

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 12TH DAY OF OCTOBER, 2020
BEFORE HIS LORDSHIP

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/05^C/2020

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. BASHAR GARBA

2. KABIRU BELLO.....DEFENDANTS

Appearances: Court resumed today 12/10/2020.

Mashkur Salisu PLO for prosecution

A.M. Lukman Esq holding the brief of A.M. Dambuwa Esq for the 1st defendant

M.B. Abdullahi Esq for the 2nd defendant.

Mashkur Salisu PLO: The case is for Judgment, Defendants in Court.

JUDGMENT

Court: By two (2) counts charges dated 3/2/2020 and filed on the 4/2/2020, the Defendants – Bashar Garba and Kabiru Bello were arraigned before this Court on the 20/2/2020 for the offences of *Criminal Conspiracy and Using position to confer corrupt advantage* contrary to Section 26(1)(c) and punishable under Section 19 of Corrupt Practices and other Related Offences Act, 2000 respectively by the Independent Corrupt Practices and other related offences Commission.

The charges were read and explained to the Defendants in both English and Hausa language to the satisfaction of the Court

because while the 1st Defendant speaks and understand English language, the 2nd Defendant speaks and understands Hausa language.

After the charges were read and explained to the Defendants, the 1st Defendant pleaded not guilty to all the two (2) charges while the 2nd Defendant pleaded guilty to all the two (2) counts charges, but because of the nature of the amount of the money involved coupled with the substance of the proofs of evidence attached to the charges, the Court in exercise of its discretion under Section 273(2) of the ACJL of Sokoto State, 2019, ordered the case to be proceeded into full trial in the interest of justice with a view to have evidence that will substantially establish the extent of the 2nd Defendant's culpability in the crimes alleged against them. Consequently, the Court decided not to convict the 2nd Defendant summarily.

The two (2) counts charges with which the Defendants were arraigned before this Court, are hereby reproduced below as follows:-

COUNT 1

That you Bashar Garba (M) and Kabiru Bello (M) between the months March to June, 2017 or thereabout at Sokoto within the jurisdiction of this Honourable Court while being public officers serving as Accountant Salary and Finance Officer of the Sokoto South Local Government Education Authority (LGEA) respectively, did conspire to commit an offence of conferring corrupt advantage upon yourselves to wit converting to your personal use the salaries of Twenty Two (22) staff members of Sokoto South LGEA to the tune of ₦563,145.30 (Five Hundred and Sixty Three Thousand, One Hundred and Forty Five Naira Thirty Kobo) and you thereby committed an offence contrary to Section 26(1)(c) and punishable under Section 19 of the Corrupt Practices and other Related Offences Act, 2020.

COUNT 2

That you Bashar Garba (M) and Kabiru Bello (M) between the months March to June, 2017 or thereabout at Sokoto within the jurisdiction of this Honourable Court while being public officers serving as Accountant Salary and Finance Officer of the Sokoto South Local Government Education Authority (LGEA) respectively, used your positions to confer corrupt advantage upon yourselves to wit converting to your personal use the salaries of Twenty Two (22) staff members of Sokoto South LGEA to the tune of ₦563,145.30 (Five Hundred and Sixty Three Thousand, one Hundred and Forty Five Naira Thirty Kobo), and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practice and Other Related Offences Act, 2000. After the plea of the Defendants were taken, the case was then adjourned to 26/2/2020 for hearing. To prove its case, the prosecution called Four (4) witnesses and tendered Six (6) Exhibits marked as **Exhibit ICPC BGKB 1, 2, 3, 4, 5 and 6** respectively.

Exhibit ICPC BGKB1 is a petition against the 1st Defendant – Bashar Garba for financial mismanagement of public funds signed by one Muhammad Yusuf of Yakubu Muazu Science Model Primary School, Sokoto on behalf of the 22 primary teachers listed therein addressed to the Chairman, Independent Corrupt Practices and other Related Offences Commission.

Exhibit ICPC BGKB2 is the report of the Committee set up to investigate the allegation of unpaid salaries of 22 staff of the LGEA, Sokoto South Local Government Council.

Exhibit ICPC BGKB3 is the Receipt No. RRR-2702-1577-8635 dated 4/4/2018 covering ₦563,145.30.

Exhibit ICPC BGKB4 is the Receipt No. RRR-1603-5885-4367 dated 10/1/2020 covering ₦26,542.30.

Exhibit ICPC BGKB5 is the statement of the 1st Defendant made on the 7/3/2018.

Exhibit ICPC BGKB6 is the statement of the 2nd Defendant made on 21/3/2018.

All the foregoing exhibits were admitted through PW1 in person of one Haruna, a Principal Investigation Officer attached to ICPC Headquarters, Abuja.

The prosecution's case is as presented by the evidence of PWS 1-4, and is as follows:-

PW1 (After affirmation): "My name is Haruna Aminu. I am a Principal Investigation Officer attached to ICPC Headquarters, Abuja". My schedule of duties includes:- investigation of petitions and Complaints assigned to my team by the ICPC Chairman, giving evidence in Court when the need arises especially in respect of cases we have conducted investigation. I have been working with ICPC for more than Ten (10) years now.

I know the Defendants, and I know them in the course of investigation petition dated December, 2017 addressed to ICPC Sokoto Zonal Office against the Defendants. We were assigned to investigate the matter and in the course of investigation, we recovered a report of a Committee of enquiry Constituted by Sokoto SUBEB. The Committee was chaired by a Deputy Director of Finance of the Board in person of one Aminu Abdullahi.

In the course of our investigation, we have also found as a fact that the 1st Defendant in person of Bashar Garba and the 2nd Defendant in person of Kabiru Bello had illegally withheld to their own benefit salaries of about 22 teachers in Sokoto South Local Government Education Authority to the tune of ₦536,603 which they embezzled and same was recovered by our team and the money was subsequently paid to SUBEB account and

properly receipted. The recoveries were made in Two (2) installments, one in April, 2018 and the other one was at the end of 2019. The receipts were dated 4/4/2018 and 10/1/2020.”

Under cross examination, PW1 testified as follows:-

“I can’t remember when I came in contact with the 1st Defendant, but I can remember it was when a petition was written against them. I participated in the recording of the statements of the Defendants and the witnesses. The statements of the defendants were recorded in Abuja and I instructed my colleagues here in Sokoto to record the statements of the witnesses because as primary school teachers, they will find it difficult financially to travel down to Abuja. The petition was on behalf of one Mohammed Yusuf and others whose names were written in the petition. Our investigation did not only rely on the statements of Kabiru Bello, Murtala Mohammed, Kabiru Abubakar and Yusuf Mohammed to prosecute the two (2) Defendants, because there was also a statement of one Aminu Abdullahi who happened to be the Chairman of the Committee set up by SUBEB to investigate the case of the Defendants, and a report duly signed by him and the Committee’s Secretary. We also rely on some other documents recovered during investigation. One Aminu Abdullahi who is the Chairman of the Committee set up by SUBEB, mentioned the name of the 1st Defendant implicating him in the embezzlement. It is part of the schedules of the 1st Defendant being Accountant Salary to make sure that effective payment of salaries of teachers of Sokoto South Local Government Education Authority is done properly. There was never a time the witnesses and the Defendants were brought together during investigation. All the monies were recovered through the intervention of SUBEB. I investigated the payment slips of Sokoto South LGEA in respect of the victims,

and the payment slips are in Abuja, and it is from their contents we detected the misappropriated sum. I was able to realize in the course of our investigation that all teachers are supposed to be paid through their bank accounts and not by way of cash payments. The 1st Defendant prepares Bank Schedules and Cash Schedules, but it is also part of his responsibility to give schedule for disbursing the funds.”

It is not necessary for the Commission to reach all the persons mentioned in the list of the petitioners. I don't know Abubakar Usman. It was not only me and the 1st Defendant that were present when his statement was taken, because his lawyer in person of Barr. Ibrahim Habib was also present when the statement was taken.

PW2 (After affirmation): “My name is Aminu Abdullahi, Chairman of the Committee set up by SUBEB to investigate the Complaint made against the Defendants. I am a Muslim and a Civil Servant working with Ministry of Finance, Sokoto State posted to SUBEB as a Deputy Director of Finance. My schedule of duties includes checking payment vouchers, cash votes and any other duty assigned to me by the Director of Finance.

I know the Defendants and they are Bashar Garba and Kabiru Bello 1st and 2nd Defendants respectively. They are all staff of Sokoto South Local Government Authority. Bashar Garba is the Accountant Salary and Kabiru Bello is the Cashier all of Sokoto South Local Government Education Authority. Sometimes in January, 2018 a four (4) man fact finding Committee was set up by SUBEB to investigate the case of the Defendants in connection with misappropriation of the Salaries of some teachers in Sokoto South Local Government Education Authority, and I was the Chairman of the Committee, and Haliru

Balaraba (Internal Auditor), Sidi Ahmed (Accountant Salary) and Tukur Abdullahi was the Secretary of the Committee. We were given mandate by SUBEB to investigate and allegation like I said earlier, non-payment of salaries of about 22 teachers. As a result, we invited Bashar Garba the 1st Defendant, and in the process of investigation, we found out that it was necessary to also invite Kabiru Bello the 2nd Defendant.

So all the two (2) Defendants were invited and interviewed. In the process we also find it necessary to invite the Education Secretary of Sokoto South Local Government Education Authority as well as one Lawali Aliyu to get some clarifications.

After we heard from the foregoing mentioned people, we also found that it is also necessary to invite the affected teachers to hear from them, and which we did. After we heard from both sides, we also requested for some documents which includes payment vouchers and bank statement and the said documents were released to us. We detected some irregularities from the documents and we asked the Defendants why the irregularities.

The 1st Defendant Bashar Garba informed us that they posted the salaries into the various Account holders, but because of one reason or the other, the money cannot be lodged into their Accounts and at that time he was acting as Schedule Officer on bank payment. He further informed us that when the money cannot be lodged, they withdrew the money from the bank in cash for cash payment. We told them it was wrong and directed them to pay back the money into the respective accounts of the beneficiaries.

We also asked them since you have withdrawn the money, why did they refuse to pay the affected teachers? They started giving us unnecessary excused. They also informed us that some of the

unpaid teachers are supposed to be paid by the 1st Defendant Bashar Garba while others are supposed to be paid by the 2nd Defendant Kabiru Bello.

Both of them confessed to us various sums of money they misappropriated belonging to the unpaid teachers. After the confession of both 1st and 2nd Defendants i.e. Bashar Garba and Kabiru Bello respectively, we wrote our report and sent same to SUBEB.”

Under cross examination, PW2 in person of Aminu Abdullahi, testified as follows:-

PW2: Finance Officer and Education Secretary are the only signatories to the Sokoto South Local Government Education Authority’s Account. I know only bank payment Mode by which payment must be done through individuals’ accounts. We use documents such as counterfeit, cheques, payment vouchers, bank statement among others to base our findings. Our report implicated the Education Secretary of Sokoto South Local Government Education Authority. It is the responsibility of the 1st Defendant as Accountant Salary to keep records including schedule of payments in addition to any other duty the Education Secretary may assign to him.

Pw3 (After affirmation): My name is Mohammed Yusuf. I am a Primary School teacher under Sokoto South Local Government Education Authority attached to Yakubu Mu’azu Science Model Primary School. I am an Arabic Teacher. I know the Defendants and they also know me. The two are Finance Department Officials of our LGEA. I am one of the Primary school teachers that were not paid their salary of March, 2017. I made a Complaint to our Education Secretary and discovered that we are many and as a result we made a Complaint at SUBEB where we

were called and interviewed one after the other. After a long time without hearing anything, we resolved to lodge another Complainant at the ICPC Office where we were also invited and interviewed in respect of the Complaint we lodged. We made statement three (3) of us at ICPC Office in which we stated what we were not paid. We were asked to give our Account numbers for the purpose of refunding our monies and we did. My monthly salary is ₦67,000 and I was paid only N30,000 through 1st Defendant (Bashar Garba) by cash. I am still waiting for the balance of ₦37,000. That is all.”

Under cross examination, PW3 testified as follows:-

Pw3: I made a statement at ICPC Office and part of the Complainant that signed the petition. I know the 1st Defendant even before this incident. 1st Defendant is the Accountant Salary of Sokoto South LGEA.

Pw4 (After affirmation): My name is Murtala Mohammed. I am a staff of Sokoto South LGEA attached to Marafa Danbaba Model Primary School. My schedule of duty is teaching in the classroom. I know the Defendants. I came to know them in 2017 when my salary was not paid. When I met the 1st Defendant to verify why I was not paid, he said it was bank’s problem, but I later found out that it was not true. I was paid ₦19,253 instead of ₦38,970. I later went to the office of Education Secretary and informed him what was happening. I then moved to SUBEB and lodge similar Complaint. SUBEB later set up a Committee and the Committee invited us and I made my explanations to the Committee. From there, we took the matter to ICPC when we could not hear anything from the Board. The ICPC also invited us and we made statement. The officials of the ICPC later informed us that our money has been paid into SUBEB Account from where we will collect our monies.

I am in the list of the Complainants who petitioned to ICPC Office and I am No. 2 on the list. We gave them our names, account numbers and our respective banks. We are now waiting for alerts. That is all.

Under cross examination, PW4 testified as follows:-

Pw4: I make statement at ICPC Office, but cannot remember when I made the statement. I use to receive my salary through my bank account. I mentioned the name of the 1st Defendant in my statement. I know what happened to my money because I explained. The remaining balance of my money is with Bashar Garba 1st Defendant.”

At the close of the prosecution’s case, the 2nd Defendants opted not to give evidence or call any witness and rested his case on that of the prosecution. The 1st Defendant in his defence was the sole witness who testified for the defence and tendered three (3) exhibits marked as **Exhibits ICPC BGKB7, 8 and 9** respectively.

Exhibit ICPC BGKB7 is the query letter issued to the 1st Defendant by SUBEB.

Exhibit ICPCBHKB8 is the 1st Defendant’s reply to the query letter issued to him by SUBEB.

Exhibit ICPC BGKB9 is a note said to have been written by one Abubakar Usman M. acknowledging the receipt of ₦20,800 cash from the 1st Defendant in respect of his May 2017 salary.

The defence of the 1st Defendant is as presented by the evidence of DW1 the 1st Defendant himself and is reproduced below:-

DW1 (After affirmation): My name is Bashar Garba. I live in Gwiwa Area, Sokoto. I am a Civil Servant as Accountant Salary attached to

Sokoto South Local Government Education Authority. My schedule of duties includes preparation of bank schedules for payment and also keep the records. On the 9/5/2018 around 12am-1pm, I was in the office when one of my Finance Officer in person of Shehu Aliyu called me and served me with a query letter from SUBEB signed by the Staff Officer of SUBEB.

On 10/5/2018, I answered the query letter and addressed it to the Chairman of SUBEB through the Staff Officer of SUBEB and submitted it to the Staff Officer.

After I submitted my reply, nobody called me again in respect of the issue. However, I was subsequently invited by the ICPC at Abuja Office in respect of the issue as contained in the query letter.

On 4/5/2017 my Finance Officer Kabiru Bello wrote a letter to Eco Bank to stop the salary of 8 teachers of Sokoto South Local Government Education Authority because at that time the LGEA was clarifying some issues in relation to salary of teachers.

On 5/2/2018, I collected the salary of one Abubakar Usman who is one of the victims of non-payment of salary, and it is his May, 2017 salary and paid him. He acknowledge the payment. That is all.

Under cross examination, DW1 testified as follows:-

DW1: I was issued a query and also made statement at ICPC Office, Abuja. I know Aminu Abdullahi. He is a Deputy Director of Finance SUBEB. I am aware of the Committee set up by SUBEB and I appeared before the Committee members. I was interviewed and interrogated in relation to the diversion of teachers salaries. The query letter has to do with the Committee's investigation. I am not aware that the committee

has submitted its report to SUBEB. Every teacher supposed to be paid his salary at the end of every month. Abubakar Usman works at Yakubu Muazu Model Primary School, Sokoto. I gave him his salary of May, 2017 in cash and I paid him in May, 2018.

I know Mohammed Yusuf. He is a teacher in Yakubu Muazu Model Primary School, Sokoto. I was with Sokoto South Local Government Education Authority from March, 2017 to December, 2018 as Accountant in charge of salaries working under the Finance Officer Kabiru Bello the 2nd Defendant. I was invited by the ICPC in March, 2018 in connection with diversion of salaries of 22 teachers of Sokoto South LGEA.

I know Barr. Ibrahim Habib. He is the Legal Officer of SUBEB. He has been accompanying me to Abuja in respect of this case.

I know the 2nd Defendant because we work together, but he is not aware that I paid Abubakar Usman. Myself and the 2nd Defendant have been invited by the Committee set up by SUBEB. I don't know that money were recovered and paid to ICPC.

After the 1st Defendant closed his case on the 18/6/2020, the case was adjourned to 6/7/2020 for adoption of written addresses of Counsel, but Counsel could not do so until on the 17/7/2020 when the written addresses of Counsel were adopted and the case was adjourned for Judgment.

The Learned Defence Counsel Mr. Kelechi D. Ogbonna Esq formulated two (2) issues for determination as follows:-

1. Whether from the totality of the evidence adduced before this Honourable Court, the prosecution has proved its case beyond reasonable doubt that the 1st Defendant as a Public

Officer used his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate or any Public Officer by converting to his personal use the salaries of Twenty two (22) staff members of Sokoto South LGEA to the tune of N563,145.30 (Five Hundred and Sixty Three Thousand, One Hundred and Forty Five Naira Thirty Koto) contrary to Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

2. Whether **Exhibits ICPC BGKB1** (the petition) and **ICPC BGKB2** (the Committee report) are not documentary hearsay having not been tendered through their makers (PW2 and PW3) but through PW1.

The Learned Prosecution Counsel Mr. Mashkur Salisu PLO on the other hand, formulated only one issue for determination and is hereby produced as follows:-

1. Whether the prosecution has from the evidence laid before this Honourable Court proved its case beyond reasonable doubt as required by law.

For the purpose of this Judgment, this Court has decided to adopt the sole issue as formulated by the Learned Prosecution Counsel as follows:-

“Whether from the totality of the evidence before the Court as presented by the prosecution, the prosecution has proved its case beyond reasonable doubt.”

Learned Counsel for the 1st Defendant submitted that the prosecution has not proved all the two offences with which the 1st Defendant was arraigned before this Honourable Court beyond reasonable doubt as required by law.

This is because according to him, throughout the evidence of the prosecution witnesses, there is no where any of the witnesses testified to the fact that the 1st Defendant conspired with the 2nd Defendant to commit any offence, nor have their evidence shown or disclose how the unpaid salaries of 22 staff of Sokoto South Local Government Education Authority, or any part thereof was converted by the 1st Defendant for the purpose of conferring any corrupt or unfair advantage upon himself. In his response, the Prosecuting Counsel submitted that for the offence of *Conspiracy* contrary to Section 26(1)(c) and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000, it is trite law that the gist of the offence of *Conspiracy* is the meeting of the minds of the Conspirators as the offence is hardly capable of direct proof. The offence of *Conspiracy* according to him, is a matter of inference from certain Criminal acts of the parties concerned done in pursuance of an apparent common intention.

- **Njovens V. State (1998) 1 ACLR 224 at 263-264.**
- **Oyediran V. FRN (2003)3 ACLR 513 at 525.**

He submitted that inference can be drawn from the evidence of the four (4) prosecution witnesses that the 1st Defendant and the 2nd Defendant connive with each other to withheld the salaries of teaches between the months of March to June, 2017 for their own benefit and urge the Court to hold that the prosecution has proved the offence of *Criminal Conspiracy* against the 1st and 2nd Defendants beyond reasonable doubt and convict them as charged.

The 1st Defendant being Accountant Salary who prepare schedule of payment of salaries of teachers and keep record of same, not a signatory to the Account of Sokoto South Local

Government Education Authority and is not responsible for paying salaries of teachers by cash, him not being a Cashier of the LGEA cannot have the privilege of having the salaries of PW3 and PW4 in his hands and in cash to the extent of under paying them, as well as held the salary of one Abubakar Usman of May, 2017 and paid him in May, 2018 as disclosed by **Exhibit ICPC BGKB9** tendered by the 1st Defendant, if there is no mutual understanding and co-operation between the 1st Defendant and 2nd Defendant to corruptly confer an unfair advantage upon themselves inconsistent with their official duties and the rights of the teachers who were entitled to the complete payment of their monthly salary at the end of every month.

It is trite law that the offence of *Conspiracy* is a matter of inference deduceable from many acts of the Conspirators apparently done in pursuance of their common intention. Once there is evidence before the Court showing the Community efforts of the Conspirators done in pursuance of an apparent common intention to commit a crime as in this case, then the offence of *Criminal Conspiracy* is complete.

- **State V. Olademeji (2003)7 SC 108.**
- **Osetola V. State (2012)6 SCNJ 329.**
- **Njovens V. State (1998)1 ACLR 224**
- **Oyediran V. FRN (2003)3 ACLR 513**

In view of the findings made earlier in this Judgment with regards to the offence of *Conspiracy*, this Court is in total agreement with the submission of the Prosecution Counsel that the offence of *Criminal Conspiracy* against the two (2) Defendants has been proved beyond reasonable doubt as the 2nd Defendant had earlier pleaded guilty when his plea was taken. I therefore found the 2 Defendants guilty for the offence of *Criminal Conspiracy* as charged.

For the offence of *Using position to confer Corrupt or unfair advantage* contrary to Section 19 and punishable under the same section of Corrupt Practices and other Related Offences Act, 2000, the prosecution is required, to prove the following elements:-

- i. That the Defendant is a Public Servant; and
- ii. That he use his office or position to gratify or confer any corrupt or unfair advantage to himself or his relation, or associate or any other Public Officer.

As to the 1st element, both the 1st and 2nd Defendants in their respective statements marked as **Exhibit ICPC BGKB5 and 6** respectively, admitted being Civil Servants working with Sokoto South Local Government Education Authority as Accountant Salary and Finance Officer respectively.

By the provision of Section 2 of the Corrupt Practices and other Related Offences Act, 2000, a “*Public Officer has been define as a person employed or engaged in any capacity in the Public Service of the Federation, State or Local Government.* I therefore hold that the 1st element has been proved beyond reasonable doubt by the prosecution.

As to the 2nd element, 1st Defendant’s Counsel contended that the prosecution has not shown by evidence how the 1st Defendant misappropriated the salaries of the unpaid 22 teachers of Sokoto South Local Government Education Authority or any part thereof to his own benefit.

In his response, the prosecuting counsel submitted that by the evidence of the four (4) prosecution witnesses and exhibits tendered and admitted in evidence, it is very clear that the 1st and 2nd Defendants used their respective positions to confer corrupt and/or unfair advantage upon themselves. PW2 one Aminu Abdullahi testified before this Court to the fact that the 1st and 2nd Defendants confessed before their Committee the various sums of money they misappropriated belonging to the unpaid teachers.

Exhibit ICPC BGKB2 which is the report of the Committee headed by PW2, shows that the 1st and 2nd Defendants misappropriated the sums of ₦152,003 and ₦185,300 respectively. The 2nd Defendant has also admitted this fact in his statement marked as **Exhibit ICPC BGKB6**.

PW3 and PW4, all testified to the fact that the 1st Defendant under paid them their salary to which he owed them the sum of N37,000 and N19,203 respectively.

In view of all the foregoing, I hold that the prosecution has also proved all the elements of the offence contained in the second charge beyond reasonable doubt, and accordingly convict them as charged. Counsel to the 1st Defendant contended that failure to tender **Exhibits ICPC BGKB1 and 2** through PW2 and PW3 who made them instead of through PW1 who was the Investigating Officer, rendered them documentary hear say and not admissible and should therefore be rejected.

- **Nepa V. Adeyemi (2007)3 NWLR pt. 1021 p 315.**
- **NAB Ltd V. Shuaib (1991)4 NWLR pt 185 p 450.**

In his response, the Prosecuting Counsel submitted that **Exhibit ICPC BGKB1** though made by PW3 Muhammed Yusuf, became public document upon receipt of same by the ICPC Office pursuant to Section 102 of the Evidence Act, 2011 and can be admitted in evidence through an Investigation Officer of the case.

- **Onwuzurike V. Edozien (2016)6 NWLR pt 1508 p 215.**
- **Udo V. State (2016)12 NWLR pt 1525 p. 24.**

PW1 in person of Haruna Aminu testified before this Court that he recovered **Exhibits ICPC BGKB1 and 2** in the course of investigation.

It is trite law that the evidence of an Investigating Officer in respect of what he saw or discovered in the course of investigation, cannot be described

as hearsay evidence as they are direct admissible evidence. **Exhibit ICPC BGKB1 and 2** are therefore properly admitted in evidence.

- **Okon V. State (2019)42 WRN 53.**
- **Arogundade V. State (2009)13 WRN 1.**
- **Olaye V. State (2018) 42 WRN 1.**

1st Defendant's Counsel contended that PW3 is not a witness of truth because while he testified to the fact that it was the 1st Defendant who paid him his salary in open Court, his statement in the proofs of evidence did not show that fact.

It is trite law that only documents that are tendered and admitted in evidence before the Court are evidence before the Court which can be utilized by the Court.

- **Kekong V. The State (2017)18 NWLR pt 1596 p 108.**
- **Gwiwa V. Anzaku (2019)37 WRN 27.**

The statement of PW3 at ICPC Office having not being admitted in evidence cannot be utilized by this Court in the determination of this Suit.

The 1st Defendant's Counsel also contended that the failure of the prosecution to call Barr. Ibrahim Habib in order to ascertain the source of the money refunded as shown by **Exhibits ICPC BGKB3 and 4** is fatal to the case of the prosecution.

It is trite law that if on the entire evidence the trial Court is left with no doubt that the offence was committed by the accused person, doubt is discharge and the Court will be right to convict the accused person even on the credible evidence of a single witness as the prosecution is not ban to call a host number of witnesses.

- **Alo V. State (2015) LPELR 24404**
- **Musa V. State (2005)1 NCC 87 at 102.**

The 2nd Defendant apart from confessing to the Commission of the crimes, also rested his case on that of the prosecution. The statement of the 2nd Defendant marked as **Exhibit ICPC BGKB6**, is confessional in nature, and a confessional statement is a good ground upon which a Court can convict where the confessional statement is direct and positive.

- **State V. Isah (2018)8 NCC 320**
- **Ajibade V. State (2013)8 NCC 221.**

Similarly, an accused person who rests his case on that of the prosecution shut out himself and will have no one to blame, as it is an indication that he does not wish to place any fact before the trial Court in form of an explanation or rebut any allegation made against him. In fact the rating of the effect of resting of a case on that of the prosecution, is admission of the evidence led by the prosecution.

- **Ajibade V. State (Supra)**
- **Ali V. State (1988)1 NWLR pt 68 p 1.**

In view of all the foregoing, I hold the view that the prosecution has proved all the elements of the offences with which the Defendants are charged beyond reasonable doubt.

- **Ajayi V. State (2013)53 NSQR 632.**
- **Ikaria V. State (2013)8 NCC 248.**

The prosecution having proved its case beyond reasonable doubt against the two (2) Defendants in respect of the two (2) counts charges with which the Defendants were arraigned, I hereby convict you Bashar Garba and Kabiru Bello as charged.

ALLOCUTUS

Court: By the provisions of Section 309(1) of the ACJL of Sokoto State 2019, where a trial Court finds a Defendant guilty, he should be informed of his right to call witnesses to character if he so wish or make any statement, or produce any necessary evidence or information in mitigation of punishment. So what do you have to say?

A.M. Lukman Esq: 1st Convict is a 36 year old male who have been married for over 12 years, married to a wife and four (4) children. He has a mother and father who are old and whom he catered for their needs. He is a first time offender and shows remorse and has also regretted his action over the period. He humbly urges the Court to consider his children and old parents. We therefore urge the Court to temper Justice with mercy by giving him an option of fine as the future of the Convict and his children lies on the mercy of this Honourable Court. We therefore urge the Court to temper Justice with mercy. We don't intend to call witnesses to character.

M.B. Abdullah Esq: The 2nd Convict is married with two (2) wives and many children. He lives with his parents who are of old age and he is the only one taking care of the parents. Precisely the father is presently seriously sick. He has no any other child to take care of his father. He is the bread winner of the said family and has shown remorse. He did not waste the precious time of this Court as he pleaded guilty and has paid the proceeds of the crime. He intended to enter plea bargain, but could not succeed in getting the co-operation of the prosecution. He is a first time offender. We pray that the 2nd Convict be giving an option of fine. See 309(1) and (2), Sections 310 and 311 of ACJL of Sokoto State, 2019. It is the discretion of this Court to give the Convict option of fine.

I refer this Court to the case decided by this Court presided over by Bello Abbas (as he then was) in the case of FRN V. Nasiru Habib Shagari where after he was convicted, he was given an option of fine with an offence that has no option of fine. Finally, we urge this Court to invoke the provisions of Section 510 of the ACJL of Sokoto State, 2019. We pray this Court to temper Justice with mercy.

Mashkur Salisu PLO: In response to the Convicts Allocutus, to the best of our knowledge, the Convicts are first time offenders with no record of previous conviction. The amount said to have been misappropriated, has been restituted into the ICPC recovery account and the Commission has successfully paid all the victims. From our records, the Convicts are married with children and I believe the submission of the Convicts Counsel on the fact that they have aged parents. Although the Section providing the punishment with which the Convicts were arraigned does not give an option of fine, we left everything to the discretion of the Court.

SENTENCE

Court: By the provision of Section 310(3) of the ACJL of Sokoto State, 2019, after conviction while sentencing, a trial Court is required to take into consideration all aggravating and mitigating evidence, or information as a guide in deciding the nature and extent of the sentence to be passed on the Convict.

Again by the provision of Section 415(2)(d) of the ACJL of Sokoto State, 2019, a trial Court shall not pass the maximum sentence provided for the offence with which the Convict is charged and convicted where the Convict is a first time offender.

Section 510(1) of the ACJL of Sokoto State 2019, provides that where a Court has authority under any written law to impose, imprisonment for any offence and has no specific authority to impose a fine, for that offence (as in this case), the Court may in its discretion impose a fine in lieu of imprisonment.

Upon the plea of Convict for leniency upon the reasons given above, I have taken into consideration of all the above reasons given by the Counsel to the Convicts as the yardstick and guide for considering the nature and extent of the sentence to be passed/and/or imposed on the Convicts.

It is also trite law that a trial Court can pass a sentence less than the one provided by law creating the offence after having regards to factors that can mitigate the sentence as in this case.

- **Musa V. State (2012)3 NWLR 50.**
- **Amoshina V. State (2011)14 NWLR pt 1268 p 50.**

Similarly, I have taken into consideration the decisions of our Superior Courts that it is trite law that the power to impose fine in lieu of imprisonment, it is a discretionary one to be exercised judicially and judiciously.

- **Nurude V. FRN (2016)5 NWLR pt 1506 p 471.**
- **Omokwajo V. FRN (2013)9 NWLR.**

In view of all the foregoing, the Convicts are hereby sentence to 2 years each for the offence of ***Criminal Conspiracy*** contrary to Section 26(1)(c) and punishable under Section 19 of Corrupt Practices and other Related Offences Act, 2020 with option of fine ₦40,000 from today.

The Convicts are also sentenced to 2 years imprison each of the offence of ***using position to confer corrupt and unfair advantage*** contrary to and punishable under Section 19 of the Corrupt Practices and Other

Related Offences Act, 2000 with an option of fine of ~~N~~40,000. The sentences are run concurrently.

Signed

Judge
12/10/2020

CERTIFY TRUE COPY:

FATIMA SAIDU MOH'D
Ag. DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.