

**IN THE HIGH COURT OF JUSTICE, DELTA STATE OF NIGERIA**  
**IN THE ASABA JUDICIAL DIVISION**  
**HOLDEN AT ASABA**

**BEFORE HIS LORDSHIP HONOURABLE JUSTICE G. B. BRIKI-OKOLOSİ (JUDGE)**  
**ON FRIDAY THE 16<sup>TH</sup> DAY OF MARCH, 2012**

**BETWEEN:**

**CHARGE No. A/ICPC/4<sup>C</sup>/2007**

**FEDERAL REPUBLIC OF NIGERIA**

}

**COMPLAINANT**

**AND**

**TADEFE IGHO**

}

**SPENCER OFA**

**ACCUSED PERSONS**

**JUDGMENT**

The accused persons Tadefe Igho (M) and Spencer Ofa (M) are vehicle inspection officers (VIOs) in the employment of the Delta State Ministry of Transport and with particular posting to the Sapele office. They were arraigned and tried jointly before me on a 5 count charge as follows:

**Statement of Offence: 1<sup>st</sup> Count**

Asking for property for self contrary to Section 10 (a) (ii) of the Corrupt Practices and other Related Offences Act 2000 and punishable under Section 10 of the same Act.

**Particulars of Offence**

Tadefe Igho (m) and Spencer Ofa (m) on or about the 8<sup>th</sup> day of March, 2007 at Sapele, Delta State, while being on duty as Vehicle Inspection Officers, asked for themselves the sum of N10, 000.00(Ten thousand Naira) from one Vincent Ekpebabor a motor driver on account of a favour to be afterwards shown to the said Vincent in the discharge of their official duties to wit: ignoring the existing acts of contravention of Road Traffic Laws by the said Vincent Ekpebabor.

**Statement of Offence: 2<sup>nd</sup> Count**

Receiving property for self contrary to Section 10 (a) (ii) of the Corrupt Practices and Other Related Offences act 2000 and punishable under Section 10 of the same Act.

**Particulars of Offence**

Tadefe Igho (m) and Spencer Ofa (m) on or about the 8<sup>th</sup> day of March, 2007 at Sapele, Delta State, while being on duty as Vehicle Inspection Officers, received for themselves the sum of N 5,000.00 (Five thousand) Naira from one Vincent Ekpebabor a motor driver on account of a favour to be afterwards shown to the said Vincent in the discharge of their official duties to wit: ignoring the existing acts of contravention of Road Traffic Laws by the said Vincent Ekpebabor.

**Statement of Offence: 3<sup>rd</sup> Count**

Receiving property for self contrary to Section 10 (a) (ii) of the Corrupt Practices and Other Related Offences act 2000 and punishable under Section 10 of the same Act.

**Particulars of Offence**

Tadefe Igho (m) and Spencer Ofa (m) on or about the 16<sup>th</sup> day of March, 2007 at Sapele, Delta State, received for themselves the sum of N5,000.00 (Five thousand Naira) from one Vincent Ekpebabor a motor driver on account of a favour to be afterwards shown to the said Vincent in the discharge of their official duties as vehicle Inspection Officers to wit: ignoring the existing acts of contravention of Road Traffic Laws by the said Vincent Ekpebabor.

**Statement of Offence: 4<sup>th</sup> Count**

Using position to confer corrupt advantage on self contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act 2000.

**Particulars of Offence**

Tadefe Igho (m) and Spencer Ofa(m) on or about the 8<sup>th</sup> day of March, 2007 at Sapele, Delta State, whilst being public officers serving in the Ministry of Transport, Delta State, did use their position as Vehicle Inspection Officers to confer corrupt advantage upon themselves by collecting a bribe of N 5,000.00 ( Five

thousand Naira) from one Vincent Ekpebabor a motor driver for contravening Road Traffic Laws .

### **Statement of Offence: 5<sup>th</sup> Count**

Using position to confer corrupt advantage on self contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act 2000.

### **Particulars of Offence**

Tadefe Igho (m) and Spencer Ofa(m) on or about the 16<sup>th</sup> day of March, 2007 at Sapele, Delta State, whilst being public officers serving in the Ministry of Transport, Delta State, did use their position as Vehicle Inspection Officers to confer corrupt advantage upon themselves by collecting a bribe of N 5,000.00 ( Five thousand Naira) from one Vincent Ekpebabor a motor driver for contravening Road Traffic Laws.

As can be seen from the above charges, the accused persons were charged together in each of the 5 counts of the information contrary to the Independent Corrupt Practices and Other Related Offences Act 2000 or otherwise, ICPC Act 2000 for short. In particular, counts 1 – 3 are laid contrary to sections 10 (a) (ii) and punishable under section 10 of the ICPC Act, 2000, while counts 4 and 5 were laid contrary to and punishable under section 19 of the same Act. The offences are alleged to have been committed on the 8<sup>th</sup> and 16<sup>th</sup> March 2007, while the accused persons were on duty as Vehicle Inspection Officers in Sapele.

The prosecution in support of the charge called a total of 3 witnesses and closed its case, while each of the two accused persons testified in their defence with the 1<sup>st</sup> accused person alone calling one witness. At the close of the case, each counsel by agreement approved by the Court then filed written addresses which were subsequently adopted in court. I now proceed to review the evidence tendered by the prosecution and the defence.

### **The Evidence**

#### **1. Prosecution**

#### **PW1 - Mr Ikenweiwe Felix**

Mr Ikenweibe Felix, PW1, is the Zonal Head, Vehicle Inspection Department Sapele, in his testimony identified the accused persons as staff of the Ministry of Transport Delta State. He stated that the accused persons were arrested on the 16<sup>th</sup> of March, 2007 while he was attending the burial ceremony of his Aunt, Mrs. Catherine Adafor Ikenweibe at Issele-Uku in Aniocha North Local Government Area, Delta State. He further stated that though he could not now remember what time it was, when he received a call informing him of the arrest of two of his staff, namely Igho and a certain Francis. He testified that he was first informed that they were on their way to Benin and later that they were on their way to Abuja. He further testified that the said Francis later called him claiming that he was innocent of the allegations against him.

The PW1 testifying further reiterated that the arrest took place on Friday 16<sup>th</sup> and that by the following Monday when he arrived the office he met Francis who gave him the phone number of the ICPC operative. He added that when he called the ICPC operatives, they told him they were returning to make more arrests as they had lost track of Igho, who was earlier arrested and a 3<sup>rd</sup> person was mentioned being Ofa. He stated that on receiving the above information, summoned Igho and Ofa to his office and inquired as to the happenings where he was informed in his own words thus:

" ... there was a job they did over a vehicle which they impounded. Igho informed me that when the person came to pay as he was handing over the money the ICPC operatives swopped on him and picked him without giving him opportunity to write a receipt...he [Ofa] informed me that he was in Benin when Igho called him on phone and by the time Igho got to Benin where he (Ofa) was waiting for him, Igho now asked Mr Ofa to start running...he said that he (Ofa) was afraid the ICPC people swopped on him as he was afraid for his life."

He further claimed that he confirmed from them that that was all that took place and he then convinced them to turn themselves in with a view to explaining as they have done. He further said that he then took them to the ICPC office in Benin and handed them over to the ICPC operatives alongside the money in the envelope which the driver brought for the job. He concluded his evidence in chief by saying "...when money is paid in my office, receipts are normally issued."

Under cross-examination, by Onome Egbon for 1<sup>st</sup> Accused, PW1 confirmed that V.I.O's have the power to collect money for contravention on behalf of the State Government. He listed the offences constituting contravention which his office could impose a fine for to include where a vehicle or truck has no road worthiness or "...where a truck is so load [ed] as to constitute danger", or not driving with or being in possession of a driver's licence. He affirmed that the fines are receipted for after payment. He offered that where a driver contravenes any of the various offences and has no money to pay, such a driver may be allowed to go, said he:

"Where a vehicle is contravened for various offences, it is conditional what will happen before he can be allowed to go. It is correct that when I say conditional, it amounts to the officer exercising a discretion to allow the offender to go."

He concluded by re-affirming his evidence to the effect that on his confronting the 1<sup>st</sup> accused person, he told him that the money collected was for contravention but he was not given opportunity to issue receipt before they swooped on him.

The PW1 was also cross-examined by K. E. Johnson, Esq., of Learned Counsel to the 2<sup>nd</sup> accused. The PW 1 offered that each officer in his office plays a specific role. He said that the second accused does not issue any vehicular papers and was only brought into the issue because he came to work on the day when the vehicle was impounded.

### **PW2 - Vincent Ekpebabor**

The PW2 is Vincent Ekpebabor. He was the driver of the vehicle contravened which led to the charges before the court. The PW2 after identifying himself then gave account of how he came to know the two accused persons on the fateful day, 8<sup>th</sup> day of March, 2007. He testified that on the day in question he was transporting some aluminium sheets to Warri when he was stopped by V.I.O.s who asked for his vehicle particulars which he provided. He further stated that he gave them a total of 5 papers which he named as, hackney carriage, roadworthiness, insurance, driving licence and vehicle licence. That upon the inspection of these papers the V.I.O.s informed him his roadworthiness had expired. At this, he stated that he did not know it had expired since

it was a company vehicle and all he had to do was to inform his boss. At this point he told them that the owners of the materials he was carrying would be waiting for the goods in Warri, he then pleaded to be allowed to go but was informed that his "...money is N20,000.00". He replied that he did not have N 20,000.00, rather all he had was the N 700.00 from the food money given to him. Testifying further, he stated that he was informed that he did not know what he was saying. At this, he begged but they did not agree so he "took machine" to his brother's place at Okirighwre being nearby but did not meet him. On returning to the Sapele roundabout, he discovered that his vehicle had been taken to the VIO office. He was asked to wait and accompany them to the office when they were leaving. While waiting, the owner of the aluminium goods he was transporting phoned and PW2 informed him that he had been arrested by VIO and they had demanded for N20,000.00. The owner of the goods who claimed the goods were being awaited in Warri, gave PW2 N 5,000.00 and left for Benin. He then offered to give them the money which he informed them was given to him by the owner of the goods but the accused persons insisted on concluding the matter in their office. He went further on getting to the office, he discovered that all the tyres of the vehicle have been deflated. After waiting for a while, he said the two accused persons called him and informed him that they would help him by accepting N 10,000.00. He said he was told to leave his spare-tyre behind to be restored to him upon return and payment of the balance money. He stated that he considered the worth of the goods valued at over N7,000,000.00 (seven million Naira) and paid the N5,000.00. He then got someone to vulcanize the tyres which he paid him with his food money. He went to state that he then proceeded to make the supply and subsequently returned to Benin the next day to report his ordeal at the hands of the VIO to his boss, whom he claimed, was very angry on receiving the information.

Testifying further, PW2 stated that on 16<sup>th</sup> March, he was invited to his boss' office where he met some men who informed him that his boss wrote a petition to them concerning what happened in Sapele and he was asked to tell them about his experience. After he had given them his account as relayed in court, they informed him that they were sent by the Federal Government. He was then shown a paper with photocopy of money of 10 Nos. N500 notes to which he appended his signature. He saw

that the original money had the same serial numbers as with the notes in the photocopy. Thereafter, he was asked to call the VIO, he then called the number of the 1<sup>st</sup> accused person while using the speakerphone application so that everyone could listen to their conversation. He said the 1<sup>st</sup> accused asked if he had the money and he answered in the affirmative, so they arranged to meet at the roundabout in Sapele where he was earlier held. PW1 was then instructed by his boss to use the company pick-up. He was accompanied by one Alex, his assistant and a mobile policeman. The said Alex disguised as a motor boy and rode with him while the others followed in their own vehicle at a distance. On getting to the roundabout, the 1<sup>st</sup> accused came to meet him.

PW2 stated that on that day he met the 1<sup>st</sup> accused person and 3 other officers, the 2<sup>nd</sup> accused person unlike the previous occasion, was not present. He said that the 1<sup>st</sup> accused then asked to the hearing of Alex who was riding with him, if he had the money and if it was complete. When PW1 said yes, he instructed him to drive behind their vehicle to their office where they kept the spare-tyre. On getting to Amukpe junction, the 1<sup>st</sup> accused stopped him and asked one of his men to board his vehicle and sit in front with Alex who was disguised as the motor boy. Earlier on, he stated that Alex had given a pre-arranged signal. On getting to their office, he said that everyone disembarked from the two vehicles, while he and Igho stood side by side then he (Igho) asked for the money and he (PW1) gave it to him. On receiving the N500 new notes, 10 pieces, he (1<sup>st</sup> accused) counted it and then proceed to put it in his pocket. PW1 then asked for his spare-tyre and the 1<sup>st</sup> accused pointed it out to him. While he was carrying the spare-tyre into the vehicle, Alex made as if to urinate, while the 1<sup>st</sup> accused moved towards their vehicle to meet the other VIO with a view to returning to the roundabout where they came from. As he (Igho) was walking towards the vehicle, Alex followed him and grabbed him from the back and informed him that the money he had just taken, belonged to the Federal Government. At this point "...the other men drove inside the compound suddenly and block everywhere..." while the other VIO men with the exception of one whom he described as fat, scaled the fence and made off.

PW2 stated that the men then took the 1<sup>st</sup> accused as well as the fat V.I.O to the ICPC office in Benin where their statements were taken. He then returned to his office and

thought that was the end of the matter till he was told the day before now that the matter would be coming up in court.

PW2 further testified that he left his spare-tyre with the VIO on the condition that he could collect it when he brought the balance. He informed the Court that he was not given a receipt for the 1<sup>st</sup> N5,000.00 he paid on 8<sup>th</sup> March, 2007. He also recalled that he had signed a photocopy of the money and identified same which was tendered for identification purpose only.

The PW2 was Cross Examination by Onome Egbon Esq., of learned Counsel to the 1<sup>st</sup> accused person. Under cross – examination, PW2 stated that he had neither lied in his statement nor in Court. When cross-examined further, he offered that his vehicle had road worthiness certificate but that it had expired. He also stated that as a driver he did not know the length of the aluminium sheets he was carrying but that it was not longer than his vehicle as the vehicle was not filled up. He denied the fact that he was on the old Sapele Road and he did not escape or enter a bike abandoning the vehicle with the load inside while being taken to the VIO office. He admitted giving them N 5000.00, but he explained that it was because of the materials in the vehicle so they could allow him go. He equally said that he was prepared to give them the N 700.00 in his possession for them to allow him go but they wanted N20,000.00. PW2 further offered that he was not in charge of renewing papers and did not know the cost of renewing the roadworthiness certificate nor the fine for driving around without one. He said he had heard of heavy duty permits but in his opinion, his vehicle being a Mercedes Faka, is not a heavy duty vehicle. He affirmed that he had a driver's licence as it is a prerequisite for employment in the company in which he worked.

Under further cross-examination, PW2 revealed that the preparations done by the ICPC before the arrest were in his boss' office and that he met the ICPC men on the 16<sup>th</sup> day of March for the 1<sup>st</sup> time. He also revealed that he did not write a petition to the ICPC between 8<sup>th</sup> and 16<sup>th</sup> March. He admitted that his boss did same but could not tell if his boss "spoke with his friends in the ICPC to come into this matter". He maintained his earlier testimony that the 1<sup>st</sup> accused was approaching their vehicle when he was



arrested by Mr. Alex Chukwurah. The Statement of PW2 made at the ICPC was then called for, identified and admitted as "Exhibit A".

PW2 stated that the 1<sup>st</sup> Accused and himself both hail from Agbarho and so he could not lie against him. He denied that he drove against traffic en route Benin at any time to avoid the VIO and that he attempted to bribe the VIO men and upon their refusal to budge abandoned the vehicle with the hope that they would be unable to move it. He also said that he collected his vehicle around 2p.m that day not 7pm as alleged since after going to his brother's house he returned and still met all 4 persons he had left and was also able to find someone to vulcanize the deflated tyres. He further stated that it was neither his suggestion to give the accused person's N5,000.00 and deposit his spare-tyre pending a promise to return the next day with the balance to reclaim it nor that he intended to bribe the accused persons. He further denied that if he had only given them N700.00, being unmindful of the stress and deflation of the tyres that he would have still reported to his boss since the money was intended for his feeding on the way.

PW2 denied being informed that the N10,000.00 was a fine for the renewal of the expired papers. He wondered if that was case why he was not given receipt for the payment. He denied calling the 1<sup>st</sup> accused person on the 9<sup>th</sup> of March pleading that he should take the N5,000.00 paid and release his spare-tyre. He maintained his earlier evidence to the effect that upon receipt of the money, the 1<sup>st</sup> accused person pocketed the money, and then on his request showed him his spare tyre. PW2 offered that the 1<sup>st</sup> accused person was entering the vehicle with the fat man when he was arrested. He further denied that the allegations resulted from a desire to punish the 1<sup>st</sup> accused person for insisting he renew his papers and pay the fine.

The PW2 was also cross-examined by K. E. Johnson Esq., of learned Counsel for 2<sup>nd</sup> Accused person. The witness admitted that on 16<sup>th</sup> March, 2007, the 2<sup>nd</sup> accused person was not present. He equally admitted that it was on 8<sup>th</sup> March 2007 that he gave the papers to the accused persons but it was only the roadworthiness certificate which had expired the week before. He maintained that his vehicle type did not require a heavy duty permit as it is not a heavy duty vehicle and that a road worthiness certificate was

still valid one month after the expiry date. He denied that he gave the 2<sup>nd</sup> Accused person the N5,000.00 on the 8<sup>th</sup> of March, 2007, but stated that he was present at the time of the exchange and indeed in the vehicle which transported them to their office. PW2 further maintained that the money was not meant as a fine for insecure loading, and renewal of his papers as he was not given any paper contravening the said law by the accused persons. He also offered that he knows that the VIOs check Vehicle papers.

**PW3 - Chukwurah Alexander**

The third and last witness for the prosecution (PW3) is one Alexander Chukwurah. He is a Principal Superintendent of Investigation attached to Special Duties Department of the Independent Corrupt Practices and Other Related Offences Commission (ICPC). He testified that he knew the accused persons in the dock in the course of his duties. He stated that on 14<sup>th</sup> March 2007, his Head of Department handed over a petition written by one Goodness Ikealuwa and that as standard practice he proceeded to assemble a team including one Adeyanju Gabriel, a uniformed policeman as well as himself. They studied the petition and discovered that Mr. Ikealuwa's phone number was contained in it. He then placed a call to him to confirm the authorship of the petition as well as its contents. It was during the call that the petitioner (Mr. Ikealuwa) told him that the petition was written on behalf of the driver one Mr. Vincent Ekpebabor. He testified further that he then applied for and obtained the sum of N5,000.00 from the Commission's Treasury to be used for the investigation being the amount demanded for the bribe. Also following procedure, he informed Court that he photocopied the N5,000.00 in N500.00 denominations, recorded the serial nos. of the said N5,000.00 in the Exhibit Register of his Department in the presence of his team-mates.

Testifying further, PW3 informed Court that on the 15<sup>th</sup> day of March, 2007, they proceeded to Benin City. On arrival, they went to the Zonal Office of the Commission to register their presence, then sought and obtained conducive, spacious and well ventilated office space as their operational base. The next day being 16<sup>th</sup> March, 2007, they re-assembled and called Mr. Ikealuwa to inform him that they would come down to his office to investigate the petition. When they got there, Mr. G. Ikealuwa formally introduced his employee, the driver, Mr. Vincent Ekpebabor (PW2), to the team.

He stated further that the PW2 when asked to narrate his experience between the Vehicle Inspection Officers and himself did so and confirmed the demand for N5,000.00 as bribe and also gave them the phone number of the 1<sup>st</sup> Accused person. He stated that he then asked PW2 to place a call to the 1<sup>st</sup> Accused while leaving his phone on speaker to enable them listen to the conversation. He said that he heard the 1<sup>st</sup> accused ask if the money was complete and PW2 replied in the affirmative and also heard the 1<sup>st</sup> accused person telling him not to come if the N 5,000.00 was not complete.

The PW3 then testified about the preparations made for the sting operation. He asked PW2 to empty his pockets and then gave him the N5,000.00 and asked him to confirm the said amount and he confirmed that the photocopies of the money tallied with the serial nos. in the N 5,000.00 cash. In this respect, PW3 corroborated the evidence given earlier by PW2. PW3 offered that while he was pretending to be urinating at the VIO office, within earshot, PW2 and the 1<sup>st</sup> accused stood side by side and the latter requested for and received the N 5,000.00 cash, then he declared "... Na now you come..." He then showed PW2 where to get his spare-tyre from while he moved towards his waiting official vehicle. It was at this point that PW3 went to him and identified himself as an Operative of the ICPC, gave a pre-arranged signal and informed him that the money he had received, counted and pocketed was from his Commission and he was therefore under arrest. He stated that at this point the driver as well as another officer of the VIO opened the car door leaving behind one Frank Ovuokporaye and the 1<sup>st</sup> accused person whom they took to the Zonal office in Benin.

The PW3 testifying further stated that on their way to Benin City, the 1<sup>st</sup> accused person informed him that Mr. Frank was not part of the team that arrested the PW2 and he then named 2<sup>nd</sup> accused as being part of the team. That based on this revelation, the 1<sup>st</sup> accused requested permission to call the 2<sup>nd</sup> accused person which permission was granted. He testified further that 1<sup>st</sup> accused then put through a call to the 2<sup>nd</sup> accused person leaving it on speaker phone to enable him (PW3) listen in to their conversation. It turned out that this call was to enable 2<sup>nd</sup> accused to be deceived into being arrested. The PW3 then testified that he overheard the 1<sup>st</sup> accused person telling the 2<sup>nd</sup> accused that he was on his way to Lagos and he wanted to fill him in on what happened in the

office. He heard the 2<sup>nd</sup> accused in reply asking after the 1<sup>st</sup> accused person's location, which he gave as Buvel Filling Station along 3<sup>rd</sup> East Circular Road, Benin City. He also heard the 2<sup>nd</sup> accused say he will be there in a matter of minutes.

The PW3 testified further that while they were waiting for 2<sup>nd</sup> accused person to arrive the 1<sup>st</sup> accused requested for a shirt for him to put on in exchange for the usual white apron uniform in order for the 2<sup>nd</sup> accused not to suspect anything. The PW3 stated that he obliged the 1<sup>st</sup> accused person and shortly after the 2<sup>nd</sup> accused arrived the scene in his car. The 1<sup>st</sup> accused went to meet the 2<sup>nd</sup> accused in his car with the PW3 following at some distance. He added that he observed them having a brief conversation but as he made to walk towards them the 2<sup>nd</sup> accused person speed off with the 1<sup>st</sup> accused in his car. He added also that the 1<sup>st</sup> accused at this time was still with the exhibit money and his shirt.

Upon this development, the PW3 then proceeded to the Benin Zonal Office with Mr. Frank who whilst there volunteered a statement after which he requested and was granted permission to put a call through to the PW1, his Zonal Head. He testified further that Mr. Frank to his hearing informed PW1 of the happenings that day and of the escape of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. He also requested to speak with PW1 and he implored him to assist the ICPC to apprehend the accused persons with the exhibit money and that PW1 promised to assist. The PW3 further testified that Mr. Frank was taken to Abuja and that on 20<sup>th</sup> March 2007, the PW1 came with the accused persons to the ICPC Zonal Office in Benin City with the exhibit money. In that office that day the PW1 and the accused persons volunteered statements in their own handwriting and signed same. The PW3 also testified that upon request from the 1<sup>st</sup> accused person, he was given the current receipt booklet of the Vehicle Inspection Unit, Sapele Zonal Office. He also made the 1<sup>st</sup> accused person to count the exhibit money and verify that the money was N 5,000.00 before confirming it with the photocopy which he signed. He testified that he also made the 2<sup>nd</sup> accused person to confirm the money and the photocopies.

The prosecution through the PW3 put in evidence the following exhibits:

- (i) The C. T. C. of the entry made of the serial number of the currency notes as Exhibit 'B'.
- (ii) The C. T. C. of the currency notes used for the operation – Exhibit 'C'. it is pertinent to note that objection was taken to the admissibility of this document by both counsel which objection was overruled.
- (iii) The C. T. C. of the petition dated 14<sup>th</sup> march 2004 – Exhibit 'D'.
- (iv) A brown envelope which as PW3 testified he placed the exhibit money before handing it over to the exhibit keeper – Exhibit 'E'.
- (v) The content of Exhibit 'E', which is 10 notes of N500.00 denomination amounting to N 5,000.00 – Exhibit 'E1'.
- (vi) The two statements made made by the 1<sup>st</sup> accused person – Exhibits 'F' & 'F1'.
- (vii) The two statements made by the 2<sup>nd</sup> accused person – Exhibits 'G' & 'G1'.
- (viii) Three Receipt Booklets – Exhibit 'H'.

Before concluding his very copious evidence-in-chief, the PW3 also clarified certain aspects of his testimony as follows:

1. On the 3 booklets, Exhibit 'H', the PW3 further testified that the 1<sup>st</sup> accused person informed him that they were the current Receipt Booklets in use at the time of the investigation.
2. The PW3 corrected his earlier testimony that he took statement from one Frank Ovuokporaye by stating that the correct name is Francis Ovuokporaye and what he said before was a mistake.
3. The PW3 was also led by the prosecuting counsel to compare Exhibits E1 (the content of Exhibit 'E', brown envelope) with Exhibit 'B' (the C.T.C. of the entry made of the serial numbers of the currency notes) and Exhibit 'C' (the C. T. C. of the currency notes used for the operation). He was able to confirm that the original N 5,000.00 of N500.00 denominations has the same serial Nos. as the photocopies that he made earlier as shown in Exhibits 'B' and 'C'.

At the conclusion of his evidence-in-chief, Mr. Alexander Chukwura was cross-examined on every conceivable point with each of the defence counsel taking his turn to do so. Led in cross-examination, first by Onome Egbon, Esq., of learned counsel for the 1<sup>st</sup> accused

person, the PW3 admitted that the meeting with the PW2 and the planning of the sting operation took place in the office of the PW's employer and not in the office provided for the team at the ICPC Zonal Office, Benin City. He however denied the suggestion that because they were working under his (PW2's) direction they were doing his bidding to ensure 1<sup>st</sup> accused person was victimized at all costs. He admitted that his team did not obtain any statement from Mrs. Goodness F. Ikealuwu as from the onset he informed them that he informed them that he wrote the petition on behalf of the PW2. The PW3 admitted that the claim that the roadworthiness certificate of the vehicle handled by the PW2 on 8<sup>th</sup> March 2007 had not expired as contained in Exhibit 'D', the petition is contrary to the evidence of the PW2 in court and therefore a false statement but he stated that PW2 was not charged for giving false statement. In respect of the greater elaboration in his evidence in court and his statement, PW3 maintained that his statement was only in summary form and he denied that his evidence in court are afterthought or a means of covering his overzealousness as an ICPC official. The statement of the PW3 was admitted in evidence and marked as Exhibit 'J'. The said statement was put in evidence to solely to contradict him. The statement of Francis Ovuokporaye was also received in evidence for the purpose of contradicting this witness as to the actual place in which the statement was made. The statement is Exhibit 'J1'.

The PW3 was next taken through a set of questions on the internal working of the VIO's office in Delta State and apart from saying that he had a faint idea as a Nigerian all the other questions were met by I do not know. He however denied the suggestion that he did not allow the 1<sup>st</sup> accused person enough time to issue a receipt because of his overzealousness. He maintained that although at the time Mr. Francis Ovuokporaye made his statement he was already aware that he was not one of those who contravened the PW2, he still had to make the statement as it is not his duty to determine who will be an accused or a witness. He however admitted that he made statement as an eyewitness. The PW1 denied the suggestion that he recovered the initial N 5,000.00 given to the 1<sup>st</sup> accused by the PW2 on 8<sup>th</sup> March and that PW1 gave him the money at Illah. He admitted that all that he did in the case was to carry out the sting operation, obtain statements from the accused persons and the witnesses and to put up a report.

The cross – examination by counsel for the 2<sup>nd</sup> accused person was relatively shorter. Led in cross – examination by learned counsel for the 2<sup>nd</sup> accused person, PW3 admitted that he does not know what took place on 8<sup>th</sup> March 2007 as he was not present. He admitted that the PW2 did not give the 2<sup>nd</sup> accused person money on 16<sup>th</sup> March 2007. The witness also admitted again that he does not know the workings of the vehicle inspection office. He added that the team did not investigate the role of vehicle inspection officers. The statement of the PW1 was also tendered through the PW3 in order to contradict him and same was marked Exhibit 'J2'. He reiterated that when the 1<sup>st</sup> accused met the 2<sup>nd</sup> accused in his car they sped off.

Upon the conclusion of the evidence of this witness there were attempts made both orally and by motion on notice to recall the PW3 to do what appears to be a repair work or better still strengthen the case of the prosecution. The oral application was opposed and the court in its wisdom refused the application. The motion on notice seeking the same relief was later withdrawn and struck out. Also a further adjournment to call one Adeyanju, a member of the team of investigators was later aborted and the prosecution then closed its case with the evidence of the PW3.

### **DEFENCE CASE**

The defence with respect to the 1<sup>st</sup> accused began with him calling one Goodnews Etaboshi as DW1. The DW1 stated that he is a staff of the Ministry of Transport Sapele. He identified the accused persons as his superior officers in the office. The DW1 gave a detailed or graphic account of the events of 8<sup>th</sup> March 2007 from the point of contravention of the PW2 to the release of the vehicle that evening after a deposit or payment of N 5, 000.00 and the pledge of his spare tyre for the payment of the balance N 5, 000.00 the following day. On the circumstances of the contravention of the PW2 on that day, he testified thus:

"..... we were on a routine check at the Benin/Sapele Road in Amukpe close to the Amukpe roundabout. We saw a truck coming down from Benin but when it got close to where we are the driver reversed and drove against the traffic. The truck drove against traffic to go through the Old Eku Road in Amukpe. The Truck was carrying aluminium sheets and the loading was insecure loading. When the truck did this we chased it by going through the roundabout and blocked it at the Old Eku Road.

We checked the vehicle and discovered that the papers were expired and there was no driver's licence. The expired papers were roadworthiness and vehicle licence. Then the third was the driver's licence. We ordered one of our officers to take him down to the office.

Both of them entered the vehicle, that is, the driver and our officer that was escorting him, while we were in front of them. When they got to one junction, the driver stopped the vehicle and entered a motorcycle and left our colleague there. Then our colleague had to call us to come back. When we came back we ordered one of our officers to drive the truck to our office."

The DW1 testified further that the team that comprised of himself, the two accused persons and also included Hollinks Ogbimi, Victor Matthew and Mr. Umukoro Goodluck then left for the office with the vehicle; and later returned to their beat at the express road. He testified also that the driver, PW2 later returned and claimed that there was money in his truck and threatened that if the money is found to be missing they will make good the amount but failed to name a particular sum. He added that at the conclusion of their work at the beat the team left for the office. The witness also offered evidence on their practice (VIO's practice) after a vehicle is impounded thus:

"The way we normally do our work is that when a vehicle is already in our office, we do not have any further action again. It is left for the Head of Road and the other senior officers to know what to do."

The DW1 further testified that after the close of work that day he left with the 1<sup>st</sup> accused person to Agbarho and only returned to Sapele at about 6.30 and 7pm. He added that while they were in Agbarho the PW2 telephoned the 1<sup>st</sup> accused person pleading for the release of the truck and that upon their return on getting to the office to park the vehicle they travelled in, they met the PW2 pleading for the release of the vehicle. On the release of the vehicle that day and what transpired between 1<sup>st</sup> accused and the PW2, the witness testified thus:

"So the 1<sup>st</sup> accused person released the vehicle to him. He agreed to release him because the driver said both of them are from Agbarho and are therefore brothers. When he released him the driver dropped his spare tyre. He had to drop the spare tyre because the money he was supposed to pay was not complete. The driver paid N 5,000.00 and was supposed to pay the balance the following day before collecting his spare tyre. I do not know the balance money that he was supposed to pay."



On what the payment of the N 5,000.00 was for, the DW1 testified thus:

"The N 5,000.00 that the driver paid was for the expired papers and the fine for insecure loading and dangerous driving. He was not given a receipt for the N 5,000.00 as the officer had already closed by the time."

The DW1 continuing testified that the PW2 did not return on the second day but later came on 16<sup>th</sup> March in a pick-up van carrying some aluminium sheets. He added that the PW2 met 1<sup>st</sup> accused with a view to recovering the vehicle papers for which he made the previous payment and his spare tyre. He confirmed or corroborated the story told by the prosecution that the 2<sup>nd</sup> accused person was not present on this day. He also tried to give a graphic detail of what took place on that day at the office in these words:

"The tyre was in the office we then placed one of our officers in the pick-up van. We put our officer in the van because of the aluminium sheets in the van so that the local government revenue officers and the military check point will not delay him.

We then went together with the pick-up van driving behind us in our vehicle to our office. At the office, the 1<sup>st</sup> accused asked me to go and bring the tyre for the driver. The driver now gave the 1<sup>st</sup> accused person money. At this time they were in the office premises. As the driver was giving the 1<sup>st</sup> accused person the money I was going to bring the tyre. As soon as I came back with the tyre, the man who was with the driver inside the pick-up van came down. He asked him, 'are you the one collecting the money.' As soon as he asked him this, he slapped him. When he slapped him the rest of my colleagues started running and I also ran." (Underlining mine for emphasis)

Apart from the slap, the evidence of the string operation as observed by this witness is not very much different from that given by the PW3, except that it had greater detail. He however denied some aspect of the events as told by the PW3. On what a truck as that driven by the PW2 on 8<sup>th</sup> March 2007 is supposed to possess to ply the road and the role of the VIO in enforcing this DW1 testified further thus:

"The vehicle that was contravened on the 8<sup>th</sup> of March was a truck. A truck is supposed to have Roadworthiness, Carrier Permit, Heavy Duty Permit, Vehicle licence and insurance. My office issues Carrier Permits, Heavy Duty Permit and Roadworthiness Certificate. The truck that the driver was driving that day did not have these papers."

On the complaint that the 1<sup>st</sup> accused was not given sufficient time to complete the process after receiving the money from the PW2 on 16<sup>th</sup> March, which featured prominently during the cross – examination of the PW3, the DW1 testified thus:

“On that day 1<sup>st</sup> accused person was arrested, he was closer to his office than were the vehicle was parked. The 1<sup>st</sup> accused person was not given any opportunity to do anything before the arresting officer slapped him.”

The DW1 was not cross – examined by the counsel to the 2<sup>nd</sup> accused person but was cross-examined by the prosecuting counsel with a view to shaking his credit or discredit him. Under cross-examination, the DW1 could not tell who asked the PW2 for money as on that day they were in a separate office to his own. The witness when asked could not give the amount of fine payable for a specific contravention or even for all other contravention or offences. The lame answer to these questions was that he is not in a position to know. Asked to tell who received the money from the PW2 on each of the days that money passed hands he stated that on both days the money was received by the 1<sup>st</sup> accused save that he was instructed to receive the money, he counted and after counting and confirming that it was correct handed the money to 1<sup>st</sup> accused. The witness when asked maintained that he accompanied the 1<sup>st</sup> accused to Agbarho on 8<sup>th</sup> March and that he was on duty on both dates.

Further on the events of 8<sup>th</sup> March 2007, when the PW2 was contravened, the DW1 stated that the 2<sup>nd</sup> accused as the leader of the team contravened the PW2 and informed him of the offences. He could not however tell if the 2<sup>nd</sup> accused also told PW2 the amount that he was to pay for each of the offences for which he was contravened. On the money received on 8/3/2007, the DW1 testified that the 1<sup>st</sup> accused kept the money in his office.

The 1<sup>st</sup> Accused Person next testified in his defence. He gave very detailed or copious evidence of the events of 8<sup>th</sup>, 16<sup>th</sup> and 21<sup>st</sup> March 2007 touching on all the matters arising from the charge. He was also cross-examined by the prosecuting counsel and the counsel to the 2<sup>nd</sup> Accused Person.

The 1<sup>st</sup> Accused Person in his own story repeated much of the evidence the DW1 had given. He confirmed the evidence given by the DW1 of how the PW2 behaved that day

and how they blocked him before the 2<sup>nd</sup> accused demanded for his vehicle particulars which he produced reluctantly. On the production of the particulars, he testified that the following were discovered to have either expired or absent. These are expired Roadworthiness and drivers licence and no Heavy Duty permit. In view of this PW2 was taken to their office for him to pay the fine to renew his expired particulars and to pay his fine. He gave the amount for renewal of Heavy Duty Permit as N 1,200.00 and for Roadworthiness as N 3, 750.00 and that the non – possession of these particulars attracts a fine. The fine for Roadworthiness is N 1,500. The PW2 was also expected to pay fine for overloading and the non – possession of these items.

He equally corroborated the evidence given by the DW1 on the behaviour of the PW2 who abandoned his truck and it had to be taken to their office. However, he continued that when the PW2 returned and found that the truck had been removed to the office, he was hostile at first and later became friendly only to produce just N 700.00 from his truck. The 2<sup>nd</sup> accused person then told him his fine which he said that he had no money to pay. Like the DW1, the 1<sup>st</sup> accused said he left the office at about 2.30pm and while away the PW2 began to call his number pleading with him to return to release his vehicle as the 2<sup>nd</sup> accused have gone to Benin. He expressed surprise that PW2 had his number which means he did not give it to him. He promised to return to Sapele at 6 pm but finally returned at 7 pm. The 1<sup>st</sup> accused person explained that when he said he went to Warri in his statement, what he meant is that he went to Agbarho. He added that for most people especially those coming from Benin every place there is called Warri.

The 1<sup>st</sup> accused testified further that on his return from his trip he went to the office where he agreed to release the truck as having no security there it would be difficult to secure the truck. He therefore directed the DW1 to attend to him. He confirmed that the PW2 brought N 5, 000.00 and suggested that he will leave his spare tyre as a pledge for his return the next day to pay the balance money which he then agreed to. He gave as reason for non – issuance of receipt that night as they do not issue receipts for part-payment. This is however different from the reason given earlier by the DW1 for the non – issuance of receipt who had testified on this that it was because the office had closed.

The 1<sup>st</sup> accused testifying further stated that the PW2 did not keep his promise the next day but only informed him on phone that they intend to renew the papers in Benin that he could keep the N 5,000.00 and that his reply to this was to say they do not work that way in his office as they do not take bribe. He added that the PW2 repeated the same thing on phone everyday but called on the morning of 16<sup>th</sup> March that he was coming to Sapele for the spare tyre and vehicle particulars. He went further that the PW2 came that day in a pick-up van and met him at the beat at Amukpe Roundabout. On his coming they now entered their vehicle and headed for the office with DW1 riding in the PW2's pick-up. The 1<sup>st</sup> accused person told the same story given of the sting operation by the DW1 including the slap by PW3 preceding his arrest. He confirmed that at this everyone ran away with the exception of the man he called 'Frank' who could not do so for reason of his age. He testified that the PW3 slapped him right in front of his office. He denied that the suggestion that the vehicle engine was on as claimed by PW3 as he drove the vehicle that day. He also stated that the vehicle engine could not have been running as the key to his office was together with the vehicle keys in a bunch. That he was with the key with which to open the office to collect the roadworthiness certificate, heavy duty permit and the receipt that were in his office. He also stated that he had no opportunity of entering his office before the PW3 slapped him.

He testified further still that the PW3 who came in the company of a mobile policeman also arrested Mr. Frank who could not run. The PW3 then proceeded to take them to Benin and on the way he informed PW3 that Mr. Frank was innocent as he was not aware of the job and he should be left to go. He stated that it is Mr. Frank that said Mr Offa is among that is 2<sup>nd</sup> accused.

On the entrapment of the 2<sup>nd</sup> accused person, the 1<sup>st</sup> accused told a different story from that told by the PW3. In his evidence, the 1<sup>st</sup> accused claimed that it was the PW3 that forced him to place a call to 2<sup>nd</sup> accused and to inform him that he should come to collect the money of Goodnews Aluminium and to pay the money into the bank next morning. He also stated that when 2<sup>nd</sup> accused came to meet him, it was PW3 that gave him his shirt so as to cover his uniform. The PW3 had testified that it was 1<sup>st</sup> accused that placed the call himself in order to get the 2<sup>nd</sup> accused who was not on duty that day

and that it was 1<sup>st</sup> accused person that requested for a shirt from him to cover the white apron that the VIOs do wear.

The 1<sup>st</sup> accused stated that when the 2<sup>nd</sup> accused came the PW3 suggested that he go over to him in his car. He went and 2<sup>nd</sup> accused invited him to enter. He entered and then gave him the money. The 2<sup>nd</sup> accused however became suspicious of the movement of PW3 towards his vehicle so that he started his engine and drove off with him in the car. After they had driven some distance, the 2<sup>nd</sup> accused wanted to know who PW3 was and he informed him he is a policeman as he did not know him then. The 2<sup>nd</sup> accused then ordered him to come down from his vehicle and he then returned to Sapele that day. He said he had to return to Sapele as he did not know the people and he did not know where they were taking him. He also said he called his boss and later they were directed by their headquarters in Asaba to report at the ICPC Office Benin Zonal Benin City the following Tuesday. He confirmed making statements in Benin Zonal office of ICPC. On the making of the statement, the 1<sup>st</sup> accused testified thus:

"When I was making my statement, Mr. Alex will read it and tear it. He ordered me not to write certain things like the slap."

Further on the statement, 1<sup>st</sup> accused testified that he did not complete his statement in Benin but concluded it at Abuja for as the author of the petition came to meet them and directed them to take him to Abuja which he did that day at about 4 pm. He added that he completed the statement under supervision. Then on the monies paid, 1<sup>st</sup> accused gave the following testimony:

"The money that was paid to me on the 8<sup>th</sup> of March 2007 was kept inside the drawer in Offa's table in the office. The money that was paid to me on the 8<sup>th</sup> of March was for the renewal of the Heavy Duty Permit, Roadworthiness Certificate and the fine."

The 1<sup>st</sup> accused also testified in-chief on the manner he was handled on that day complaining that he was not allowed time to conclude his work in these words:

"If I had been given enough time I would have written the Heavy Duty Permit renewal and the Roadworthiness Certificate and also given the vehicle tyre to the PW2."

The 1<sup>st</sup> accused maintained that it is not their practice in the office to collect bribe from contravened people and to let them go. As stated before, the 1<sup>st</sup> accused was cross-examined first by prosecuting counsel. Under cross-examination, he maintained that he told the court the truth. He was cross-examined on Exhibit 'H' and he gave these answers:

"There is no space on Exhibit 'H' either front and back where I can write 'this amount is collected as part – payment, and balance is so much.' I cannot see blank space in Exhibit 'H'.

He was asked further questions on this receipt booklet which then had to be marked as Exhibit 'HA'. On their escape, he simply said that it was 2<sup>nd</sup> accused person that drove away with him in the vehicle. He however admitted that he was afraid of the PW3 as he was calling several people. The 1<sup>st</sup> accused was cross-examined on the amount the PW2 was asked to pay and by whom and he gave the following answers:

"I am aware that the 2<sup>nd</sup> accused person finally said that the driver should pay N 10,000.00. it is correct that the 1<sup>st</sup> N 5,000,00 was a part-payment of he sum of N10,000.00."

He was also cross-examined on the perceived contradiction between his evidence and that of the PW1 who is his boss in the office to which 1<sup>st</sup> accused gave the following answers:

"It is correct that the PW1 said you cannot collect money without issuing receipts. I joined the vehicle inspection unit before him. In the first place, I am the one running the office as he is not always in the office. The PW1 is my boss in that office. It is correct that when he gives orders as my boss, I am to obey."

The 1<sup>st</sup> accused was also cross-examined by the counsel to the 2<sup>nd</sup> accused person. He was led to confirm that on the 8<sup>th</sup> day of March 2007 the 2<sup>nd</sup> accused person was head of enforcement. He also confirmed that on that day the vehicle of tPW2 was impounded and taken to the office. He at first could not confirm if 2<sup>nd</sup> accused person left the office for Benin on that day at 4 pm as he was himself not in the office having left earlier. He however accepted the suggestion that at the time he collected the N 5,000.00 from the PW2 and released the vehicle the 2<sup>nd</sup> accused was not present as he was in Benin. He also accepted the suggestion that the 2<sup>nd</sup> accused was not present in the office on 16<sup>th</sup>

March when everything took place including the collection of the 2<sup>nd</sup> N 5,000.00. he admitted that although they met in Benin that day it was the PW3 that forced him to call the 2<sup>nd</sup> accused person.

The 2<sup>nd</sup> accused also testified in his defence. He stated that he is a staff of the Ministry of Transport in the Vehicle Inspection Department and the Zonal Head for the Sapele office. On the PW3, the 2<sup>nd</sup> accused stated that on he only saw him in court for the first time. He specifically denied the charge.

He testified that as head he led the team of Vehicle Inspection Officers who went on Road Inspection along the Benin/Warri expressway, Amukpe on the 8<sup>th</sup> day of March 2007. He told court the story of how the team accosted the PW2, the driver of the truck on that day. He also stated that on getting the PW2 to stop after attempting to elude or evade them, he finally stopped and handed the particulars to 1<sup>st</sup> accused person. On what 1<sup>st</sup> accused did and his own action, he testified thus:

The 1<sup>st</sup> Accused then went through the particulars and brought them to me telling me that all the papers have expired. ... I called on the driver and asked, why he is driving with expired papers, and also his driver's licence. I also drew his attention to the excessive loading of his truck. It was also dangerously loaded. The aluminium sheets were also longer than the vehicle at the front and at the rear; and without proper 'C' caution attached to the goods at the rear. He also had two worn out tyres. He had no fire extinguisher as well. Putting all these together I now decided to take the vehicle to the office."

He testified that the driver refused to take the vehicle to the V.I.O office and left on a motor bike while one of his officers drove the contravened vehicle to the office. He stated further that the PW2 re-emerged after about an hour at the office. On the PW2's return, the 2<sup>nd</sup> accused testified on what transpired thus:

I asked him whether he knows what offence he has committed by abounding the vehicle and he said No. I then told him to go and call the owner of the vehicle. He refused to do so and that he has N700.00 with him to give to the V.I.O. I told him that the N700.00 is not enough for him to do the expired papers and the offences he has committed.

He then said that the N700.00 is not for making of these papers but that he is giving us the money as a bribe. I told him that we are not prepared to take bribe from anybody and that the V.I.O. Department in the State

is a revenue generating department.... I now asked him to go to the owner and get money for these documents instead of paying the N700.00 for nothing."

He went on that at this the driver (PW2) left and when he had not returned at 4 pm he then closed for the day. He denied receiving the sum of N5,000.00 from the PW2 as bribe on that day. Then as to the events of the 16<sup>th</sup> day of March 2007, the 2<sup>ns</sup> accused testified that he did not turn up for work as he was very sick. He added that he was therefore in his home in Benin City. He corroborated the story told already by the PW3 and 1<sup>st</sup> Accused on how 1<sup>st</sup> got him to meet him at a filling station in Benin with the story that he is travelling to Lagos. On what happened at the filling station, 2<sup>nd</sup> accused testified thus:

As I was about getting to the gate of the filling station he now come out of the gate of the filling station. I stopped and he simply opened the door of my car and entered. He asked me to move and that police was after him. I was asking for explanation but he did not care to know but only utter that he was running for his dear life. For the fear of the unknown I had to move. I immediately turned into one earth road by the side of 3<sup>rd</sup> East Circular. Then after a little distance on that road, the 1<sup>st</sup> accused stopped me opened the door and went away after telling me that we are going to see in the office.

I was still trying to know what happened between him and the police but he did not care. He then went away."

Then 2<sup>nd</sup> Accused reported that he knows nothing about the first payment of N5,000.00 that was made on 8/3/2007 as he had already gone home at the time it was made. Then as for the payment made on the 16<sup>th</sup>, he was in Benin in his house sick and not at work. He however confirmed that they asked the pW2 to pay the sum of N10,00.00 for the expired papers. He named the expired papers thus:

These are the expired roadworthiness, the heavy duty permit and the contraventions."

The PW2 also made the following denials:

It is not true that the 1<sup>st</sup> Accused person called me on the 16<sup>th</sup> day of March 2007 requesting me to come and collect the N5,000.00 paid by the PW2 and to pay same into Bank Account. It is not also true as claimed by the 1<sup>st</sup> Accused that the N5,000.00 collected on the 8<sup>th</sup> day of March 2007 was kept in my drawer. The 1<sup>st</sup> Accused has his own drawer and I have the key to my drawer.



Whenever money is collected it could be for papers that have expired or it could be for contravention. I do not collect money as part of my function. It is also not part of my function to issue vehicle papers. My duty as a V.I.O. at the V.I.O. Office Sapele is enforcement and operation."

The 2<sup>nd</sup> Accused person was cross-examined on his role in the contravention of the vehicle driven by the PW2 on the 8<sup>th</sup> day of March 2007 by the prosecuting counsel. He confirmed that as the leader of the team, he contravened the vehicle for the offences and directed that the vehicle be taken to the office. He denied asking the driver for money and that he was not aware if any one asked him for same. He also denied directing the 1<sup>st</sup> Accused to collect money from the Pw2 on that day. When asked to name the penalties and their fees he testified thus:

The penalty for roadworthiness is N3,750 for renewal; the heavy duty permit is N1,250.00. Then the driver's licence or expired licence which is driver's licence violation has to pay the penalty of N1,500.00. For the dangerous loading the penalty is N2,500.00. These were the charges he paid for."

He denied that PW2 paid any money to him and was emphatic that payment was to his co-staff. He also maintained that he only became aware of the money paid on 16/3/2007 after the ICPC came into the matter. Then on his duties as regards contravened vehilces and payment, the 2<sup>nd</sup> accused explained his role thus:

As the leader of the enforcement my duty ends when the vehicle is taken to the office. The payment for expired papers, payment for contravention and receipt issuance are not my duties. The issuance of receipts is done by the Zonal Head. The Zonal Head is the PW1. The PW1 has the power to receive monies and issue receipts for such payments and pay same into Government Accounts later. .... the PW1 was the one charged with these duties."

He also maintained that he only became aware of the first payment of N5,000.00 after the 2<sup>nd</sup> payment. He was also asked questions on the events that took place when the 1<sup>st</sup> Accused called him to meet him up in Benin. He maintained that he did not know why 1<sup>st</sup> accused called him and that he only went because he felt he had a message for him from Asaba. He also maintained that he drove away at the prompting of 1<sup>st</sup> accused person out of fear and what he told him. He maintained that he did not go into hiding after the 16<sup>th</sup> but reported at the ICPC office on his own.

The counsel to the 1<sup>st</sup> Accused person also had questions for the 2<sup>nd</sup> Accused person. He was made to accept after denying that in his statement made at the ICPC on 22/3/2007 he did not say 1<sup>st</sup> Accused asked him to move. He however admitted when confronted with his statement Exhibit 'F' and what he said, that he was the one who drove away when he became aware that 1<sup>st</sup> Accused was with someone and that he drove away for fear of the unknown.

He was also cross-examined on his denial that he knew nothing of the payment of N5,000.00 on 8<sup>th</sup> March until after the 16<sup>th</sup> and he gave the following answers:

Yes, I was aware that the vehicle that I contravened on 8<sup>th</sup> March was no longer there. I asked questions why the vehicle was removed.

When I asked about the vehicle that was contravened, the 1<sup>st</sup> Accused said that the driver of the vehicle (PW2) was his brother at Agbarho. That he only allowed him to go after dropping the spare tyre of that vehicle. He also informed me that the driver also promised to come and complete the payment of the money that he has paid to him so that he can renew his expired vehicle papers."

He admitted that the money paid to 1<sup>st</sup> Accused was for the renewal of the vehicle papers. He also admitted that in the absence of the Zonal Head another officer could be detailed to issue the papers. He further admitted that all that took place on 8<sup>th</sup> and 16<sup>th</sup> March 2007 was completely legal and part of the performance of their duties.

At the conclusion of the case both for the prosecution and the Accused persons, final written addresses were by agreement filed for the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons by their respective counsel and also by the prosecuting counsel. The counsel to the 2<sup>nd</sup> Accused person also filed a Reply on points of law. I find the addresses of counsel in the matter well written with a show of high industry and I must commend the spirit with which the case was fought from start to finish.

In the address filed on behalf of the 2<sup>nd</sup> Accused person only one issue was identified for the determination of the court and it is:

Whether the prosecution have by their evidence proved the case beyond reasonable doubt.

Learned counsel, K. E. Johnson, Esq., argued the above issue in his address touching on the 5 counts of the charge, he also referred to the evidence and cited some authorities. It is therefore his submission that the prosecution failed to prove the case against the 2<sup>nd</sup> Accused person on all the 5 counts beyond reasonable doubt. He then urged the court to discharge and acquit the 2<sup>nd</sup> Accused person.

For the 1<sup>st</sup> Accused person, learned counsel Onome Egbon, Esq., filed a very copious and detailed address touching on every possible issue in the case. He cited a good number of authorities. He centred his arguments on the following two issues:

1. Whether on the face of the information A/ICPC/4c/2007: FRN v. TADAFE IGHO, before this Honourable court, the 1<sup>st</sup> Accused person has committed any offence.
2. Whether on the face of the evidence before the court, the prosecution has proved beyond reasonable doubt the alleged offences against the 1<sup>st</sup> accused person.

In concluding, learned counsel urged the court to hold that the prosecution did not prove the case against the 1<sup>st</sup> Accused person beyond reasonable doubt and that the case of the prosecution on the 5 counts be dismissed and to discharge and acquit the 1<sup>st</sup> Accused person.

Then for the prosecution, Falola, Y. O., senior legal officer (ICPC), in his written address after giving the introduction and the brief facts of the case adopted issues for determination similar to those identified by the counsel to the 1<sup>st</sup> Accused person thus:

1. Whether on the face of the information: A/ICPC/4c/2007: FRN v. TADAFE IGHO & ANOR., before this Honourable court, the Accused persons had committed any offence.
2. Whether on the face of the evidence before the court, the prosecution has proved beyond reasonable doubt the offences against the accused persons.

In my consideration of the case, I intend to go with the issues identified for the determination of the court by the learned counsel for the prosecution as it covers the two sets of issues identified by the two learned counsel for the Accused persons.

**On Issue I**, learned counsel for the 1<sup>st</sup> Accused person had submitted that there is no law known as ICPC Act 2000 under which the 5 counts of the charge were laid against the 1<sup>st</sup> Accused and indeed the 2<sup>nd</sup> Accused person. In his argument, learned counsel contended that the relevant law at the time of the commission of the offence is the ICPC Act, 2003 and that s. 55 of the 2003 Law has repealed the ICPC Act, 2000. He contended further that since the Accused persons were charged under a repealed or non-existent law the entire charge ought to be dismissed and the accused person discharged and acquitted. He therefore urged the court to resolve issue I in favour of the 1<sup>st</sup> Accused person and to dismiss the entire charge before it.

In his reply, learned counsel for the prosecution in his written address contended that the submission on this issue is misconceived and thus incompetent and ought to be disregarded as not being the correct position of the law. He cited several authorities asserting the position that the ICPC Act 2000 is the extant law on the prosecution of corruption offences in Nigeria as the ICPC Act 2003 has been declared still born. Learned counsel also obliged the court with one of the authorities establishing this fact being the judgment of the Court of Appeal in Senator Adolphus Wabara & 2 Ors. vs. FRN delivered on 1<sup>st</sup> June 2010. In that case before the High Court of the Federal Capital Territory, the Appellant had sought to have the charges brought against him under the ICPC Act 2000 quashed as having been based on a non – existent law. Upon refusal to uphold the objection, Appellant filed an Appeal before the Court of Appeal, Abuja Division. The appellate court upheld the decision on this ground restating that the ICPC Act 2000 is the extant law on anti – corruption in Nigeria as the 2003 law was still born having been so declared by the Supreme Court in the case of Attorney – General, Ondo State vs. Attorney – General, Federation (2002) 9 NWLR (Pt. 772) 222. In the light of the authorities, I hold that the issue is therefore not well taken and as an objection it is incompetent and I hereby discountenance same. I hold that the ICPC Act 2000 is the extant law on the prosecution of anti-corruption cases in Nigeria and applicable in this court and I in consequence hold that the charges are properly before the court. This issue is accordingly resolved against the 1<sup>st</sup> Accused person.

Issue 2

This covers the sole issue in the written address filed on behalf of the 2<sup>nd</sup> Accused person and as shown already, it is issue II in the addresses filed on behalf of the 1<sup>st</sup> Accused and the prosecution. The law is trite that in all criminal trials, the burden is always on the prosecution to prove the guilt of an accused person beyond reasonable doubt. The law therefore does not impose any duty on the accused person to prove his innocence as any lingering doubt in the case must be resolved in favour of the accused person. See s. 135 (1) of the Evidence Act, 2011. It is to be noted that the burden of proof is proof beyond reasonable doubt and not beyond every shadow of doubt. See *Aruna & Anor. vs. The State* (1990) 6 NWLR (Pt. 155) 125 @ 135 – 136. But if the prosecution by credible evidence accepted by the court raises circumstantial evidence calling for some explanation from an accused person, it is incumbent on him to offer some explanation to excuse those circumstances. See sections 135 (3) and 139 (2) of the Evidence Act, 2011. Where an accused fails to offer such an explanation, the failure shall be taken by the court to support the inference of guilt against such an accused person. See *Lori vs. The State* (1980) 8 – 11 SC 81.

I have at the beginning of this judgment set out the 5 counts of the charge and I have also painstakingly reviewed the evidence tendered by the 3 prosecution witnesses and the defence of each accused person, including the evidence of the witness called by the 1<sup>st</sup> Accused person (DW1). The counsel to the 1<sup>st</sup> Accused person and that to the prosecution have in their respective addresses set out the ingredients of the offences charged. I accept these as aid in my determination of this case.

The evidence in this case shows as highlighted in the testimony of the PW3, the ICPC Investigator that the case of the prosecution is essentially based on the sting operation carried out by the PW3 on the 16<sup>th</sup> day of March 2007. I have set out the elements of that operation in my judgment. The sting operation was set up based on the Petition Exhibit 'D', that is, the petition of one Goodness F. Ikealuwu. This document has been attacked variously by the defence as ground for alleging that the PW3 did not carry out any investigation into the case. I have myself examined Exhibit 'D' and it cannot be gainsaid that the petition was written on behalf of the PW2 or anybody for that matter. The PW3 alleged that the said Goodness F. Ikealuwu informed him that he wrote the

petition on behalf of the PW2, who as it turns out was the actual driver of the contravened vehicle and not the petitioner. Exhibit 'D' was written in the first person and it presupposes on the face of it that the driver of the truck was the petitioner and not the PW2. Yet the said petitioner or writer was not called but the driver was called. Even if the claim that Exhibit 'D' was written on behalf of the PW2 is accepted, then at best the content of the petition is hearsay based on the report made by the PW2 to the writer of the petition. The said writer of the petition as it turned out later got some of the facts wrong and it behoved the investigator to confirm the facts before proceeding on the elaborate entrapment procedure carried out in this case.

My view is that the manner the investigation was carried out in this case has opened the case for a lot of criticisms and rightly so. The defence have raised the complaint that the entire operation was directed at producing one result and doing the bidding of the petitioner/writer of Exhibit 'D' and also at ensuring that the Accused persons are brought to book no matter the costs. I am tended on a calm view of the entire evidence in the case to go with this argument.

The sting operation carried out by the PW3 may be likened to the doctrine of entrapment by an agent provocateur found in English Law and also in America Law. The practice though deprecated at times is acceptable and evidence gotten by the practice of entrapment is not rendered inadmissible as a result. In jurisdictions such as Malaysia and Singapore, it is a defence to excuse the evidence from being admitted in a court especially as the agent provocateur by deception joins in the crime in order to nab the criminal. In Nigeria, in the case of Igbinovia vs. The State (1981) 2 SC 3, Obaseki, JSC held that the evidence of oral confession of a crime by the Appellant made to an agent provocateur in an entrapment operation was admissible. In that case, the English authorities on the point were thoroughly examined. In the light of the authorities I hold that the practice of sting operation presently being used by the ICPC Investigators and or Operatives in the investigation of possible cases of corruption in Nigeria is not out of touch with the law and evidence obtained during such operations is admissible. I hold this view strongly with the knowledge that the war against corruption and vice in all its facets will never be won if the court takes a very dim view of the practice of sting

operations. The offence of corruption is rampant and it is the bane of our economy and of our nascent democracy and the task of detection is not made easier by the manner of the persons involved in the practice. The court must join in the war by approving of this practice as the only means by which the trickery of the offenders and their offences may be exposed for possible punishment in a proper case. In the said case under reference, Obaseki, JSC had this to say on the point:

In this area of the world where crimes of violence are on the increase and means of investigation are in their rudimentary stage of development coupled with the secrecy with which these crimes are committed and the abiding faith in concealment of facts by whatever means by the perpetrators of these crimes, the duty of ensuring security for the lives and property of our citizens demands the detection of the perpetrators of these crimes by all means allowed by our law. Detection of crime is a never ending task the police is called upon to perform and in the performance of this task, they ought to be able to beat the suspects in their game of hide and seek....."

And further in the judgement, the learned justice also held:

There is no doctrine of entrapment in Nigerian Law and evidence obtained by means of agent provocateurs is admissible. See George Diamantides vs. Chief Inspector of Mines 13 WACA 94; Omotosho v. Commissioner of Police (1961) All NLR 693." (underlining mine for emphasis)

In effect the evidence of PW3 on the sting operation given in this case is admissible. The question I however ask is whether it has proved the case of the prosecution beyond reasonable doubt. I am tended on this to go with the arguments of the defence counsel that the prosecution was not able to prove the ingredients of the offences charged beyond reasonable doubt. The prosecution's case contains quite a number of holes (doubts) which must be resolved in favour of the Accused persons. The most damaging here is the fact that the PW3 did not allow the 1<sup>st</sup> Accused person enough time for him to know whether a receipt will be issued or not. There is also in evidence that PW2 who offered the specially arranged money did not demand to be given a receipt for the payment or even the issuance of the certificates or permits. If a receipt was demanded

for and not issued then this would have been conclusive evidence that the demand for N10,000.00 and the payment was as a gratification and not a payment made for the contravention of the vehicle. The prosecution also failed to produce the vehicle particulars said not to have expired as claimed in the petition, Exhibit 'D', this is especially against the admission later in the case by the PW2 that the roadworthiness at least had expired. The defence in their evidence was emphatic that the PW2 was contravened for various offences which by the PW3's admission he failed to investigate. I hold that this is fatal to the case of the prosecution.

I perceive the PW3 a well-trained and intelligent officer, but to do a proper or successful sting operation or entrapment, a lot of patience is required so that the very person sought to be entrapped does not easily escape the law. In the present case, I do not see how by the quality of investigation and the evidence a conviction could be sustained. The giving of money alone in this case and its receipt does not lead to the imputation of crime, where the receiver of the money can offer some explanation which is tended to cast doubts on the prosecution's case as in the instant case. It is common ground that by the practice in the Vehicle Inspection Unit of the Ministry of Transport, the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons, as Vehicle Inspection Officers (VIOs), are empowered to collect revenue for government. In this respect, the evidence of the PW1 and Exhibit 'HA', the Revenue Collector's Receipt of the Delta State Government supports this claim. The accused persons are therefore entitled to the benefit of the doubt.

It is therefore my view that the arrest of the 1<sup>st</sup> accused person on the 16<sup>th</sup> day of March by the PW3 was premature especially as it was later proved that the PW2 was not totally free of fault and that the contravention was proper.

On the events of the 16<sup>th</sup> day of March 2007 in Benin City when the Accused persons made good their escape from the PW3, I am in agreement with the learned defence counsel, Onome Egbon, Esq., in his submission that this cannot be used as evidence of guilt or as proof that an offence has been committed. I also accept the authorities cited on the point as good law. It is trite that an accused telling lies is not evidence of guilt or of the commission of a crime; See *Obalum Anekwe vs. The State* (1976) 10 NSCC 558; *OKpere vs. The State* (1971) 1 All NLR 105; and *Agbo vs. The State* (2006) All FWLR (Pt.



309)1380 @ 1406, paras. F – G. I also find the counts of conspiracy not proved beyond reasonable doubt.

In conclusion, it is my finding that the prosecution failed to discharge the burden laid on it by law to prove its case beyond reasonable doubt as required by law. I accordingly resolve issue II in favour of the defence as I find that the defence by the explanation offered by them in this case have been able to raise reasonable doubt which must in this case be resolved in their favour. In consequence, I find the two Accused persons not guilty on all the counts of the charge. I accordingly discharge and acquit them on each of the 5 counts of the charge.

I also make the following consequential orders:

- (i) Exhibits E & E1 being Federal Government money are hereby directed to be returned to the Prosecuting counsel.
- (ii) Exhibit H Group to be returned to the Delta State Ministry of Transport, Vehicle Inspection Unit, Zonal Office, Sapele.

~~Hon. Just. G. B. Briki – Okolosi~~  
Judge  
16<sup>th</sup> March 2012

**Counsel:**

Y. O. Falola, Esq.,	
Senior legal officer (ICPC)	- For the prosecution
Onome Egbon, Esq.,	- For the 1 <sup>st</sup> Accused person
K. E. Johnson, Esq.,	
(E. C. Orhioko for him)	- For the 2 <sup>nd</sup> Accused person.