to establish the allegation while the 1st respondent testified as DW1 without calling any additional witness. The 2nd respondent did not adduce oral evidence but called one witness who testified upon a subpoena. Documents were also tendered and admitted as exhibits. After the learned Counsel for the parties had filed and adopted their written addresses, the learned trial judge, Hon. Justice M.T.M. Aliyu in the judgment delivered on 3rd July, 2013 at pages 205 – 221 of the record of appeal found that the offence of Criminal Conspiracy against the two accused persons and the substantive offence had not been established. The learned judge

consequently discharged and acquitted the accused persons who are now the respondents.

As the expression of dissatisfaction with the decision of the High Court of Kaduna State (now called the trial Court), the appellant commenced this appeal through the Notice of Appeal dated 12th day of August, 2013 with three grounds of appeal, which was amended with the leave of this Court by addition of two more grounds making a total of five grounds of appeal as contained in the Amended Notice of Appeal filed on 13/2/14 but deemed filed properly on 26/5/14.

In prosecuting the appeal before this Court, the Appellant's Brief of Argument dated 12th day of February, 2014 and settled by **Oluwasanmi Aiyemowa Esq.,** was filed on 13/2/14 but deemed to have been properly filed on 26/5/14. The learned Counsel formulated two issues for determination from the grounds of appeal filed. The two issues are;

1. ***Whether the learned trial judge was right in finding that the prosecution has failed to establish the ingredients of the offence with which the accused persons were charged in Counts 1 – 14 of the charge.***

2. ***Whether having established the ingredients of the main offence, the offence of conspiracy to commit the substantive offence has not been proved as required.***

In response to the Brief of Argument of the appellant, the respondents separately filed their own briefs. The 1st Respondent's Brief of Argument settled by **Morris Odeh Esq.,** of Counsel filed on 17/11/14 was deemed properly filed on 25/2/15 while the 2nd Respondent's Brief was prepared by **Gabriel Didam Esq.,** filed on 24/2/15 but deemed properly filed on 25/2/15. In his brief of Argument, the learned Counsel for the 1st Respondent raised two issues for determination as follows:-

1. ***Whether the learned trial judge was not right in finding that the prosecution has failed to establish the ingredients of the offence with which the 1st respondent was charged in Counts 1 – 7 and 15 of the charge sheet.***
2. ***Whether the judgment of the lower Court was perverse in any way to warrant a reversal.***

The 2nd Respondent's learned Counsel, Gabriel Didam raised the following as the two issues in this appeal;

1. ***Whether the trial Court rightly defined the terms "Relation" and "Associate"*** as ***envisaged by the ICPC Act 2000.***
2. ***Whether the offence of Criminal Conspiracy under section 26 of the ICPC Act, 2000 was proved by the prosecution.***

At the hearing of the appeal all the parties were represented by their respective learned Counsel who adopted their brief of argument in the appeal. We were urged by the appellant to allow the appeal while each of the respondents urged that the appeal be dismissed.

On the issues for determination, it is noted that the first issue by the appellant deals with the proof of the offence by the appellant against each of the respondents which is the same as the first issue in the 1st respondent's brief and substantially the same as the first issue formulated by the 2nd respondent. Also the second issue by the appellant asking whether the offence of conspiracy to commit the substantive offence has not been proved is the same as the 2nd respondent's issue number two

while the 2nd issue by the 1st respondent can be accommodated under the two issues by the appellant.

I therefore believe that this appeal can be fully determined under the two issues formulated by the appellant and I adopt those issues for the determination of the appeal.

On the first issue, the learned Counsel for the appellant argued that the 2nd respondent was the Hon. Member representing Kajuru Local Government Area Council at the Kaduna State House of Assembly at the relevant period of the alleged offence and PW1 who was the cashier of the Local Government gave evidence that he gave money to the 2nd respondent upon the 1st respondent's approval while the 1st respondent admitted payment of the sums specified in the various Counts of the charge to the 2nd respondent as security allowance, and the 2nd respondent admitted receipt of the money only with the excuse that the speaker of Kaduna State House of Assembly directed that all members of the House be assisted by their respective Local Government Area Council on monthly basis which facts were supported by evidence and were not controverted at the trial.

It was contended by the appellant that there was no dispute that the 1st respondent was a public officer as defined by law

especially the Act under which the respondents were charged i.e. using his public office to confer unlawful advantage upon himself or another who is either another public officer, an associate or a relation as the case may be. The learned Counsel referred to the definition of **"public officer"** under section 2 of the Act as well as the interpretation of **"corruption"** also under the same section of the Act.

Contending that the above facts of payment of money to the 2nd respondent by the 1st respondent who was a public officer were not challenged, the appellant submitted that such unchallenged evidence will not require to be proved; **BENDEL PILGRIMS WELFARE BOARD V. IRAWO (1995) 1 NWLR (Pt. 369) 118.** It was contended also that those facts were not debunked by the 2nd respondent under cross examination, **FBN PLC V. ONKWUGA (2005) 16 NWLR (Pt. 950) 120; OFORLETE V. STATE (2000) 12 NWLR (Pt. 681) 415; ABOGEDE V. STATE (1995) 1 NWLR (Pt. 372) 473;** On the effect of unchallenged evidence, the case of **ADEJUMO V. AYANTEGBE (19989) 3 NWLR (Pt. 110) 417** was cited that the evidence ought to be accepted.

On the duty of the prosecution, it was submitted that the prosecution had satisfied the requirement of the law to establish

the guilt of the respondents in respect of the offence under section 19 of the Act, as the 1st respondent who claimed that the money was budgeted for failed to prove the assertion. The cases of **ADIO V. STATE (1986) 2 NWLR (Pt. 24) 581 and MOHAMMED V. STATE (1997) 11 NWLR (Pt. 528) 339** were relied upon.

On the conflict in evidence of a party the learned Counsel contended that the 2nd respondent had approbated and reprobated as to whether he collected the sums of money alleged which the law does not permit a party to do; **STATE V. AKPABIO (1993) 4 NWLR (Pt. 286) 204; IKE V. STATE (2010) 5 NWLR (Pt. 1186) 41.** It was contended that having accepted that the 1st accused approved the sum of N1,900,000.00 as security allowance to the 2nd accused and that the 2nd accused was not entitled thereto not being a staff of the Local Government, the learned trial judge could not have picked and chosen or made a case for the parties by assisting the parties in their defence; **AKPOKU V. ILOMBU (1998) 8 NWLR (Pt. 561) 281; UDOH V. STATE (1994) 2 NWLR (Pt. 329) 666.**

On the scope and intendment of the Act, it was contended that even if the 2nd respondent was not a public officer, the scope of the individuals covered by the law was not limited to public

officers but extends to relations and associate and a person who could not be liable not being a public officer may be liable if found to be an associate or relation of the conferring authority. It was submitted that the use of the word **"includes"** in section 2 of the Act is meant to expand the meaning of relation; **UTIH V. ONOYIVWE (1999) 1 NWLR (Pt. 1166) 221.**

The learned Counsel submitted that in its duty to interpret statutes or provisions, the Court has developed a tradition of relying on documents of interpretation, such as the dictionary and where the literal rule of interpretation does not meet the purpose of the statute, the Court can resort to other canons of interpretation; **OKEKE V. A.G. ANAMBRA (1992) 1 NWLR (Pt. 215) 60; MANDARA V. A.G. FEDERATION (1984) 1 SCNLR 311;** It was submitted that a Court should interpret a statute in a manner that will ensure that the intention of the legislature or makers of the law is achieved; **TAFIDA V. ABUBAKAR (1992) 3 NWLR (Pt. 230) 511.**

It was submitted that the finding of the learned trial judge was not supported by the evidence before him, and therefore perverse thereby occasioning a miscarriage of justice by going outside the scope of his duty; **AJAYI V. MILITARY ADMINISTRATOR ONDO STATE (1997) 5 NWLR (Pt. 504)**

237. On the duty of Court regarding evidence before it, the case of **STATE V. AKPABIO (1993) 4 NWLR (Pt. 286) 204** was cited and the learned Counsel submitted that the trial judge was bound to properly evaluate the evidence before the Court and make findings based thereon but the trial court failed to do so in the instant case. It was contended that the learned trial judge held that the offence against the respondents under section 19 of the Act was not established by the appellant despite the abundant evidence before the Court; **ABUBAKAR V. YAR'ADUA (2008) 19 NWLR (Pt. 1120) 1.**

It was further submitted that if the 2nd respondent did not qualify as a public officer, he will qualify as both a relation and associate under the use of the word **"or"** by the law makers which makes more people to be liable, and in this case it is in evidence that the two respondents are from the same village which is enough motivation to do something illegal. On his contention that the Court required a purposive approach to the interpretation of statute, the case of **BRAITHWAITE V. A.D.M. (1998) 7 NWLR (Pt. 557) 307** was cited and relied upon.

The learned Counsel argued that the 2nd respondent fits into the definition of an associate, being a public officer holding a public office in trust for the people but has betrayed the public

trust, this fact of being a person answerable to the people makes the 2nd respondent a public officer and an associate of the 1st respondent. The use of the word include in the definition of associate in the Act admits of an expansion in the category of persons who are associates and from the definition of the word in Merriam – Webster Colligate Dictionary, the 1st and 2nd respondents are associates on the ground that they are from the same village or clan, and they are both senior citizens from the same village. We were urged to hold that the finding of the trial Court that the prosecution failed to establish the offence under section 19 of the Act, is perverse; **FBN V. MAYMED CLINICS (1996) 9 NWLR (Pt. 471) 195.**

Further on the argument that the trial Court did not properly evaluate the evidence adduced, the cases of **KALU V. STATE (1993) 3 NWLR (Pt. 279) 20; DOUKPLOLAGHA V. ALAMEIYESIGHA (1999) 6 NWLR (Pt. 607) 502,** were cited and relied upon.

The appellant urged us to hold that the ingredients of the crime were proved and that the conclusion reached by the trial judge was not based on evidence before the Court. We were further urged to re-evaluate the evidence before the trial Court in

the interest of justice; citing the case of **STATE V. AKPABIO (1993) 4 NWLR (Pt. 286) 204.**

On the issue of whether the learned trial judge was right in finding that the prosecution has failed to prove the ingredients of the offence with which the 1st respondent was charged, in Counts 1 – 7 and 15 of the charge sheet, the learned Counsel for the 1st respondent submitted that under section 19 of the Act where the respondents were charged as relating to 1st accused the appellant should establish that; (1)The 1st accused used his office or position to gratify or confer a corrupt or unfair advantage upon himself; (2)The 1st accused used his office or position to gratify or confer a corrupt or unfair advantage upon any relation; (3) The 1st accused used his office or position to gratify or confer a corrupt or unfair advantage upon the 2nd accused who is an associate or public officer.

The learned Counsel submitted that based on section 135 (1) of Evidence Act, 2011, the standard of proof in Criminal cases is beyond reasonable doubt and the burden of proof is heavily on the prosecution, citing the case of **AWOSIKA V. STATE (2011) ALL FWLR (Pt. 560) 1237.**

It was submitted that the appellant must produce evidence leading to the conclusion that 1st and 2nd respondents were public

officers who used their position or office to gratify or confer corrupt or unfair advantage upon themselves or each other; **STEPHEN V. STATE (2011) ALL FWLR (Pt. 562) 1806.** It was also submitted that failure to prove any of these ingredients is fatal to the case of the prosecution; **TANKO V. STATE (2009) ALL FWLR (Pt. 456) 1977.** The learned Counsel contended that while it was agreed at the trial that the 1st respondent was a public officer, the appellant failed to prove that the 2nd respondent was a public officer and that burden was never discharged before the trial Court and even before this Court.

The learned Counsel argued with reliance on section 2 of the Act, section 318 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Interpretation Act that the provisions thereof cannot be overstretched to accommodate the 2nd respondent who was an elected member of the State House of Assembly representing Kajuru Local Government of Kaduna State; **OJUKWU V. YAR'ADUA (2009) ALL FWLR (Pt. 482) 1065.** It was submitted that the appellant failed to prove that the 2nd respondent was a public officer at the time of the offence an ingredient required under Section 19 of the Act.

It was submitted that the appellant also failed to prove that the 2nd respondent was a relation or associate of the 1st

respondent as the evidence given is that the 2nd accused was from the village of the 1st respondent but the appellant attempted to stretch the meaning of relation in Section 2 of the Act that relations include father, mother, child, brother, sister, uncle, aunt and cousins where applicable and their spouses beyond its meaning or intention of the law maker. It was also not proved that the 2nd respondent was an employee or agent of the 1st respondent or his agent, nominee or representative or trustee in any organization managed by the 1st respondent.

The learned Counsel submitted that from the evidence of the witnesses at the trial, the appellant did not disagree with the 1st respondent that there was a standing resolution to pay the 2nd respondent even before the 2nd respondent became the Chairman of the Local Government; that the 1st respondent did not unilaterally take the decision to pay the 2nd respondent, and the decision to continue the payment was a collective one by the Council; that it is the Council and not the 1st respondent that was responsible for any conferment of nay corrupt or unfair advantage on the 2nd respondent (if any was conferred).

It was contended that the learned trial judge was right to have held that the appellant failed to establish the ingredients of

the substantive offence against the 1st respondent beyond reasonable doubt.

Arguing under his second issue for determination which is whether the decision of the trial Court was perverse, the learned Counsel submitted that it is the duty of the trial Court to receive, evaluate and ascribe probative value to evidence before it; **HASKE V. MAGAJI (2009) ALL FWLR (Pt. 461) 887; AKAWO V. STATE (2011) ALL FWLR 9Pt. 597) 624.** It was the contention of the learned Counsel that from the evidence of the witnesses, there was nothing upon which the trial Court could have convicted the 1st respondent for the alleged offence since the appellant did not place such evidence before the trial Court.

The learned Counsel submitted that this Court cannot interfere or substitute its views for that of the trial Court that saw the witnesses and heard them unless the appellant can establish that trial Court's findings are perverse which has not been shown in this case. It was submitted that though the learned trial judge had a duty to act on unchallenged evidence, such evidence must not be incredible and must support the case; **TANKO V. NONGHA (2005) ALL FWLR (Pt. 279) 131.** It was also submitted that the appellant in the instant case has exaggerated the evidence before the trial Court thereby rendering same an

affront to reason and intelligence; **FATUNBI V. OLANLOYE (2004) 6 SCNJ** (incomplete).

The learned Counsel submitted that the duty of the prosecution is to establish the guilt of the 1st respondent beyond reasonable doubt and not to secure conviction at all cost; **TANKO V. STATE (2009) ALL FWLR (Pt. 456) 1977; OMOPUPA V. STATE (2008) ALL FWLR (Pt. 455) 1648; AWOSIKA V. STATE (2011) ALL FWLR (Pt. 560) 1237.** It was submitted that the judgment of the trial Court was fair, standard and need no reversal in view of the evidence adduced in the case; **SHAMAKI V. BABA (2000) FWLR (Pt. 26) 1878; OKULATE V. AWOSANYA (2000) FWLR (Pt. 25) 1666.**

On duty of Court in interpreting statutes, it was submitted that where the wordings of a statute are clear and unambiguous, the Court does not need to seek further interpretation outside the statute itself; **HASKE V. MAGAJI (2009) ALL FWLR (Pt. 461) 887.**

On the power of the Court of Appeal to convict, it was submitted that the appellate Court can vary the decision of the trial only where the judgment of the trial Court is perverse; **OSUJI V. EKEOCHA (2009) 1 ALL FWLR (Pt. 490) 614.**

The 2nd respondent had, in the Brief of Argument filed on 24/2/15 but deemed filed on 25/2/15 formulated two issues for determination which I had already set out in this judgment.

I need to state however that the 2nd respondent had prior to setting out the issues contended in paragraph 2 of the brief that the two issues framed by the appellant either do not arise from the grounds of appeal or not related thereto. The learned Counsel contended also that no issue has been distilled from grounds 1, 2, 3 and 4 because the two issues raised by the appellant do not flow from those grounds of appeal. The learned Counsel submitted that where an appellant fails to formulate issue from any ground of appeal, that ground is deemed abandoned and consequently grounds 1, 2, 3 and 4 should be deemed abandoned and struck out. Reference was made to the cases of **RASHEED OLAIYA V. THE STATE (2010) ALL FWLR (Pt. 514) 1; WAYO V. JSC BENUE STATE (2006) ALL FWLR (Pt. 302) 66 and DAUDA GAMU V. SAMU HAUSA (2006) ALL FWLR (Pt. 293) 378.**

As further contended by the learned Counsel, the first issue by the appellant does not flow from the grounds and any issue not tied to a ground of appeal goes to no issue; **AUGUSTINE ABBA V. SPDCNL (2013) ALL FWLR (Pt. 708) 812.** It was

argued that specific finding of the trial Court was not appealed against. It was submitted that a finding of a Lower Court not appealed against remains valid subsisting and binding citing the cases of **TOMTEE NIGERIA LTD. V. FEDERAL HOUSING AUTHORITY (2010) ALL FWLR (Pt. 509) 400; MAOBISON INTER – LINK ASSOCIATED LTD. V. UIC PLC (2013) ALL FWLR (Pt. 694) 52; C.C.T.C. & CS LTD. V. BASSEY EKPO (2008) ALL FWLR (Pt. 418) 198; PRINCE (DR.) S.A. ONAFOWOKAN V. WEMA BANK PLC (2011) ALL FWLR (Pt. 585) 201.** It was also contended that the finding of the Lower Court that the allegation of corrupt practices in the charge was not proved had not been challenged by any ground of appeal and that the second issue by the appellant can therefore not stand.

The 2nd respondent argued on issue 1 in his own brief of argument that the Act seeks to punish a public officer who uses his office to enrich himself, another public officer, relation or associate; and **"relation"** as defined in section2 of the Act means a person related to the public officer by blood and spouses of such blood relation and the word **"include"** can only limit the word to blood relations or their spouses. It was submitted that the contention of the appellant that the respondents were relations or associates has no legal basis.

The issue being considered here is whether the prosecution established the ingredients of the offences with which the two respondents were charged at the trial Court.

It has become settled through a plethoral of judicial decisions that in all Criminal cases the burden is on the prosecution that allege commission of the offence not only to prove the charge but to prove same beyond reasonable doubt before a conviction can be secured.

This position of the law is buttressed by the provisions of section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that a person charged with commission of a crime is presumed innocent until proved guilty and section 135 (1) of the Evidence Act, 2011 that when the commission of a crime is directly in issue in any proceedings civil or criminal, it must be proved beyond reasonable doubt. This burden remains on the prosecution throughout the trial and does not shift, save in recognized instances. See **SALIMONU V. THE STATE (1972) 2 SC 14; NWANKWOALA V. STATE (2006) 14 NWLR (PT. 1000) 663; R.V. LAWRENCE (1932) 11 NLR 6; AMALA V. STATE (2004) 12 NWLR (Pt. 888) 520; KALU V. THE STATE (1988) 10 – 11 SC 19; OGUNDIYAN V.**

STATE (1991) 3 NWLR (Pt. 191) 519; BAKARE V. STATE (1987) 1 NWLR (Pt. 52) 579.

The two respondents were charged for offences of corrupt practices under section 19 of the Act and conspiracy under Section 26 thereof. I reproduce section 19 of the Act thus;

> ***"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 5 years without option of fine"***

From the foregoing provision, it is obvious that the section has its focus on "any public officer" who uses his position or office to confer any advantage or to gratify corruptly or unfairly "any relation" or "associate" of himself or "any other public officer". After reviewing the various ingredients of the offence as variously proffered by the learned Counsel in the case, the learned trial judge at page 209 of the record of appeal, stated the ingredients of the offence as follows:-

> ***"It must first be established that the two accused persons are public officers within the***

definition of section 2 of the Act. It must also be proved beyond reasonable doubt that the two accused persons used their position or office as public officers to gratify or confer corrupt or unfair advantage upon themselves or one other".

It is quite obvious that the above position of the learned trail judge on the ingredients do not exhaustively cover the provision of section 19 having excluded the gratification or conferment of advantage on the relations or associate of the public officer. Thus the prosecution may succeed where he is able to establish that the person so gratified or beneficiary of the corrupt or unfair advantage was or is a relation or associate of the public officer, even where it has not succeeded in proving that the beneficiary was a public officer. Put succinctly, the prosecution has the duty to prove that the accused person who is a public officer has used his position to gratify or confer corrupt or unfair advantage on his relation or associate or another public officer.

In the effort to establish these ingredients the prosecution called two witnesses who testified as PW1 and PW2 respectively.

The PW1, **Ibrahim Gajere** was himself a staff of Treasury Department of Kajuru Local Government from 1999 – 2005. He stated that the 2nd respondent who was not a staff of the Local

Government collected the various sums stated in the charge though he did not sign the vouchers prepared for the payment of the money which he paid to the 2nd respondent in cash. This witness stated that the payment of money to the 2nd accused had started before the 1st respondent assumed duty as Chairman of the Local Government in September, 2003 but without record until the 1st respondent refused to make payment without supporting documents for the sake of transparency and there was Council resolution for the payments made while the 1st respondent merely endorsed the resolution of the Council.

The PW2, **Samuel Ladan** was then the Head of Adamawa Zonal office of the ICPC but formerly an investigator with ICPC since 2002 with the duty to carry out investigation of petitions assigned to him and testify in cases that go to Court. He said he knew the two respondents in the course of his investigation of a petition against the 2nd respondent, a member of Kaduna State House of Assembly elected to represent Kajuru Local Government of the State. He said he obtained statements from the two respondents which were admitted as exhibits 1 and 2 respectively. He tendered some other documents he obtained in the process of investigation and they were also admitted as exhibits.

This witness stated at page 193 of the record of appeal under Cross examination that;

> ***"I only investigate what I was asked to investigate and I was not asked to investigate whether in other LGS such payments are made to members of House of Assembly. The minute of the 1st accused on 2nd page of Exhibit 4A is reasonable step taken by him".***

He stated further that;

> ***"I did not investigate the House of Assembly whether these payments were in order. I also did not go round the other Local Governments to investigate whether they also pay such amount, if it was a policy of the Kaduna State Government to make such payments..."***

Under further cross examination, the PW2 revealed that the 2nd respondent was an elected member of the House of Assembly (Kaduna State) from 1999 - 2007. He stated that he did not invite any other member of the House of Assembly in Kaduna State to find out whether every member of the House was being paid the money now in contention, as claimed by the 1st respondent on page 3 of exhibit 1, and he did not investigate the

statement by the 1st respondent on page 4 of the same exhibit about the Speaker of the House of Assembly and the DPM.

The 1st respondent was the first witness for the defence who testified as DW1. He was the Permanent Secretary Bureau for Religious Affairs (Christian Matters) but was sworn in as Chairman Interim Management Committee of kajuru Local Government on 15/9/2009. He said before he came into office a resolution had been passed by the Council of the Local Government to assist the 2nd respondent as confirmed to him on record by the Chief Admin. Officer of the Local Government, **Mr. Philip Anga** who also confirmed that the amount being paid was N300,000.00 but all the Chairmen of Local Government were later directed by the Speaker of the State House of Assembly to pay a uniform amount of N250,000.00 which was the amount the 2nd respondent was being paid up to the time he was redeployed. He stated that before he started payment of N250,000.00 he secured the Resolution of the Council of the Local Government which is the highest decision making body in the Local Government. He said the money paid to the 2nd respondent was budgeted and he did not derive any benefit therefrom.

The DW2, Salami Ganga was on subpoena to produce proceedings in KMD/193DC/2007 the Certified True Copy of which

he tendered and was admitted as exhibit 7. He was the Senior Registrar II at the Chief Magistrate II Court, Kakuri.

In the judgment of the trial Court, the learned judge found no difficulty based on the evidence of the 1st respondent himself and those of other witnesses corroborating the evidence, as well as the provisions of sections 2 of the Act and section 318 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), that the 1st respondent was a public officer. The learned trial judge however held on page 216 of the record of appeal in respect of the 2nd respondent that "I hold the view that the 2nd accused who at all times material to the charge in this case was elected member of the House of Assembly representing Kajuru Local Government is not a public officer within the meaning of section 2 of the Act and section 318 (1) of the Constitution. I so hold".

Thus the learned trial judge decided that the first respondent could not be guilty of using his position to gratify another public officer as an ingredient of the offence under section 19 of the Corrupt Practice And Other Related Offences Act, 2000. Much as this decision of the trial Court has affected the case of the appellant at the trial Court, it is noteworthy that there is no ground of appeal against this finding filed by the

appellant. For ease of reference and clarity, I reproduce the Grounds of Appeal in the appellant's Amended Notice of Appeal filed on 13/2/14 but deemed filed on 26/5/14 upon which the appellant has contested this appeal. I reproduce the grounds without particulars as follows;

"GROUND ONE

The learned trial judge erred in law when he discharged and acquitted the accused persons on the wrong and misconceived interpretation of the statutorily defined word "Relation" when he held that "to argue that the word in the context in which it is used in the section imports the whole clan and all kinsmen seems to me absurd" and this occasioned a miscarriage of justice.

GROUND TWO

The learned trial judge erred in law when he held as follows: "The fact that the 2nd Accused person will call the 1st accused demanding for payments of "his allowance/monetary assistance" does not make the 2nd accused an associate of the 1st accused within the meaning of section 2 of the Act, when the facts of the

case accords with the intention of the law and thereby failed to do justice to this case.

GROUND THREE

The learned trial judge erred in law when he held as follows: : "to show that the 2nd accused person is not his Associate, 1st accused person stated that when the 2nd accused came with his demand for payment of the security allowance, he had to confirm from the director of personnel and insisted on documenting the transaction. He also sought the approval of the Local Government Council", but refused, failed and neglected to apply the law to established facts leading to the wrong acquittal of the accused persons.

GROUND FOUR

The learned trial judge erred in law when he held that: "The prosecution had not led any evidence to show that the 2nd accused person is a relation of the 1st accused person", when there are evidence on the records of the Court as to the relationship of the 1st and 2nd accused person and this occasioned a grave miscarriage of justice.

GROUND FIVE

The learned trial judge erred in law when he held that because the first accused person: "first of all sought for and obtained the permission of the Local Government Council before paying that amounts in the charge. This in my opinion clearly shows that there was no meeting of minds of the two accused persons", when evidence on the record of the Court shows that there was meeting of mind between the 1st and 2nd accused persons and this occasioned a grave miscarriage of justice."

Since the appellant has not found any reason to appeal against this finding of the trial Court that the second respondent, a member of the House of Assembly of Kaduna State who was paid and maintained with public fund was not a public officer, the view of the law is that the finding has been accepted by the appellant, and same remains valid and binding on the parties and consequently does not form an issue in this appeal. The law is that a finding or decision not appealed against is binding on the parties. See **SPD NIG. LTD V. X.M. FED LTD. (2006) 16 NWLR (Pt. 1004) 189; ADEJOBI V. STATE (2011) VOL. 6 (Pt. 1) MJSC 101; OMNIA (NIG.) LTD. V. DYKTRADE LTD.**

(2007) 15 NWLR (Pt. 1058) 576; ODJEVWEDJE V. ECHANOKPE (1987) 3 SC 47.

With the issue of the 2nd respondent as public officer having not been placed before this Court as an appellate Court, we are left with finding whether the 2nd respondent was a relation or associate of the 1st respondent so as to make either or both of them guilty of the offence. Now from the evidence before the Court and the interpretation of those words, can the 2nd respondent be adjudged as the relation or associate of the 1st respondent? The piece of evidence that has directly touched on the relationship of the respondents apart from both being government workers is what the 1st respondent stated at page 196 of the record of appeal that **"the 2nd accused is from my village. He is not my associate".**

In the effort to interprete these words, it is necessary to state here that it has been the position of the law that object of interpretation is to find out the intention of the law makers as derivable from the language of the statute. See **IFEZUE V. MBADUGHA (1984) 1 SCNLR 427; LAWAL V. G.B. OLIVANT (NIG.) LTD. (1972) 3 SC 124.** It is a general rule of interpretation of statutes that a Court should not read into a statute words which are not provided therein or thereby implied.

Thus it is the duty of the Court in interpreting a statute to apply and give effect to the clear, plain and unambiguous words used in the statute without seeking any extrinsic aid. The Court has a duty to give the words of the statute their intended meaning and effect. See **ADEYEMO V. GOVERNOR OF LAGOS STATE (1972) 2 SC 45; ATTORNEY-GENERAL ONDO STATE V. ATTORNEY GENERAL EKITI STATE (2001) 17 NWLR (Pt. 743) 706. In Buhari V. Obasanjo (2005) FWLR (Pt. 273) 1 at 189, PATS-ACHOLONU JSC** said, *"I would go even further to postulate that where the words of the statute appear shrouded in a clock of cloudiness making it difficult to ascertain on the surface what it has in mind, it is the duty of the Court to attempt to give a meaning that will resonate with sense, order and system so as to make it workable and real".*

In section 2 of the Act, it is stated that the word relation unless the context otherwise requires includes father, mother, child, brother, sister, uncle aunt cousins where applicable and their spouses while **"associate"** in relation to a person includes any person who is an employee, agent, nominee or representative, trustee, firm or incorporated company known to act subject to the directives or influence of such person.

In the judgment of this Court in **HASKE V. MAGAJI (2008) LPELR – CA/K/EP/SHA/72/07,** it was held that where a word has been legally defined in any statute or enactment, the ordinary or popular meaning of such word will give way and any definition of the word in any other enactment or legislation can also not be imported into the enactment in which the word has been defined.

Upon my calm study and understanding of the meaning ascribed to the two words in section 2 of the Act read together with other provisions thereof it does not appear to me that they or any of them will apply to a public officer merely on the basis that the other person comes from the same village with him or that every member of the village will be an associate or relation of the public officer.

I had in the course of this judgment set out the evidence of the 1st respondent as the DW1 in his defence that the payment of money to the 2nd respondent had been on ground before he assumed office as the Chairman of the Council but not documented; that he acted on the directive or instruction of the Speaker of Kaduna State House of Assembly to all the Chairmen of Local Governments in reducing the amount paid to 2nd respondent to N250,000.00 which was the uniform amount, and

that he conveyed a meeting of the Council and a resolution was passed before he continued paying the N250,000.00. All these facts which are substantially intandem with the evidence of the first prosecution witness were said not to have been investigated according to the PW2. The duty of the prosecution to prove beyond reasonable doubt covers every spectrum of the case and includes the duty to investigate and demolish any defence put up by the accused person failing which doubt must have been created and the case has not been proved.

I agree with the respondents that the crime alleged against the 1st respondent in Counts 1 – 7 and against the 2nd respondent in Counts 8 – 14 of the charge were not proved beyond reasonable doubt and I so hold.

I resolve this issue against the appellant.

Count 15 of the charge states as follows;

> **"That you, Ben Mataimaki (M) and Hon. Patrick Stephen Maigari (M) sometime between September 2003 to March 2004 in Kaduna State within the jurisdiction of this Court, and being Public officers in the Course of your duties, conspired among yourselves by agreeing to authorize and did withdraw the sum of**

N1,900,000.00 (One Million Nine Hundred, Thousand Naira) from the coffers of Kajuru Local Government Council, Kaduna State and thereby committed an offence contrary to section 19 of the Corrupt Practices And Other related offences Act, 2000".

"Section 26 (1) of the Act provides that; Any person who -

(a) **attempts to commit any offence under this Act.**

(b) **Does any act preparatory to or in furtherance of the commission of any offence under this Act, or**

(c) **Abets or is engaged in a Criminal conspiracy to commit any offence under this Act;**

(d) **Commits any offence under this Act, shall be guilty of an offence and shall on conviction be liable to the punishment provided for such offence".**

The learned Counsel for the appellant relied on the case of **PARICK NJOVENS & ORS V. THE STATE (1973) 8 NSCC 257** and argued that there is evidence that the 2nd

respondent knew the 1st respondent, and that 2nd respondent asked for money from the 1st respondent which the 1st respondent paid to the 2nd respondent and that based on the evidence of the 1st respondent alone, the allegation of conspiracy was proved; **ABOGEDE V. STATE (1995) 1 NWLR (Pt. 372) 473; ATANO V. A.G. (1988) 2 NWLR (Pt. 75) 201** were cited in support of the contention that conspiracy as an offence is separate and different from the offence committed in furtherance thereof.

It was submitted that the proof of conspiracy is a matter of inference; **ERIM V. STATE (1994) 5 NWLR (Pt. 346) 522; BALOGUN V. A.G. OGUN STATE (2002) 6 NWLR (Pt. 763) 512; AROGUNDADE V. STATE (2009) 6 NWLR (Pt. 1136) 165.** It was submitted also on the authority of **PARICK NJOVENS V. STATE (Supra)** that it is not necessary to prove that the conspirators were seen together and they need not to have started the conspiracy at the same time so long as it is started by one person and joined by another at a later stage.

The 1st respondent's Counsel argued that the offence of conspiracy must be proved independently by cogent and direct evidence though the Court is at liberty to infer

conspiracy where there is verifiable evidence; **JUA V. STATE 92008) ALL FWLR (Pt. 440) 766.** The learned Counsel contended that the evidence on record does not warrant conviction for the offence of conspiracy.

Conspiracy is the offence committed when two (or more) persons agree to carry out an illegal act or to do an act which is not itself illegal, in an illegal manner. The offence of conspiracy is complete upon proof of the agreement and it is not necessary to prove that the substantive or actual offence has been committed. See **OBIAKO V. THE STATE (2002) 10 NWLR (Pt. 776) 612. In OSETOLA V. THE STATE (2012) VOL. 6 – 7 (Pt. 11) MJSC 41,** it was held per **ARIWOOLA JSC** at page 64 that;

> **"First and foremost I must state that the proper approach to an indictment containing conspiracy charge and substantive charges is to deal with the latter, that is, the substantive charges first and then proceed to see how far the conspiracy count has been made out in answer to the fate of the charge of conspiracy.**

Conspiracy is an agreement between two or more persons to do an unlawful act. Failure to prove a substantive offence does not make conviction for conspiracy inappropriate; as it is a separate and distinct offence, independent of the actual offence conspired to commit".

It has been held that the offence of conspiracy is complete upon an agreement by the conspirators which in most cases is inferred or presumed. See **OSUAGWU V. STATE (2013) 1 MJSC (Pt. 11) 130** where it was further held per **RHODES – VIVOUR JSC** at page 161 that *"In all cases of conspiracy, the Court must be satisfied with evidence of complicity of the accused person in the offence".*

The essential ingredient of the offence of conspiracy which the prosecution is required to establish so as to secure the conviction is an agreement of the accused persons to carry out a criminal purpose or a lawful act by an unlawful means. See **ABACHA V. THE STATE 11 NSCQR 345; R. V. ADEBANJO 91935) 2 WACA 315.**

In the instant case the scenario as gathered from the evidence on record which I had reviewed earlier is that the PW1,

the prosecutor's own witness stated that the payment made to the 2nd respondent had been on before the 1st respondent became the Chairman of the Local Government, and that it was the first respondent that insisted on having documentary record of the payment while the 1st respondent himself said though he gave authority for the payment of the alleged amount, he acted on the directive of the Speaker of Kaduna State House of Assembly and after securing the resolution of Council of Kajuru Local Government. In all these, there is no role that the 2nd respondent played nor was there any agreement between the two respondents proved or inferable, moreso that though authorized by 1st respondent after himself had secured authority, the payment was made directly by the PW1.

The evidence on record in this case does not show any agreement or meeting of the minds of the two respondents or the facts from which conspiracy may be inferred, and I hold that the offence of conspiracy has not been established by the prosecution in this case.

I resolve this issue against the appellant.

Having resolved the two issues against the appellant, the proper conclusion is that the appeal cannot stand. It has

collapsed and should be dismissed. I dismiss the appeal accordingly and affirm the judgment of the High Court of Kaduna State delivered by M.T.M. Aliyu J. on 3/7/2013.

ISAIAH OLUFEMI AKEJU
JUSTICE, COURT OF APPEAL.

Counsel:
Oluwasanmi Aiyemowa Esq. for Appellant.

Morris Odeh Esq. for1st Respondent.

Gabriel Didam Esq. for 2nd Respondent.

CA/K/499/2013

JUDGMENT

(DELIVERED BY UWANI MUSA ABBA AJI, JCA)

I have read before now the draft of the lead judgment of my learned brother, I.O. Akeju, JCA just delivered.

My learned brother painstakingly considered the issues canvassed in this appeal and I agree with the reasoning and conclusions arrived at by my learned brother which I adopt as mine that the appeal lacks merit. I too for the reasons therein stated in the lead judgment, dismiss this appeal.

Appeal dismissed.

UWANI MUSA ABBA AJI,
JUSTICE, COURT OF APPEAL

CA/K/499/2013
JUDGMENT

(DELIVERED BY ABDU ABOKI, JCA)

I have the advantage of reading the judgment of my learned brother **ISAIAH OLUFEMI AKEJU, JCA,** and I agree with the reasoning and conclusions reached that the appeal lacks merit. I too affirm the judgment of the High Court of Kaduna State delivered on 3rd July, 2013 by M. T. M. Aliyu J.

ABDU ABOKI,
JUSTICE, COURT OF APPEAL