

IN THE COURT OF APPEAL, NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

ON FRIDAY THE 29TH DAY OF MARCH, 2019
BEFORE THEIR LORDSHIPS:

<u>JIMI OLUKAYODE BADA</u>	- <u>JUSTICE, COURT OF APPEAL</u>
<u>HARUNA SIMON TSAMMANI</u>	- <u>JUSTICE, COURT OF APPEAL</u>
<u>FOLASADE AYODEJI OJO</u>	- <u>JUSTICE, COURT OF APPEAL</u>

APPEAL NO: CA/IB/168C/2018

BETWEEN:

YUSUF TEMILADE APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA RESPONDENT

JUDGMENT

(DELIVERED BY JIMI OLUKAYODE BADA, JCA)

This is an appeal against the Judgment of High Court of Ogun State, Abeokuta Judicial Division, in CHARGE NO:- AB/ICPC/01/2015 BETWEEN:- FEDERAL REPUBLIC OF NIGERIA VS. (1) ADEYEMI ALABA SAMUEL, (2) AMULUDUN TOSIN, (3) YUSUF TEMILADE delivered on the 13th day of June, 2017.

Briefly, the facts of the case are that the Respondent by an amended information dated 18/5/2016 and filed on 31/5/2016 at lower Court initiated against the Appellant as 3rd Defendant along with the other two Defendants (Adeyemi Alaba Samuel; Amuludun Tosin) a 7 counts charge of conspiracy contrary to Section 26(i)(c); punishable under Section 19 of the Corrupt Practice and Other Related Offences Act 2000. Using Position to confer unfair advantage upon a Public Officer contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act 2000 and stealing contrary to Section 388 and Punishable under Section 390 of the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 2004.

The plea of the Appellant and the other two accused persons were taken at the lower Court and they pleaded not guilty. The Prosecution in proving its case against the Appellant and the other accused persons called 3 witnesses and tendered 9 Exhibits and annexures (Exhibits, A, B, C, D, E, H, J, K, L, P and P1) while the Defence tendered two Exhibits (Exhibits F and G) through PW1 during Cross Examination and 6 Exhibits (Exhibits M, N, O, Q, R, and S) in their defence through DW1 and DW3.

The learned trial Judge on the 13th day of June 2017 delivered Judgment wherein the three Defendants (Appellant inclusive) were convicted on counts 1, 2, 3, 5 and 7 and sentenced them to (5) five years imprisonment, sentences to run concurrently.

The Appellant who is dissatisfied with the Judgment of the lower Court appealed to this Court.

The learned Counsel for the Appellant formulated two issues for the determination of the appeal. The said issues are reproduced as follows:

- (1) Whether the Appellant acting as the secretary of Non-Academic Staff Union of Tai Solarin College of Education, Omu-Ijebu is a Public Officer in that capacity. (Distilled from Ground 1).
- (2) Whether the Prosecution has proved its case against the Appellant beyond reasonable doubt. (Distilled from Ground 2).

The Respondent also adopted the two issues raised by the Appellant for the determination of the appeal.

At the hearing of this appeal on 6/2/2019, the learned Counsel for the Appellant stated that the appeal is against the Judgment of Ogun State High Court delivered on

13/6/2017. The Notice of Appeal was filed on 20/7/2017. Leave of Court was granted to the Appellant to transmit record of appeal which was deemed as properly transmitted on 8/11/18.

The Appellant's brief was filed on 7/11/18 but deemed as properly filed on 6/2/2019.

He adopted the said brief and relied on it as his argument in urging that the appeal be allowed.

On the other hand, the learned Counsel for the Respondent referred to the Respondent's Brief of Argument filed on 10/1/2019 and deemed as properly filed on 14/1/2019. The said Respondent's Brief of Argument was further deemed as properly filed on 6/2/2019.

Learned Counsel for the Respondent adopted the said Respondent's brief and relied on it as his argument in urging that this appeal be dismissed.

The learned Counsel for the Respondent has adopted the two issues formulated on behalf of the Appellant for the determination of this appeal. I will therefore rely on the said two issues.

ISSUE NO 1

"Whether the Appellant acting as the Secretary of Non-Academic Staff Union of Tai Solarin College of Education, Omu-

Ijebu is a "Public Officer" in that capacity" (Distilled from Ground 1).

The learned Counsel for the Appellant referred to Section 19 of the Corrupt Practices and Other Related Offences Act 2000.

He posed the question:-

Who is a Public Officer?

He referred to the definition of a Public Officer given in Section 2 of Corrupt Practices and Other Related Offences Act 2000. Learned Counsel for the Appellant also relied on the case of:-

REGISTERED TRUSTEES OF THE PLANNED PARENTHOOD FEDERATION OF NIGERIA VS. DR. JIMMY SHOGBOLA (2004) 11 NWLR PART 883 PAGE 1.

He also referred to the definition of Public Service as given by Section 318 1(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), and the case of:-
PROFESSOR MVENDAGA JIBO VS. MINISTRY OF EDUCATION AND 11 OTHERS (2016) LPELR-40616 (CA).

It was conceded by the Appellant that from the definition of Public Officer that the Appellant is a Public Officer by virtue of her being member of Staff of Tai Solarin College of Education Omu-Ijebu, which is a State Government Institution. But that from the evidence

presented that the issues complained of in this matter all occurred by virtue of the activities of the Appellant as an executive member of NASU, which is not a Public Institution. NASU is strictly a voluntary organization for the interest of its members only.

It was submitted on behalf of the Appellant that the Appellant acting as Secretary of (NASU) Non-Academic Staff Union of Tai Solarin College of Education (TASCE) Omu-Ijebu is not "Public Officer".

The learned Counsel for the Appellant referred to the decision of the lower Court where it was held that the Appellant as member and staff of NASU Tai Solarin College of Education is a Public Officer within the meaning of Section 2 of the Corrupt Practices and Other Related Offences Act 2000.

Learned Counsel for the Appellant submitted that the decision of the trial Judge is a misconception of law because,

- (i) NASU is not a governmental organization. It is a voluntary organization opened to all interested Non-Academic Staff of Tai Solarin College of Education (TASCE). The fact that the union members are all employees of the Ogun State Government; working at Tai Solarin

College of Education does not automatically make NASU a governmental organization.

- (ii) Officials of NASU are not appointed by the Government. It is members of the union that elect and appoint their officials. The appointed officials are however expected to protect the interest of their members only and not that of the general public interest.
- (iii) That the alleged wrong of the Appellant is basically against NASU and its members and not Tai Solarin College of Education (TASCE) which is owned and controlled by the Ogun State Government.

It was contended on behalf of the Appellant that NASU is not an organ of the Federal, State nor the Local Government established by law through whom any of the tiers of government carries out its function.

The learned Counsel for the Appellant submitted that contrary to the view of the learned trial Judge, the activities of the Appellant as the Acting Secretary of the NASU of Tai Solarin College of Education, Omu-Ijebu is purely outside the scope of a Public Officer as defined under Section 2 of the Corrupt Practices and Other Related Offences Act 2000.

He relied heavily on the case of:- AGBOROH VS. WAEC (2016) LPELR-40974 (CA).

It was finally submitted that since NASU Officials cannot benefit from the Provisions of the Public Officers Protection Act, therefore NASU Official i.e. the Appellant cannot be seen as a Public Officer.

In his response to the submission of Counsel for the Appellant, the learned Counsel for the Respondent referred to the definition of a "Public Officer" and "An Official" as stated in **Section 2 of the ICPC Act 2000**. He also referred to the evidence of PW1, PW3, DW1, DW3 and the concession that the Appellant is a Public Officer by learned Counsel for the Appellant before turning round to argue that the issues complained of in this matter all occurred by virtue of the activities of the Appellant as an executive member of NASU which he stated is not a Public Institution.

The learned Counsel for the Respondent submitted that the Appellant's Counsel stretched technicality too far. He commended this Court to look at the reasoning of the trial Judge contained on **pages 382-384** of the Record of Appeal.

Learned Counsel for the Respondent also urged this Court to distinguish the facts of the case of **AGBOROH VS. WAEC (Supra)** relied upon by the Appellant's Counsel.

He finally urged this Court to find and hold that the Appellant is a Public Officer.

RESOLUTION

In Section 2 of the ICPC Act 2000 "Public Officer" is defined as follows:-

"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 Magistrates, Area Court or Customary Courts or Tribunals.

"An Official" is also defined in Section 2 of the ICPC Act 2000 thus:-

"An Official means any director, functionary, Officer, agent, servant privy or employee serving in any capacity whatsoever in the Public Service or other Public body, or in any Private Organization, Corporate body, political party, institution or other employment whether under a contract of service or contract for services or otherwise and whether in an Executive capacity or not."

In proof of its case against the Appellant, the Respondent called **Mr. Ifeanyi Obialor (PW1)** who testified that the Appellant is a Non-Academic Staff of Tai Solarin College of Education, Omu-Ijebu, Ogun State. The said tertiary institution is owned wholly by the Ogun State Government.

The Appellant herself testified before the lower Court thus:-

**“My name is Temilade Yusuf. I am a staff of Tai Solarin College of Education, Omu-Ijebu.....
I was employed by Tai Solarin College in August 2005. I was employed as a non-teaching staff. (See page 300 of the record of appeal).**

It would be observed at this point that the evidence of the Appellant herself corroborated the evidence of **PW1 Mr. Ifeanyi Obialor** that the Appellant is a Public Officer in line with definition of a Public Officer as given in **Section 2** of the **Corrupt Practices and Other Related Offences Act 2000**.

The **PW1** also testified that the Appellant as a Non-Academic Staff of the Tai Solarin College of Education was a **NASU Union Executive** holding the position of **Acting Secretary of the Non-Academic Staff Union of Educational and Associated Institutions**.

The PW3 Dr. Abiodun Ojo, the Provost of the college corroborated the evidence of PW1 and DW1 and he confirmed that the Appellant and the other two people that stood trial at the lower Court are staff of the college and executives of the NASU Union of the college. The Appellant and the other two Defendants at the lower Court corroborated the evidence above in their statements Exhibits C & C1, D & D1 and E & E1.

The learned Counsel for the Appellant in paragraph 4.7 of the Appellant's Brief of Argument conceded that the Appellant is a Public Officer by virtue of her being a member of staff of Tai Solarin College of Education which is a State Government Institution but he contended that by virtue of the activities of the Appellant as an executive member of NASU which is not a public institution but strictly a voluntary organization is for the interest of its members only. He concluded that in view of the foregoing Appellant is not a Public Officer.

The learned Counsel for the Appellant relied heavily on the case of:-

AGBOROH VS. WAEC (2016) LPELR-40974 (CA).

It is my view that the facts, issues and the legal principles raised in this appeal under consideration is

axiomatically different from those in the case relied upon by Counsel for the Appellant. Agboroh's case dealt with application of Public Officers Protection Act whereas this present case is criminal in nature dealing with abuse of office and financial impropriety contrary to the Provisions of Corrupt Practices and Other Related Offences Act 2000.

Also membership of Non-Academic Staff Union of Educational and Associated Institution in Tai Solarin College of Education, Omu-Ijebu are inextricably tied to their employments as Non-Academic Staff of the Tai Solarin College of Education by virtue of which they are Public Officers.

Also the loan in question was guaranteed by the College Management in respect of its staff because they are Public Officers. The Appellant was convicted not exclusively because of union activities but a careful look at the loan in issue which resulted in the trial and conviction at the lower Court would show that the loan application, approval, disbursement and repayment were closely knit around the college management.

At this stage, I agree with the submission of the learned Counsel for the Respondent that Counsel for the Appellant stretched technicality too far in his submission on this issue.

The learned trial Judge in his Judgment stated among others that:-

“Mr. Uthman himself has rightly conceded, the defendants as staff of Tai Solarin College of Education (TASCE) are public officers, because the institution is fully owned by the Government of Ogun State. By Rule 1(1)(A) of NASU Constitution, admitted as Exhibit Q, they are members and officers of NASU by virtue of being staff of Tai Solarin College of Education (TASCE). Their status as public officers in Tai Solarin College of Education did not cease to be, when they became members and officers of NASU, but remained. Indeed, should they cease to be staff of TASCE, they would no longer have the locus to be members and officers of NASU, Tai Solarin College of Education (TASCE) chapter. Indeed, in my humble view, it would amount to standing logic on its head, to say in one breadth that they are public officers as staff of Tai Solarin College of Education (TASCE), and in another, that they are not, as members and officers of NASU. I have read the AGBOROH VS. WAEC case, ... The facts, applicable law and legal issues that arose for

determination in that case were quite different from those that arise in the present case, aside from the fact that the case was civil while this one is criminal. WAEC is not a Nigerian government owned institution, but a regional body, with Nigeria being just one of the countries with stakes in it. On the other hand, NASU is a union of employees to which the defendants belong by virtue of their positions as non-academic staff of Tai Solarin College of Education (TASCE). It is my view that the defendant's membership and positions as officers of NASU of Tai Solarin College of Education (TASCE) are inextricably interwoven with their status as public officers of Tai Solarin College of Education (TASCE). One does not and cannot exist without the other. Rather, one is dependent on the other".

(See pages 383-384 of the record of appeal).

In view of the evidence which the Respondent placed before the lower Court, I cannot agree any less with the reasoning and conclusion of the learned trial Judge that as members of NASU and staff of Tai Solarin College of Education Omu-Ijebu that the Appellant and the other two

Defendants before the lower Court are Public Officers within the meaning of Section 2 of the Corrupt Practices and Other Related Offences Act 2000.

The Appellant in my view came within the meaning of Public Officer within the contemplation of the ICPC Act 2000 in her activities as an executive of NASU of Tai Solarin College of Education, Omu-Ijebu, Ogun State. This is because her status as Public Officer in Tai Solarin College of Education did not cease to be when she became a member and officer of NASU and conversely she would lack the locus to be a member of NASU should she cease to be a staff of Tai Solarin College of Education, Omu-Ijebu, Ogun State.

This issue No. 1 is therefore resolved in favour of the Respondent and against the Appellant

ISSUE NO. 2

Whether the prosecution has proved its case against the Appellant beyond reasonable doubt. (Distilled from Ground 2).

The learned Counsel for the Appellant submitted that the Respondent has the duty of prove its case beyond reasonable doubt which is the standard of proof in a criminal case and that the prosecution has not been able

to prove all the essential ingredients of the allegations against the Appellant.

He relied on the following cases:-

OLADELE VS. NIGERIAN ARMY (2004) 6 NWLR PART 868 PAGE 166 AT 178 PARAGRAPHS D-E.

AMALA VS. THE STATE (2004) 6 SCM PAGE 55.

ADEJOBI & ANOTHER VS. THE STATE (2011) 7 SCM.

THE STATE VS. SALAWU (2011) 12 SCM PART 2 PAGE 455.

It was contended on behalf of the Appellant that the Respondent failed to prove beyond reasonable doubt that the Appellant used her position as Acting Secretary of Tai Solarin College of Education Non-Academic Staff Union (TASCE NASU) for disbursement to its members, when the one Mr. Soetan Femi Ayoolu who is not a member of NASU nor staff of Tai Solarin College of Education, Ogun State was granted loan.

Learned Counsel for the Appellant submitted that during the Cross Examination of PW1 Mr. Ifeanyi Obialor (i.e. the investigating Officer with ICPC) confirmed to the Court that Mr. Soetan is a member of NASU and that he was then the state chairman of NASU. He stated further

that he joined the services of college of Education, Ogun State in 1983. He also stated that he has seen the Constitution of the association and by virtue of this he knows who are eligible to be members of the association; he said he saw the rules and regulations guiding (NASU) (TASUED), that Non-Academic Staff of TASUED are eligible members of NASU.

It was submitted further on behalf of the Appellant that her action in applying and obtaining loan for herself cannot be said to have been a corrupt or undue advantage.

The learned Counsel for the Appellant finally urged this Court to allow the Appeal.

In his response to the submission of the learned Counsel for the Appellant, the learned Counsel for the Respondent submitted that it is trite that in Criminal trials the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. He relied on the case of:-

AMOSHIMA VS. STATE (2009) ALL FWLR PART 488 PAGE 342.

It was submitted on behalf of the Respondent that in proving counts 1, 2 and 7 against the Appellant, the essential elements the prosecution must prove are:-

- (1) That the Defendant now Appellant is a Public Officer.
- (2) That the Defendant conferred on herself or some other persons some advantages which are either corrupt or unfair.
- (3) That she did so using her position or office.
- (4) In the case of count 1 that there was conspiracy to do (2) and (3) above.

On Conspiracy as contained in count 1, it was submitted by the Respondent that the prosecution must show that as between the conspirators, there was a common intention to commit the alleged offence. He went further that the prosecution needs not prove that the conspirators were seen together or sat together to agree that the alleged offence should be committed. It is sufficient to prove that there was a meeting of mind at a point before the commission of the alleged offence and that the meeting of minds could even be inferred from the nature of the Criminal Conduct. He relied on the following cases:-

ABA.CHA VS. STATE (2002) 11 NWLR PART 779 PAGE 497.

NJOVENS & OTHERS VS. THE STATE (1973) NNLR PAGE 76 AT 96.

OYAKHERE VS. STATE (2005) 15 NWLR PART 947 PAGE 159 AT 178.

STATE VS. USMAN (2005) 1 NWLR PART 906 PAGE 80 AT 161-163.

The learned Counsel for the Respondent submitted that the three Defendants by executing Exhibit "B" and "B1" as executives of the Union which exists wholly to cater for the work interest of Public Officers that they are, they knew that the said Mr. Ayoolu was not a member of Tai Solarin College of Education who applied for the loan for disbursement to its members vide Exhibits F and J1-16, used their positions as executive members of Tai Solarin College of Education NASU to confer unfair advantage on him when they advised FCMB to advance money to him as loan from the union's loan account with the bank.

In proof of counts 1, 2 and 7 learned Counsel for the Respondent referred to the evidence of PW1, PW3, DW1 and DW3 and Exhibits "B" and "B1" with which the three Defendants advised First City Monument Bank (FCMB) to disbursed money to members of the Non-Academic Staff Union of Educational and Associated Institutions.

He urged this Court to hold that the prosecution has discharged the burden of proof placed upon it in law and has established the guilt of the three Defendants in counts 1, 2, 3, 5 and 7.

RESOLUTION

The position of the law in criminal prosecution is that the standard of proof required is that of proof beyond reasonable doubt.

Under Section 135(1) of the Evidence Act 2011, if the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.

See the following cases:-

ANOSHIMA VS. STATE (Supra)

ITU VS. STATE (2016) LPELR-26063.

Nonetheless, proof beyond reasonable doubt does not mean that the Prosecution must prove its case with mathematical exactitude nor does it mean proof beyond any shadow of doubt.

The prosecution is said to have proved its case beyond reasonable doubt when it has proved all the

ingredients of the particular offence the accused is charged with. See - SMART VS. THE STATE (2016) LPELR-40827 SC.

DIBIE VS. STATE (2004) 14 NWLR PART 893 PAGES 284-285

NWATURUOCHA VS. THE STATE (2011) 6 NWLR PART 1242 PAGE 170.

In the discharge of the onus of proof, there are four ways by which the prosecution can prove the commission of crime.

- (1) By Confessional Statement.
- (2) By evidence of eye witness.
- (3) By circumstantial evidence where Confessional Statement is lacking.
- (4) Admission by conduct of the accused person.

See – ABIRIFON VS. THE STATE (2013) LPELR-20807 (SC).

D. GIRA VS. THE STATE (1996) 4 SCNJ PAGE 95 AT 106.

EMEKA VS. STATE (SC), (2001) LPELR-1125 (SC), (2001) 6 SCNJ PAGE 259.

In order to prove that the Appellant along with others tried with her at the lower Court conferred undue

advantage upon one Mr. Soetan Femi Ayoolu, another Public Officer and themselves using their positions. The prosecution recalled PW1 Mr. Ifeanyi Obialor who testified as follows:-

“My name is Ifeanyi Obialor I recall that I had earlier testified in this case. I am a member of the team that investigated the petition leading to this case.

I met one Mr. Soetan Femi Ayoolu in the course of my investigation. We observed that the loan application that was made by NASU members of Tai Solarin College of Education. It was now disclosed that Mr. Soetan Femi Ayoolu, received the sum of ₦1,331,000.050 from the loan, while he was not a member of NASU nor a staff of Tai Solarin College of Education. This he got through the approval of 1st, 2nd and 3rd accused persons, as they advised FCMB to pay him. We went through the staff nominal roll of the school and members of NASU and couldn't see the name of Soetan Femi Ayoolu there. But we saw his name as one of the first beneficiaries of the loan. We then invited him and he came and made statement.

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.....
.....
(See pages 323-324 of the Record of Appeal).

The PW1 whose excerpt of his testimony was reproduced above also testified that he obtained the written statement of Mr. Soetan Femi Ayoolu which was tendered in evidence as Exhibits P and P1. Therein the said Mr. Ayoolu stated that he is a Public Officer in the employment Tai Solarin University of Education, Ogun State.

The Defendant i.e. the Appellant and the other two accused persons corroborated the evidence of PW1 in their Evidence-in-Chief and during Cross Examination. It was also shown from the evidence of PW1 while testifying during his recall that the three Defendants advised First City Monument Bank (FCMB) through Exhibit "B" and "B1" to disburse several sums of money to the listed names described by the Defendants as members of Non-Academic Staff Union of Education and Associated Institutions, Tai Solarin College of Education, Omu-Ijebu, Ogun State. Mr. Ayoolu was not a member of the Tai Solarin College of Education NASU who applied for the loan for disbursement to its members vides Exhibits "F" and "J1-16".

In view of the foregoing I am of the view that the Appellant and the other two accused person before the lower Court, by executing Exhibit "B" and "B1" as executives of the union which exists wholly to cater for work interest of Public Officers that they used their position as executive members of Tai Solarin College of Education to confer undue or unfair advantage on the said Mr. Soetan Femi Ayoolu.

It is also on record that the prosecution through PW1 and PW3 proved that the Appellant who did not apply for any loan received the sum of **₦1,331,250.00 (One Million, Three Hundred and Thirty-One Thousand, Two Hundred and Fifty Naira)** thereby denying of those who applied and were screened and approved for the loan by the college management.

Furthermore, the evidence by PW1 and PW3 also proved that the Appellant and the other two accused persons before the lower Court vide Exhibit "B" and "B1" paid the sum of **₦1,331,250.00 (One Million, Three Hundred and Thirty-One Thousand, Two Hundred and Fifty Naira)** to Mr. Soetan Femi Ayoolu. It must not be forgotten that the said Mr. Soetan Femi Ayoolu is not a member of staff of Tai Solarin College of Education and the college authorities was

not given any opportunity to check and verify his request and the amount paid to him.

The above was confirmed by PW3 Dr. Abiodun Ojo while testifying before the lower Court on 13/1/2016 when he stated that the accused persons (Appellant inclusive) disbursed the loan without the knowledge of the college management.

Concerning conspiracy as contained in count 1. Conspiracy has been held in a number of decided cases to be an agreement by two or more persons to do an unlawful act or do a lawful act by an unlawful means. The two or more persons must be found to have combined in order to secure a conviction.

See the following cases:-

NJOVENS & OTHERS VS. STATE (Supra)

ABACHA VS. STATE (Supra).

OYAKHERE VS. STATE (SUPRA).

BELLO VS. THE STATE (2010) 12 SCM PART 2 PAGE 28 AT 34.

NWOSU VS. STATE (2004) 15 NWLR PART 897.

YAKUBU VS. THE STATE (2014) LPELR-22401 (SC).

GARBA VS. COP (2007) 16 NWLR PART 1060 PAGE 378.

The ingredients of the offence of conspiracy are:-

There must be an agreement between two or more persons.

The two or more persons must agree to do an unlawful act by illegal means.

The main substance of the offence of conspiracy is the meeting of minds of the conspirators which is hardly capable of direct proof. The offence of conspiracy is established as a matter of inference from certain criminal acts of parties concerned.

See the case of – KAYODE VS. THE STATE (2016) LPELR-40028 (SC).

In this appeal, the evidence placed before the lower Court is that PW1 tendered Exhibit “B” and “B1” which was admitted in evidence without objection on 18/11/2015. The Exhibits revealed that the Appellant and the other two accused persons before the lower Court used their positions as Chairman, Treasurer and Acting Secretary of the Non-Academic Staff Union of Education and Associated Institution, Tai Solarin College of Education, Omu-Ijebu, Ogun State, authored a letter dated 26/1/2012 addressed to the manager, FCMB, Imepe Branch Ogun State instructing the bank to credit the account of the attached 16 beneficiaries of various sums totaling **N18,654,803.14** (Eighteen Million, Six Hundred and Fifty-Four Thousand,

Eight Hundred and Three Naira, Fourteen Kobo) from the union's loan account with the Bank. The Three Defendants (Appellant inclusive) in that continuous transaction of using their positions as Chairman, Treasurer and Acting Secretary of the said union and in those capacities signed the union's cheque of the amount stated above and attached a list of 16 beneficiaries duly signed by them.

I am of the view that the Appellant and the other two accused persons, by executing i.e. writing and signing Exhibits "B" and "B1" as Executives of the Union which exists wholly to cater for the work interest of Public Officers that they are, when they knew that the said Mr. Soetan Femi Ayoolu was not a member of the Tai Solarin College of Education NASU who applied for the loan for disbursement to its members vide Exhibits F and J1-16, used their positions as Executive Members of the Tai Solarin College of Education NASU to confer unfair advantage on Mr. Soetan Femi Ayoolu when they advised the FCMB to advance money to him as loan from the union's loan account with the bank.

It is on record that Mr. Soetan Femi Ayoolu's name was included in Exhibits "B" and "B1" i.e. a letter signed by the three Defendants (the Appellant inclusive) to FCMB along with a list of those to be credited with various sums of

money from the loan account while the same name of Mr. Soetan Femi Ayoolu was excluded from Exhibit L – a letter written to the college management explaining how the loan was disbursed along with the names of 92 members of staff of the college who benefitted from the loan.

In view of the foregoing, I am of the view that there was meeting of the minds among the Appellant and the other two accused persons before the lower Court when they executed Exhibits “B”, “B1” and “L”. The offence of conspiracy has been proved against the Appellant and her Co-Accused persons.

This issue No. 2 is hereby resolved in favour of the Respondent and against the Appellant.

Therefore the trial Court was right in when it held that the prosecution has proved its case beyond reasonable doubt against the Appellant and the other two accused persons.

In the result, with the resolution of the two issues for determination in this appeal in favour of the Respondent and against the Appellant, it is my view that this appeal lacks merit and it is hereby dismissed.

The Judgment of the lower Court in charge **NO:- AB/ICPC/01/2015** Between: **FEDERAL REPUBLIC OF**

NIGERIA VS. (1) ADEYEMI ALABA SAMUEL, (2) AMULUDUN TOSIN, (3) YUSUF TEMILADE delivered on the 13th day of June 2017 is hereby affirmed as far as the Appellant is concerned.

Appeal dismissed.



JIMI OLUKAYODE BADA
JUSTICE, COURT OF APPEAL

Counsel:

MR. ADENIYI UTHMAN with him is **O. A. AKINTOYE** for the Appellant.

MR. ENOSA OMOGHIBO Chief Legal Officer, ICPC with him is **ADEOLUWA** (Assistant Chief Legal Officer, ICPC) for the Respondent.

APPEAL NO: CA/IB/168C/2018

HARUNA SIMON TSAMMANI, JCA.

I had the privilege of reading before now, the judgment delivered by my learned brother, **Jimi Olukayode Bada, JCA.**

From the facts and entire circumstances of this case, it is valid to hold that the Appellant was a public officer within the definition of a public officer under **Section 2 of the Corrupt Practices and Other Related Offences Act, 2010**, at the time the offence for which he was convicted, was said to have been committed. Her status as the Acting Secretary of NASU of Tai Solarin College of Education takes root from her position as an employee of the College. She could not have been the secretary of NASU without being an employee of the College. Accordingly, her status as the Ag. Secretary of the union cannot be completely separated from her status as an employee of the College. The two are inextricably connected. In other words, they are like ***siamese twins*** that must exist together.

It is for the above reason and the more elaborate reason stated in the lead judgment that I agreed that this appeal lacks merit. It is hereby dismissed.


HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL.

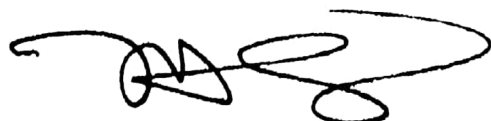
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FOLASADE AYODEJI OJO (JCA)

I have read before now the judgment just delivered by my learned brother, ***Jimi Olukayode Bada JCA***. I agree with the reasoning and conclusion reached therein.

His Lordship has dealt extensively with the issues raised in the appeal. I am in full agreement with him that the Respondent proved the ingredients of the offences alleged against the Appellant beyond reasonable doubt as required by law.

I also find no merit in this appeal and it is accordingly dismissed.



**HON JUSTICE FOLASADE AYODEJI OJO
(JUSTICE COURT OF APPEAL)**