

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA.
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO.19
COURT CLERKS –T.P. SALLAH & ORS
DATE: 08/11/17**

FCT/HC/CR/279/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----

COMPLAINANT

AND

**1. HON. SALIHU NDANUSA DAUDA }
2. NSA OYOK EDET }**

DEFENDANTS

JUDGMENT

By the amended information filed on the 22nd March, 2016, the 1st and 2nd Defendants are charge as follows:-

COUNT ONE

STATEMENT OF OFFENCE

Making false statement contrary to section 25(1) (a) and punishable under section 25(1) (b) of the Corrupt Practices and Other related Offences Act 2000.

PARTICULARS OF OFFENCE

Hon. Salihu Ndanusa Dauda (M)on or about August 19th, 2015 at Abuja made a false statement to one Ibrahim Mohammed Bomai, Director, FCT Treasury when you informed him on phone that is a petition against him before the Commission (ICPC) which statement you knew is untrue.

COUNT TWO

STATEMENT OF OFFENCE

Impersonation contrary to and punishable under section 132 of the penal Code Act, cap 532 Laws of Federal Capital Territory, Abuja 2006.

PARTICULARS OF OFFENCE

HON. SALIHU NDANUSA DAUDA (M)on or about August 19th, 2015 at Abuja personated the Honourable Chairman of the Independent Corrupt Practice and Other Related Offences Commission (ICPC) by minuting on a petition titled " WILFUL DIVERSION AND CRIMINAL MISAPPROPRIATION OF PUBLIC FUNDS A CLEAR CASE OF CRIMINAL CONSPIRACY AGAINST THE COMMON WEALTH OF THE STATE" and in such assumed character presented the said petition through Nsa Oyok Edet and Solomon Adukwu (now at large) to one Ibrahim Mohammed Bomai, Director, FCT Treasury, Abuja under the colour of such office.

COUNT THREE

STATEMENT OF OFFENCE

Making false statement contrary to section 25(1) (a) and punishable under section 25(1) (b) of the Corrupt practices and Other Related Offences Act, 2000.

PARTICULARS OF THE OFFENCE

Nsa Oyok Edet (m) on or about August 19th, 2015 at Abuja made a false statement to one Ibrahim Mohammed Bomai, Director FCT Treasury when you, in company of one Solomon Adukwu (now at large) presented a case file No. ICPC/AFC/INV./1.VOL 1 and its contents to the said Director, FCT Treasury purporting same to have emanated from the commission (ICPC) which statement you knew is untrue.

COUNT FOUR

STATEMENT OF OFFENCE

Impersonation contrary to and punishable under section 132 of the Penal Code Act, Cap. 532 Laws of Federal Capital Territory, Abuja 2006.

PARTICULARS OF OFFENCE

Nsa Oyok Edet (m) on or about August 19th, 2015 at Abuja personated as staff of the Independent Corrupt Practices and

Other related Offences Commission (ICPC) and in such assumed character presented a case file No. ICPC/AFC/INV./1 VOL 1 with its contents purporting same to have emanated from the ICPC to one Ibrahim Bomai, Director, FCT treasury, Abuja when you knew you are a staff of the ICPC.

COUNT FIVE

STATEMENT OF OFFENCE

Conspiracy contrary to section 26(1) (c) and punishable under section 25(1) (b) of the Corrupt Practices and Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

HON. SALIHU NDANUSA DAUDA (M) Nsa Oyok Edet (m) and Solomon Adukwu (m) (now at large) on or about August 19th, 2015 at Abuja conspired to make a false statement to one Ibrahim Mohammed Bomai, Director, FCT Treasury in the assumed character of being staff of the Independent Corrupt practices and other related Offences Commission (ICPC) presented a case file No. ICPC/AFC/INV./1 VOL1 with its contents purporting same to have emanated from ICPC, which you knew it, was false.

To prove the five counts charge against the 1st and 2nd Defendants, the prosecution called three (3) witnesses who

testified as PWs1,2 and 3. Exhibits 1,2,3,6,7 and 8 were admitted in evidence through the prosecution witnesses while exhibits 4,5 and 9 were rejected in evidence in the course of trial.

The brief facts and evidence of the prosecution's case is that PW1, Ibrahim Bomai, a public servant and Director, Treasury of Federal Capital Territory on 18th August, 2015 received a call from an unknown cell phone number. The caller asked him whether he is Ibrahim Bomai and PW1 answered "yes". The caller then introduced himself to him as Honourable Ndanusa a Commissioner with the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Honourable Ndanusa told PW1 that he has a petition written against the former Minister, Senator Bala Mohammed and PW1. The Honourable Ndanusa then told PW1 that he would be sending two of his officers from Independent Corrupt Practices and Other Related Offences Commission (ICPC) the following day, the 19th August, 2015 with a copy of the petition for PW1 to go through and then later discuss the petition with him. Then both the Honourable Ndanusa and PW1 agreed that the two staff of Independent Corrupt Practices Commission (ICPC) will meet PW1 in his office at 11:00am of 19th August, 2015. PW1 testified that he became suspicious of their discussion and he then wrote a letter to the Independent Corrupt Practices and Other Related Offences Commission (ICPC) informing them that one Honourable

Ndanusa called him at about 9:30pm of 18th August, 2015 and informed him that he would be sending his boys with a petition to go through and later to discuss with him. The letter of PW1 to Independent Corrupt Practices Commission (ICPC) was admitted in evidence as exhibit 1.

PW1 then testified that on the 19th August, 2015 the Independent Corrupt Practices Commission (ICPC) sent its personnel to his office. He however testified that he could not meet the two officers sent to him by Hon. Ndanusa, the 1st Defendant at 11:00am because he was attending a meeting with his permanent secretary and the meeting ended at about 1:00pm. As PW1 was returning to his office, the personnel sent by Independent Corrupt Practices Commission (ICPC), Idris Mohammed who testified as PW2 accompanied PW1 to his office from the office of the permanent secretary. On reaching his office, PW1 testified that his secretary informed him that two officers from Independent Corrupt Practices Commission (ICPC)

are in the waiting room wanting to see him. PW1 stated that he then asked the two officers from Independent Corrupt Practices Commission (ICPC) to come into his office. PW1 testified that the 2nd Defendant, Nsa Oyok Edet and one other person (now at large) that claimed to come from Independent Corrupt Practices Commission (ICPC) said to him that they are not comfortable seeing a third party in the office, that is, PW2 and that PW2

should go out. PW1 testified that instead of PW2 going out completely, he asked PW2 to stay in his conference room which a sliding glass separates his office and the conference room but PW2 can hear and see PW1 and the purported officers from ICPC. PW1 further testified that after PW2 moved to the conference room, the 2nd Defendant and the other person now at large that introduced themselves as officers of Independent Corrupt Practices Commission (ICPC) brought out a file from a brown envelope. He testified that the file is brown in colour with red strips a crossed with the inscription Independent Corrupt Practices Commission (ICPC). PW1 testified that he opened the file and he saw a petition against the former Minister, Senator Bala Mohammed and himself, the Director treasury, Ibrahim Mohammed Bomai. PW1 testified that the petition stated that the FCT received the sums of N18,600,000,000.00 in two tranches of N6,000,000,000,000.00 and N12,000,000,000.00 which he cannot remember the exact figures. He testified further that the FCT received this amount of N18,600,000,000.00 and that the petition alleged that the former Minister, Senator Bala Mohammed took the sum of N10,000,000,000,000.00 out of the sum while PW1 took N5,000,000,000,000.00 and the remaining N3,000,000,000,000.00 was shared among the staff of the FCT. PW1 then explained to the 2nd Defendant and the other person that it is not true because whatever fund is received by the FCT,

it goes to consolidated account of the FCT and whatever payment is to be made is made straight from the Consolidated Revenue Account of the FCT. PW1 then volunteered to show the 2nd Defendant and the other person the bank statements of account showing the date the amounts were remitted to the FCT account and the bank statement of account showing the payments of the 18,600,000,000,000.00. PW1 testified that the 2nd Defendant and the other person said their mission is to show him the petition and later he can discuss with their boss, Honourable Ndanusa, the 1st Defendant.

PW1 testified further that he requested from the 2nd Defendant and the other person that claimed to be officers of (ICPC) to allow him make photocopies of the documents because he saw in the file official correspondences of the FCT, with Revenue Mobilization and Fiscal Commission Office as well as office of the Accountant General of the Federation. PW1 testified that while he was discussing with the 2nd Defendant and the other person, PW2 Mohammed Idris, was in the conference room and was listening to their discussion. PW1 stated that when the 2nd Defendant and the other person wanted to leave, PW2 sent to him a text message asking him to delay the acclaimed officers of (ICPC) from leaving the office as he had sent for police reinforcement and when the police arrived, PW1's orderly sent a text to PW2 that the police had arrived. PW1 then testified that at this

junction, PW2, the Independent Corrupt Practices Commission (ICPC) official came into his office from the conference room and pick up the official file brought by the 2nd Defendant and the other person and PW2 identified himself and brought out his Identity card that he is an officer of the Independent Corrupt Practices Commission (ICPC) and demanded from the 2nd Defendant and the other person (now at large) to identify themselves if they are truly officers from ICPC. PW1 testified that the 2nd Defendant and the other person (now at large) started panicking and denied being officers of ICPC. PW1 in conclusion testified that the police came into his office and got the 2nd Defendant and the other person (now at large) arrested.

PW2, Mohammed Idris is the investigating officer from the Independent officer from the Corrupt Practices Commission (ICPC) and he explained his role in the investigation of this case and further testified how the 1st Defendant Honourable Ndanusa Salihu Dauda was arrested in Zaria with the help of Solomon Adakwu (now at large). Exhibits 2,3,6,6 (a), 7 and 7 (a) were admitted in evidence through PW2. And PW3, Linus Gubi is the leader of the investigation team of this case. The testimony of PW3 is not different from the testimonies of PWs 1 and 2.

At the close of evidence of the case of the prosecution the 1st and 2nd Defendants testified as DWs 1 and 2 respectively. The defence also called two additional witnesses i.e. Mohammed Salihu and Jummai Salihu both of them son and wife of the 1st Defendant as DWs 3 and 4 respectively. Exhibit 8, a letter of the Independent Corrupt Practices Commission (ICPC) to the Permanent Secretary, Federal Ministry of Water Resources was admitted in evidence through PW3, Linus Gubi on behalf of the defence.

The brief testimony of DW1 is that the operatives of the Independent Corrupt Practices Commission (ICPC) came to his house in Zaria on the 23rd August, 2015 and showed him a search warrant and an arrest warrant. According to Dw1, his house was searched by the operative led by PW2 but nothing was found. DW1 testified that he then signed the search warrant that nothing was found in his house. DW1 testified that PW2 and his men then arrested him and took him to Abuja. In Abuja, according to DW1, PW2 confronted him with some documents and he asked him whether he knows anything about them? DW1 answered that he does not know anything about the documents. According to DW1 that PW2 also asked him whether he phoned one Ibrahim Bomai and he told him "no" Dw1 testified that PW2 then gave him a plain sheet of papers and asked him to write his biography and

what he knows about the documents and the phone called to Ibrahim Bomai. DW1 testified that he did not know PW1. Ibrahim Bomai except here in Court when he testified as PW1 DW1 stated that he was in Abuja on the 15th, 16th and 17th of August, 2015 and he left Abuja on 17th August, 2015 back to Zaria and he was arrested on the 22nd August, 2015 in Zaria. DW1 testified that he was in Independent Corrupt Practices Commission (ICPC) detention cell from the 22nd August, 2015 to the 25th August, 2015 and later taken to Kuje prison by the Court for two weeks.

DW2, Elder Oyok Edet Nsa is a civil servant working with Federal Ministry of Water Resources, Abuja. According to DW2 on the 19th August, 2015, one Solomon Adukwu (now at large) a contractor with the Federal Ministry of Water Resources called him at about 9:30am that his Engineer will be coming to site at Kubwa and that the Engineer will leave for Kano on the same date. DW2 testified that the said Solomon Adukwu (now at large) pleaded with him to come to his site and show his Engineer the photographs of a motorized borehole, a new technology that works with solar energy. According to DW2 that he did not have sufficient fuel to take him to Kubwa and therefore drove to Garki where the said Solomon Adakwu (now at large) picked him in his car and promised to buy him some fuel by giving money on their return from Kubwa. DW2 testified that the meeting was slated for 11:00am with Solomon Adakwu's Engineer. DW2 testified further

that he join Solomon Adakwu's car and Solomon Adakwu told him that he has an envelope to drop with the Director of Treasury Federal Capital Development Authority (FCDA) DW2 testified that when they got to FCDA for the first time, Solomon Adakwu went to see the Director treasury alone but the Director treasury was not in the office. DW2 testified that himself and Solomon Adakwu (now at large) decided to move around and then at about 1:30 pm, Solomon Adakwu received a call that the Director Treasury is back in the office. DW2 stated that he ran out of patience and he wanted to leave but Solomon Adakwu pleaded with him to stay so that he can introduced him to the Director Treasury as the Director Treasury is in charge of land, property and estates in Abuja and it is therefore an opportunity for DW2 to introduced his new technology to the Director Treasury, PW1. Thus, DW2 testified that based on Solomon Adakwu's suggestion to introduce his new technology, to PW1 he decided to go back to the office of the Director of Treasury of Federal Capital Development Authority. According to DW2, when they returned to the office of Director Treasury, the security man at the gate of the Director Treasury's office asked them to wait in the waiting room. Then after about five (5) minutes the Director Treasury Federal Capital Development Authority returned to the office and the Director Treasury opened the waiting room and asked him and Solomon Adakwu to come into his office. DW2 testified that the Director

Treasury came in together with one person later known as Mohammed Idris, PW2. DW2 stated that later Mohammed Idris left the Director Treasury with Solomon Adakwu while he was seated in the office but he was not closed to them. According to DW2, Mohammed Idris, PW2 was in another office but he was watching PW1 and Solomon Adakwu all what they were doing. DW2 testified that he was not introduced to the Director Treasury and PW1 and Solomon Adakwu were speaking in Hausa and he did not understand Hausa. DW2 further testified that when himself and Solomon Adakwu (now at large) stood up to go, then Mohammed Idris PW2 came into the Director Treasury's office and said to them "gentlemen are you from Independent Corrupt Practices Commission (ICPC)?" DW2 testified that Solomon Adakwu said "no" and he also said "no" and that he is a staff of Federal Ministry of Water Resources. DW2 stated that Mohammed Idris (PW2) then brought out his Independent Corrupt Practices Commission (ICPC) identity card and he also brought out his identity card of Federal Ministry of Water Resources. DW2 testified that Mohammed Idris (PW2) then invited the policeman at the gate, they were searched and only photographs of the motorized borehole he supervised in Bayalsa was found on him. He then testified that Mohammed Idris (PW2) then moved them to the Independent Corrupt Practices Commission (ICPC) office where he was detained. DW2 testified that on the same 19th

August, 2015, he wrote his statements to the Independent Corrupt Practices Commission (ICPC) and he explained the role he played.

In conclusion DW2 testified that nobody sent them to the Director Treasury and DW1 did not call PW1. DW2 testified that he did not conspire with Solomon Adakwu and DW1 to take away Independent Corrupt Practices Commission (ICPC) file. The evidence of DWs 3 and 4 is not different from what DW1 testified to the effect that the operatives of the Independent Corrupt Practices Commission (ICPC) visited DW1's residence in Zaria with search and arrest warrants but could not find anything. DW3 testified that the Independent Corrupt Practices Commission (ICPC) officials did not allow him to see his father. DW3 and DW4 also confirmed that she could not come to Abuja because DW3 said the operatives of Independent Corrupt Practices Commission (ICPC) would not allow her to see him, DW1.

At the close of the Defendants' case the case was adjourned for adoption of final written addresses. On the 15th May, 2017, both the prosecution and the defence Counsel adopted their final written addresses and the case was adjourned for judgment for the 10th July, 2017. However, due to the change in the vacation calendar, the vacation of the Court started on the 10th July, 2017 thereby affecting the statutory period of three months within

which to deliver the judgment. The case was then adjourned today for judgment.

Be it as it may, the learned prosecution Counsel formulated the following sole issue for determination.

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

Then at paragraphs 2.5- 3.0 of the final written address of the prosecution, the learned prosecuting Counsel in proffering arguments on the sole issue for determination firstly, referred me to the 5 counts charge against the Defendants, the testimonies of PWs 1, 2 and 3 and the exhibits tendered in evidence and submitted that the prosecution have proved the ingredients of the offences against the Defendants.

On counts 1 and 3 on the charge, punishable under section 25(1) of the Act, at paragraphs 3.2- 3.8 of the final written address of the prosecution, in order to prove the offence of making of false or untrue statement, the learned prosecution set out the ingredients under section 25(1) of the Act as follows:-

- (1) That the Defendant must be a person;
- (2) Who either makes or causes any other person;
- (3) To make any statement which to the knowledge to be made;

- (4) To either the officer of the commission or to any other public officer;
- (5) In the course of the exercise by such public officer of the duties of his office.

The learned prosecution submitted that the ingredients of the offence of making false or untrue statement can be discerned or gathered from the evidence of PW1, Ibrahim Mohammed Bomai, a public officer, who received the statements from the Defendants, and the statement were received in the course of his official duties that he has a case of misappropriation of Government funds relating to his office on August 19th, 2015 pending before the Independent Corrupt Practices Commission (ICPC). Consequently upon this information, the learned prosecution submitted that PW1 was shown a case file exhibit 3, purporting to be from the Independent Corrupt Practices Commission (ICPC).

The learned prosecuting Counsel submitted that each Defendant in the present charge, qualifies as " a person" as defined and contemplated by section 2 of the Corrupt Practice and other Related Offences Act, 2000. The learned prosecuting Counsel argued that both PW1 is a public officer and the Defendants fall into the definition persons. He submitted that the Defendants are persons caught in the act in which PW1 testified how the 1st

Defendant called him on phone, introduced himself as Honourable member of the Independent Corrupt Practices Commission (ICPC) and on that assumed character informed PW1 that he has a case against him at the commission and that he will send two of his boys with the file exhibit 3 to come and show him. Learned prosecuting Counsel submitted further that based on the conversation on phone between PW1, Ibrahim Mohammed Bomai and the 1st Defendant, the 1st Defendant actually sent the 2nd Defendant and one Solomon Adakwu (now at large) to the office of PW1, the Director Treasury and the 2nd Defendant and Solomon Adukwu (now at large) also actually took the case file, exhibit 3 to PW1, which case file, exhibit 3 was false and untrue.

The learned prosecution also stated that neither exhibit 3 nor its presenters i.e the Defendants were from the Independent Corrupt Practices and Other Related Offences Commission, (ICPC). He submitted that when exhibit 3 was presented to PW1, it was in the ordinary course of his official duties as Director, Treasury FCT. Further, the learned prosecution submitted that PW1 equally explained to the alleged boys of the 1st Defendant how the funds as per the content of exhibit 3 came to the FCT, which according to the prosecution, shows that the information itself as contained in exhibit 3 was false because no funds were misappropriated as claimed by the Defendants in exhibit 3.

The learned prosecution contended further that the alleged boys of the 1st Defendant, i.e the 2nd Defendant and Solomon Adukwu (now at large) were arrested in the office of PW1 by Mr. Mohammed idris, PW2, an authentic staff of Independent Corrupt Practices Commission (ICPC) and his team based on the petition, exhibit 2 by PW1 to Independent Corrupt Practices Commission (ICPC) dated 19th August, 2015. According to the learned prosecution, PW2 arrested the 2nd Defendant and one Solomon Adukwu (now at large) when they were discussing with PW1 on exhibit 3 in PW1's office. The prosecution also referred me to the evidence of PW3 and the confessional statements of the Defendants. The learned prosecution therefore submitted that by the evidence of PWs1, 2,3 and the exhibits tendered in evidence, the prosecution has proved beyond reasonable doubt the offences of counts 1 and 3 of the charge and he urged me to convict the Defendants.

He relied on the case ***ADISA WALE V THE STATE (2013)14 NWLR (pt1375) page 567.***

Counts 2 and 4 of the charge deals with impersonation against the Defendants. The learned prosecution at paragraph 4.0 of his final written address set out the ingredients of the offence of impersonation under section 132 of the Penal Code and then submitted at paragraphs 4.2 and 4.3 of his final written address to the effect that the Defendants presented themselves as public

officers by assuming same when they are not. He then referred me to exhibits 3,6 6 (a),7 and 7 (a) respectively and the evidence of PWs 1 and 2 and contented that the Defendants by their statements explained the roles played relating to how they hatched plans to approach PW1 with the Independent Corrupt Practices Commission (ICPC) case file and the actual showing of the case file to PW1. The learned prosecution submitted that these facts have been ascertained and proved at the trial. He relied on the cases of **ANTHONY NWACHUKWU V THE STATE, (2007) NWLR (pt1062) page 31 and MODUPE V THE STATE, (1988) LPELR 1888(SC).**

The learned persecution further submitted that the Defendants by exhibit 3 and its contents, was decorated to appear as if it was emanating from the Independent Corrupt Practices Commission (ICPC) which was showed to PW1 in his office and the Defendants were arrested with the file, exhibit 3 in PW1's office by PW2 and his team. The learned prosecution submitted that the evidence of PW1, Ibrahim Mohammed Bomai, PW2, Muhammed Idris and PW3, Linus Gubi together with exhibit 3 corroborates the confessional statements of the Defendants that the offence of personation of a public officer under section 132 of the Penal Code has been proved and he urged me

to convict the Defendants on counts 2 and 4 of the charge.

On count 5 for the offence of conspiracy and making of false statement contrary to section 26 (1) (b) of the Corrupt Practices and Other Related offences Act; 2000 and punishable under section 25 (1) (b) of the same Act, the learned prosecuting Counsel at paragraphs 5.4 of his final written address set out the ingredients of the offence and then submitted at paragraphs 5.5 -5.11 of his address to the effect that the Defendants in the instant case are persons that make or cause the statement with knowledge to PW1, a public officer in the cause of his public duties. The learned prosecution then referred me to the statements of the Defendants and the evidence of PW1 as well as exhibit 3.

The prosecuting Counsel submitted that conspiracy can be formed in one of the following ways.

- (1) The conspirators may directly communicate with each other at a particular place and time and enter into an agreement with a common design;

- (2) There may be one person who is the hub around whom the others involve, like the centre of a circle and the circumference;
- (3) A person may communicate with A and A with B who in turn communicate with another and so on.

The learned prosecution submitted that conspiracy is a complete act upon an agreement by the conspirators, and in most cases, agreement is inferred or presumed. He relied on the case of **OSUAGWU V STATE, (2013) 5 NWLR (pt1346) page 366.**

At paragraphs 5.12-5.18 of the final address of the prosecution, he submitted to the effect that even by the confessional statements of the Defendants alone, the Defendants can be convicted of the offence of conspiracy punishable under section 25(1) (b) of the Act. The learned prosecution submitted that a confession is an admission stating or suggesting the inference that the Defendants committed that crime. He relied on the case of **MUSA YARO V THE STATE, (2007) 18 NWLR (pt 1066) page 215.**

Further, apart from the confessional statements of the Defendants, the learned prosecuting Counsel submitted that the evidence of the prosecuting witnesses and the exhibits tendered in evidence also corroborated the confessional statements of the Defendants. He relied on the case of **AKPAN V THE STATE, (1992) 6 NWLR (pt 248) page 439.**

In conclusion, the learned prosecution submitted that it has discharged the burden of proof placed on it by law beyond reasonable doubt and urge me to convict the Defendants on the strength of the evidence adduced at the trial.

The Defendants on the otherhand, in their final written address also raised a sole issue for determination as follows:-

“Whether the prosecution has proved the allegations preferred against the Defendant beyond reasonable doubt to warrant their conviction in this case.”

At paragraphs 3.1 and 3.2 of the final written address of the Defendants, learned Counsel submitted that the

onus in criminal proceedings lies on the prosecution to prove the guilt of the Defendant and the prove is beyond reasonable doubt.

He relied on the cases of ***ORJI V STATE, (2008) 10 NWLR (pt1094) page 31 ONUBOGU V STATE, (1974) 9 SC1, UDOSEN V STATE, (2005) 8 NWLR (pt928), EDET V STATE, (2008) 14 NWLR (pt1106) page 52 and OMOYELE V STATE (2014) 3 NWLR (pt 1394) page 232 at 236 ratio 2.***

In the instant case, the learned Counsel submitted that the prosecution failed to prove the allegations against the Defendants beyond reasonable doubt.

On counts 1 and 2 of the charge against the 1st Defendant, the learned Counsel at paragraphs 3.3 – 3.6 of his final written address submitted that by virtue of the testimony of PW1 there is no evidence before the Court that it was the 1st Defendant that called PW1 on phone on the 18th August, 2015. Learned Counsel referred me to the cross examination and answers elicited from PW1 wherein PW1 testified that he has

never seen the 1st Defendant except here in Court. Learned Counsel submitted that there is no deducible evidence of PW1 that the 1st Defendant was the alleged Honourable Commissioner of Independent Corrupt Practices Commission (ICPC) that called PW1 on the 18th August, 2015 on any of the two mobile phones of PW1. He submitted also that throughout the period of investigation and detention of the Defendants, PW1 was not invited to identify 1st Defendant or at least see him for clarity of identification. He then submitted that there is no evidence showing that the 1st Defendant ever called PW1 on 18th August, 2015 or any other day talk more of making the alleged false statement. Learned Counsel relied on the case **OMOYELE V STATE, (supra)**.

Further, the learned Counsel for the 1st Defendant submitted that it is trite law that in every criminal proceeding, the Defendant must be charge for an offence known to law and particulars of the time venue and date in which the alleged offence was committed must be stated. He submitted that in the instant case of count 1, the charge disclosed that the 1st Defendant called PW1 on 19th August, 2015 while the evidence of PW1 was that the 1st Defendant called him on the 18th August, 2015. He then submitted that there is doubt as to the dates the offence was committed and he urged me to resolve this doubt in favour of the 1st Defendant. He relied on the case

of ***ANKWA V STATE, (1969) 1 ALL NLR 133*** and section **196(1)** of the Administration of Criminal Justice Act 2015.

He also referred me to the testimonies of DW1, DW3 and DW4 to the effect that the 1st Defendant was not in Abuja on 18th and 19th of August, 2015 but in Kaduna State, a place outside the jurisdiction of this Court at the alleged time of the commission of the crime.

Learned Counsel for the Defendants therefore contended that the prosecution failed to prove the offence contrary to Section 25 (1) (a) of the Act.

In respect of count 2, he submitted that the prosecution failed to prove the offence of impersonation against the 1st Defendant beyond reasonable doubt. He submitted that there is no evidence that the 1st Defendant impersonated any officer of the Independent Corrupt Practices Commission (ICPC) on record. He stated that there is no evidence before the Court that the 1st Defendant was in contact with PW1 on 19th August, 2015 in any way let alone of personating the officer(s) of the Independent Corrupt Practices Commission (ICPC). He then enumerated at paragraph 3.8 of his address the ingredients of the offence under the Act and then submitted that he who asserts must prove. Learned Counsel then contended that the offence of personation under Section 132 of the Penal Code,

the ingredients of the offence have not been proved. He relied on the case of ***ADELUMOLA V THE STATE, (1988) 1 NWLR (pt73) page 693.***

On counts 3 and 4 against the 2nd Defendant at paragraphs 3.10 – 3.14 of the final written address of the Defendants, learned Counsel submitted to the effect that from the testimony of DW2, which is uncontroverted and uncontradicted that DW2 only accompanied one Solomon Adukwu to the office of PW1 and that DW2 was not in the knowledge of the purported file, exhibit 3 as PW1 and one Solomon Adakwu were speaking in Hausa and that DW2 does not understand Hausa.

Learned Counsel then submitted at paragraph 3.11 of his address that the prosecution failed to prove the ingredients under Section 25(1) (a) of the Act against the 2nd Defendant. He stated further that no evidence was adduced by the prosecution that the 2nd Defendant personated the staff of Independent Corrupt Practices Commission (ICPC) and he urged me to hold that no allegation of impersonation against the 2nd Defendant has been proved.

On count 5 for the offence of criminal conspiracy, the learned Counsel at paragraphs 3.15 and 3.16 of his address submitted that the prosecution must prove an agreement to do an illegal

act; and the doing of the Act in pursuance thereof. He contended that it must be shown a meeting of the minds of the conspirators to carry out an unlawful act or to carry out a lawful Act by unlawful means. He relied on the cases of **ADELEKE V THE STATE, (2012) 5 NWLR (pt 1292) page 122, NJOVENS V THE STATE, (1973) 5 SC 17 AND OKE V THE STATE (1999) 2 NNLR (pt590) page 246.**

Learned Counsel then submitted that the evidence of PWs 1, 2 and 3 and exhibits P1 and P2 respectively have not established conspiracy of the Defendants and Solomon Adakwu(now at large).

In conclusion, he urged me to discharge and acquit the Defendants of the five counts charge.

Now after the review of the evidence of both the prosecution and the defence as well as their respective final written addresses, to determine the allegations against the Defendants, I adopt the issue for determination as distilled by the prosecution as follows:-

“Whether the prosecution has, from the evidence laid down before the Court proved its case beyond reasonable doubt as required by law.”

The amended 5 counts charge and its particulars against the Defendants had already been reproduced at the beginning of

this judgment. I will now consider the 5 counts against the Defendants, the evidence adduced in support and the applicable law. However, I must stress that this is a criminal trial. And by virtue of Sections 135 and 136 of the Evidence Act, 2011 (as amended). It provides.

“(35) (1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”

(2)The burden of proving that any person who has been guilty of a crime or wrongful Act is, subject to section 139 of this Act on the person who asserts it, whether the commission of such Act is not directly in issue in the action.

(3) if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the Defendants.

“ 136(1) The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.

(2) In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the Court to the

opportunity of Knowledge with respect to the fact proved which may be possessed by the parties respectively.”

Thus, by the above provision, in a criminal trial, the prosecution must prove its case against the Defendant beyond reasonable doubt. And proof beyond reasonable doubt had been explained by the Court of Appeal in the case of **ADEYEME PEDRO V THE STATE (2015) LPELR 2457**, Akure Judicial Division thus:-

“Proof beyond reasonable doubt does not mean proof beyond shadow of doubt. Therefore, if the evidence adduced by the prosecution is so strong against an accused person as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course it is possible but not in the least probable; the case is proved beyond reasonable doubt, but nothing short of this will do.”

See also **AGBO V STATE, (2006) 6 NWLR (pt977) page 545, NWATURUOCHA V THE STATE (2011)6 NWLR (pt1242) page 170 and FRIDAY SMART V THE STATE, (2016) LPELR 40827 (SC).**

Having said the above, I will now consider counts 1 and 3 for the offences of making false statement contrary to Section 25(1) (a) of the Act and impersonation contrary to section 132 of the Penal Code Cap 532 Laws of the Federal Capital

Territory, Abuja, 2006 against the two Defendants. Thus, for the 1st and 3rd counts against the Defendants for making false statement, Section 25 (1) (a) of the Corrupt Practices and Other Related Offences Act, 2000 provides:-

“25 (1) (a) Any person who makes or causes any other person to make to an officer of the commission or to any other public officer in the course of the exercise by such public officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made.

(a) Is false, or intended to mislead or is untrue in any material particular;

The ingredients or elements of the offence of making false statement contrary to Section 25 (1) (a) of the Act and punishable under subsection (b) of Section 25 (1) of the Act are as follows:-

- (i) That the Defendant is a person;
- (ii) Who either makes or causes any other person to make the statement;
- (iii) To make the statement which to the knowledge of the person making, or causing the statement to be made;

- (iv) To either an officer of the commission or to any other public officer;
- (v) In the course of the exercise by such public officer of the duties of his office.

The question now is whether from the testimonies or evidence adduced by the prosecution witnesses, the prosecution has proved the above ingredients against the Defendants in counts 1 and 3 beyond reasonable doubt?

Firstly, before I evaluate the evidence adduced by the prosecution in prove of counts 1 and 3 against the Defendants and the evidence of the defence as well, I want to categorically make it clear that to secure a conviction of any Defendant or before the conviction can take place, the Court of Appeal in the case of ***AMINU ADAMU V THE STATE, (2016) LPELR 41174, Kaduna Judicial Division held.***

“The commission of an offence by an accused person can be proved or established by either of the following:-

- (a) The confessional statement of the Accused persons; or
- (b) Circumstantial evidence; or
- (c) Evidence of eye witnesses of the crime.

Thus, the prosecution does not always need an eye-witness evidence to secure the conviction of an accused person, even where the charge is that of culpable homicide or murder, if the charge can be proved by any of the ways enumerated above.”

See also ***IGALEDE V THE STATE (2006) 6 NWLR (pt 1000) page 100 at 120, LORI V THE STATE, (1980) 8 -11 SC APGE 81 and EMEKA V THE STATE (2001) 14 NWLR (Pt 734) page 666.***

In the instant case, by exhibit 2, PW1, Ibrahim Mohammed Bomai, complained to the Independent Corrupt Practices Commission (ICPC) that on the 18th August, 2015 at about 9:30pm, a person who claimed to be Honourable Ndanusa from Independent Corrupt Practices Commission (ICPC) informed him that there is a petition written against the former Honourable Minister FCT and himself, the Director, FCT treasury to the Independent Corrupt Practices Commission (ICPC) and that the Honourable Ndanusa volunteered to send his staff from Independent Corrupt Practices Commission (ICPC) with the petition for PW1 to peruse it and later to meet the Honourable Ndanusa for discussion. Then at paragraph 2 of exhibit 2, it states:-

“We agreed that two (2) officers from the commission will bring the petition to me to the office at 11:00am on Wednesday, the

19th of August, 2015 unfortunately, I had to attend a meeting at the scheduled time and so I could not meet with the officers until about 1.15pm.”

The oral testimony of PW1 on the 24th March, 2016 is consistent with the statement contained in exhibit 2. PW1 further testified and explained that on the 18th August, 2015, he received a phone call from an unknown person at about 9:30pm. PW1 stated that the caller asked him whether he is Ibrahim Bomai the Director Finance of FCT? PW1 answered in the affirmative. PW1 then testified that the caller introduced himself as Hon. Ndanusa, a commissioner with Independent Corrupt Practices Commission (ICPC) and that there is a petition in respect of the former Honourable Minister, Senator Bala Mohammed and himself, the Director of Treasury. PW1 further testified that Hon. Ndanusa said to him that he was going to send two of his officers of Independent Corrupt Practices Commission (ICPC) the following day being 19th August, 2015 with a copy of the petition for him to go through and later they discuss on the petition.

Then the 1st Defendant, Hon. Salihu Ndanusa Dauda in his statement to the officials of Independent Corrupt Practices Commission (ICPC), exhibit 6, the 1st Defendant state:- “ I know Solomon Adakwu in Zaria for long.” In exhibit 6, the 1st Defendant also states:-

“As for Nsa Oyok, it was Mr. Solomon Adakwu who brought him to bail me on 17th June, 2015 at the Economic and Financial Crime Commission (EFCC).” In exhibit 6, the 1st Defendant confessed further and states:-

“While I was in Abuja two weeks ago, on e Abdullahi Baba Saleh paid me a visit to see my health being his family’s long acquaintance. At the same time, Mr. Solomon and Mr. Nsa Oyok was also at the Hotel and they were discussing generally when I came out, I introduced Abdullahi to Solomon along with Solomon’s friend Mr. Nsa Oyok. During that discussion, Abdullahi said he has a friend who have relevant documents on how certain N18,000,000,000.00 was paid to Federal Capital Territory Administration (FCTA) and shared”

The first Defendant further stated in exhibit 6 as follows: -“I was in Zaira and Solomon came to my house with a bunch of documents and a typed petition and said all those papers apart from the petition which he typed on his NGO letter headed paper were given to him by the said Abubakar. And that also the said Abubakar has given him the telephone numbers of those who they claimed shared the money. I told him to investigate it properly because it was not a small case. He said he wants me to call one Ibrahim Bomai who he said was given to him so that he can see the documents! The 1st Defendant stated further in exhibit 6, “I said if you are only to show him the documents that

is no problem but be careful. That was how he and Nsa Oyok went to the said Ibrahim Bomai.”

Now by the evidence of PWs1 and 2, Ibrahim Mohammed Bomai and Mohammed Idris respectively confirmed that Solomon Adakwu and Nsa Oyok, the 2nd Defendant actually came to PW1’s office at 11:00am of 19th August, 2015 but PW1 was in a meeting. PW1 and 2 testified that after the meeting by PW1, Solomon Adakwu and Nsa Oyok saw PW1 in his office at about 1.15pm. This piece of evidence by PWs1 and 2 was also confirmed by the 2nd Defendant in his confessional statement, exhibits 7 and 7 (a) respectively. In exhibit 7, the 2nd Defendant stated thus: - “case file mark with red ink with file no ICPC/AFC/INV/1 VOL 1 also classified as “secret (x) crossed marked in red tapes containing a petition titled “WILFUL DIVERSION AND CRIMINAL MISAPPROPRIATION OF PUBLIC FUNDS, A CLEAR CASE OF CRIMINAL CONSPIRACY AGAINST THE COMMON WEALTH OF THE STATE.” The file was found in our position with me and Solomon S. Adakwu at Federal Capital Development Authority (FCDA) Director of Treasury office! The 2nd Defendant further stated in exhibit 7 as follows:-

“The 33 pages of the petition contained in the case file was given to us by Hon. Ndanusa who surname is Unknown to give to the Director of Treasury Federal

Capital Development Authority (FCDA) to read and check and speak with him later.”

The red file referred to by PWs1,2 and by exhibits 6, 6(a),7 and 7 (a), Is exhibit 3 which was actually delivered to PW1 in his office by the 2nd Defendant and Solomon Adakwu (now at large). And in exhibit 3, I have seen the petition addressed to the Chairman Independent Corrupt Practices Commission (ICPC) on the letter headed paper of Muslim and Christian Youths integration for good leadership which petition was minuted to Assistant Commissioner of Police (ACP) with the following inscription:- “please direct investigation and report to me personally.” And by exhibit 6, the 1st Defendant states: -

“The minute of the petition was done by me and addressed to ACP written,” please direct investigation and report to me personally was written and signed by me.”

The 1st Defendant confessed vide exhibit 6 thus: -

“The Independent Corrupt Practice Commission (ICPC) stamp was done by me and destroyed. The Independent Corrupt Practices Commission (ICPC) stamp was dated 15th January, 2015 and signed by me.”

As clearly confessed by the Defendants all these features i.e. minutes by the 1st Defendant, Independent Corrupt Practices

Commission (ICPC) stamp and the date of receipt of the petition, exhibit 3 are crystal clear on the face of exhibit 3.

Having evaluated the evidence adduced by the prosecution, for the offence of making false or untrue statement, it is clear that the Defendants are persons who make or cause to be made exhibit 3 and its contents. Further, the Defendants and one Solomon Adakwu (now at large) have the knowledge of exhibit 3 and its contents. And by the evidence of PWS1 and 2 and exhibits 6, 6(a), 7 and 7(a) including exhibit 2, the statement was made to PW1, the Director of Treasury, Federal Capital Development Authority (FCDA), a public officer and in his office, meaning in the course of his official duties which statement are false and untrue.

Now I have gone through the evidence of DWs 1, 2, 3 and 4 and the submissions of the Learned Counsel for the Defendants in his final written address especially his submissions at paragraphs 3.3, 3.8, 3.11 and 3.12 that the offence of making false statement under Section 25(1) (a) have not been established by the prosecution against the Defendants. It is the contention of the learned Counsel that PW1 testified both in-chief and under cross examination that he did not know the 1st Defendant except here in Court. He also submitted that the 2nd Defendant only accompanied one Solomon Adakwu (now at large) to deliver an enclosed enveloped to PW1's office and that he did not know the contents of the file neither did the 2nd Defendant made any false

statement to PW1 or officers of the ICPC. He further stated that while in the office of PW1, Solomon Adakwu (now at large) and PW1 were discussing in Hausa Language and that the 2nd Defendant did not understand Hausa.

Now as I stated earlier, the prosecution can established its case and secure conviction on either the confessional statement of the Defendant or by circumstantial evidence or evidence of eye witnesses. In the instant case, by exhibits 6, 6(a), 7 and 7(a), the confessional statements of the two Defendants, it corroborated the testimonies of PWs 1, 2, and 3 in making it easier for the prosecution to established the ingredients of the offence of making false statement or untrue statement contrary to Section 25(1) (a) of the Corrupt Practices and Other Related Offences Act, 2000.

See the cases of ***CHIAMAKA NNAJIOFOR V PEOPLE OF LAGOS STATE, (2015) LPELR 24666 (CA), LAGOS*** Judicial Division and ***IGABELE V THE STATE, (2004) 15 NWLR (pt 896) page 314.***

In the instant case, by the testimonies of PWs 1, 2 and 3 and the corroborative confessional statements of the 1st and 2nd Defendants as contained in exhibits 6, 6(a), 7 and 7(a), I hold the view that the prosecution has proved the ingredients of the offence of making false statement or untrue statement against

the Defendants contrary to Section 25 (1) (a) of the Act beyond reasonable doubt and I so hold.

On Counts 2 and 4 of the charge contrary to Section 132 of the Penal Code Act Cap 532 Laws of the Federal Capital Territory, Abuja against the Defendants, the prosecution must establish beyond reasonable doubt the following elements or ingredients: -

- (a) That the Defendant personated a public servant, or that he pretended to hold the post of a public servant;
- (b) That he was not such a servant , or did not hold the post pretended;
- (c) That he acted falsely or that he know that he did not hold the office in question;
- (d) That he, when assuming the character, did or attempted to do something under the colour of his assumed office.

In the instant case, by the evidence of PW1, Ibrahim Mohammed Bomai, he testified that on the 18th August, 2015 at about 9:15pm, he received a phone call from someone that introduced himself as Honourable Ndanusa, a Commissioner with the Independent Corrupt Practices Commission (ICPC). PW1 further testified that the Hon. Ndanusa, i.e. (1st Defendant) told him that he would be sending two of his officers to PW1 with exhibit 3. And the two officers from the said Honourable Ndanusa i.e. one Solomon Adakwu (now at large) and the 2nd Defendant, Nsa Oyok

Edet presented themselves to PW1 as the Independent Corrupt Practices Commission (ICPC) officers sent by Honourable Ndanusa (the 1st Defendant). The testimony of PW2, Mohammed Idris, the Independent Corrupt Practices Commission (ICPC) investigating officer is also critical and key in the instant case. According to PW2, when he emerged from the conference room of PW1, he confronted the 2nd Defendant and Solomon Adakwu whether they are officers of Independent Corrupt Practices Commission (ICPC) and that they should produce their identity cards. PW2 testified that he produced his ICPC identity card and then asked the 2nd Defendant and Solomon Adakwu to do the same thing if they are actually officers of ICPC. According to PW2, the 2nd Defendant and Solomon Adakwu started panicking and told PW2 that they were actually sent by Honourable Ndanusa Dauda Salihu, that is, the 1st Defendant.

By the evidence of PW1 and PW2, firstly the 1st Defendant introduced himself to PW1 as Honourable Ndanusa, a Honourable Commissioner with Independent Corrupt Practices Commission (ICPC). Secondly, 1st Defendant told PW1 that he would be sending two officers of the Commission to bring exhibit 3 which the 2nd Defendant and Solomon Adakwu did and presented or hold themselves to PW1 as officers of Independent Corrupt Practices Commission (ICPC) being sent by their boss, the 1st Defendant. And by exhibit 3 and its contents especially the

minutes on the petition on the letter headed paper of Muslim & Christian Youths Integration for Good Leadership, the 1st Defendant in exhibits 6 and 6(a) confessed to making the minutes and addressed to ACP to investigate and report back to him personally. Certainly by the evidence of PW1, PW2 and the confessional statement of the Defendants i.e. exhibits 6, 6 (a), 7 and 7(a), the Defendants personated themselves or hold out themselves as officers of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in which the Defendants are not servants of the Commission neither did the Defendants hold the office of Honourable Commissioner or officer of the Commission respectively. Thus, by the evidence of PWs 1, 2, Exhibit 3 and its contents and the confessional statements of the Defendants, the action of the Defendants was false and indeed knew that they are not public servants of the Commission. And the final ingredients for the offence of personating a public servant or holding out as a public servant is when assuming the character, did or attempted to do something under the colour of his assumed office. In the instant case, by exhibit 3 and the minutes on the petition by the 1st Defendant as confessed by him in exhibits 6 and 6(a), and the presentation of exhibit 3 to PW1 by the 2nd Defendant and one Solomon Adakwu (now at large), the assumption is that PW1 and the former Minister of FCT, Senator Bala Mohammed are under investigation of wilful

diversion and criminal misappropriation of public funds to the tune of N18,000,000,000.00 (Eighteen Billion Naira) by the Commission. By the testimony of PW1, exhibit 3 and its contents and exhibits 6, 6(a), 7, 7(a), the prosecution has established the requirement of the last ingredient of the offence of impersonation contrary to Section 132 of the Penal Code.

Thus, in the circumstance, I hold the view that counts 2 and 4 of the charge sheet for the offence of impersonation contrary to Section 132 of the Penal Code applicable in the Federal Capital Territory, the prosecution has proved with credible evidence the ingredients of the offence against the Defendants beyond reasonable doubt and I so hold.

On the final count charge i.e. for the offence of criminal conspiracy contrary to Section 26 (1) (c) and punishable under Section 25 (1) (b) of the Corrupt Practices and Other Related Offences Act, 2000. As rightly submitted at paragraph 3.15 of the final written address of the Defendants' Counsel, the prosecution has the onus to prove against the conspirators: -

- (1) An agreement to do an illegal act;
- (2) To carry out a lawful act by unlawful means.

In other words, criminal conspiracy has been defined as follows: -

"When two or more persons agree to do or cause to be done (a) an illegal act (b) an act which is not illegal by illegal means, such an agreement is called conspiracy."

See **SGT MONDAY YAKUBU V THE STATE, (2014) LPELR 22401 (SC)**.

Also in the case of **BENJAMIN OYAKHERE V THE STATE, (2005) 15 NWLR (pt 947) page 159**, the Supreme Court of Nigeria further states on the meaning of Criminal Conspiracy thus: -

"When two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means, such agreement is called criminal conspiracy."

In the instant case, the Defendants by Count 5 of the charge were charged for criminal conspiracy pursuant to Section 26(1) (c) of the Act. It provides: -

"Any person who: -

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act."

In order to prove the offence of criminal conspiracy against the Defendants, I indorse and i agree with submissions of the learned prosecuting Counsel at paragraphs 5.8 and 5.10 of his final

written address. By exhibits 6, 6(a), 7, 7(a), the Defendants confessed to the various meetings held with others now at large, the roles played by each in making exhibit 3. The 1st Defendant, in exhibits 6 and 6(a) states: -

"When I came out, I introduced Abdullahi to Solomon along with Solomon's friend Mr. Nsa Oyok. During that discussion, Abdullahi said he has a friend who have relevant documents on how certain ~~₦~~18,000,000,000 was paid to Federal Capital Territory Administration and shared."

In exhibit 6(a), the 1st Defendant further states as follows: -

"The documents as contained in the Independent Corrupt Practices Commission (ICPC) purported file all emanated from the meeting Mr. Solomon Adakwu, Nsa Oyok Edet, Abdullahi Baba Saleh and Abubakar had in Abuja and Solomon brought the documents to me in Zaria with the file. I went through it and marked it secret because what I saw was baffling."

In exhibit 6(a), the 1st Defendant states further: -

"I was involved because they said the aggrieved person that gave them documents and telephone numbers will give them something if he is given the agreed amount they promised him which he said was One Billion Naira

out of which he was given only ₦25,000,000 (Twenty Five Million Naira).

Also, in furtherance of the agreement, the 2nd Defendant by exhibit 7, himself and Solomon Adakwu presented to PW1, Ibrhaim Mohammed Bomai exhibit 3 being the file given to them by the 1st Defendant. The confessional statements of the Defendants in exhibits 6, 6(a), 7, 7(a) collaborate or support the evidence of PW1 towards the grand design of the Defendants in making untrue statements to PW1. PW1 testified thus: -

“In the petition that was submitted to me they alleged that out of ₦18,600,000,000 (Eighteen Billion, Six Hundred Million Naira) received by Federal Capital Territory, the sum of ₦10,000,000,000 (Ten Billion Naira) was taken away by the former Minister of Federal Capital Territory and that the sum of ₦5,000,000,000 (Five Billion Naira) was taken away by me the Director Treasury while the remaining ₦3,000,000,000 was shared among the Staff of Federal Capital Territory.”

PW1 testified that he explained to the 2nd Defendant and Solomon Adakwu (now at large) how the funds of ₦18,600,000,000 (Eighteen Billion, Six Hundred Million Naira) was received and the expenditures therein. PW1 volunteered to make available to the

2nd Defendant and Solomon Adakwu (now at large) the Bank Statements but the 2nd Defendant and Solomon Adakwu (now at large) insisted that their mission is to show PW1 the petition and documents contained in exhibit 3 and later he can discuss with their boss, Honourable Ndanusa, the 1st Defendant.

Thus, from the testimony of PW1 and indeed PW2, exhibits 6, 6(a), 7 and 7(a) clearly lend credence to the fact that the Defendants and others now at large had different meetings involving two or more persons. It is also in evidence by exhibits 6, 6(a), 7 and 7(a), and the evidence of PWs 1 and 2, the Defendants and others now at large, by exhibit 3, their action or act was illegal and unlawful. Furthermore, the statements as contained in exhibit 3 is false and untrue. And by the evidence of PW2, Mohammed Idris, who sat in a vantage position of PW1's office without the knowledge of the 2nd Defendant and one Solomon Adakwu that he is an operative of the Independent Corrupt Practices Commission (ICPC), when confronted by PW2, whether they are officers of Independent Corrupt Practices Commission (ICPC) the 2nd Defendant and Solomon Adakwu (now at large) were panicking from where they were arrested. In other words, by the evidence of PW2 and the confessional statements of the Defendants, the Defendants are not officers or operatives of the Independent Corrupt Practices Commission (ICPC).

Hence, therefore, in the instant case, by the evidence of PWs 1, 2 and exhibits 6, 6(a), 7 and 7(a) in which the Defendants hatched the idea of producing and indeed did produce exhibit 3 which exhibit 3 is false or untrue, the prosecution has successfully proved the offence of Criminal Conspiracy contrary to Section 26 (1) (c) of the Act and punishable under Section 25 (1) (b) of the same Act against the Defendants beyond reasonable doubt and I so hold.

Thus, before I conclude, it is important to refer to the submissions of the learned Counsel for the Defendants at paragraph 3.4 of his final written address. He submitted that it is trite that an accused person in every criminal proceeding must be charged for an offence known to the law and particulars of time i.e. date hour and venue stated in the charge. In the instant case, learned Counsel submitted that the charge stated the date as 19th August, 2015 while the evidence of PW1 stated that the Honourable Ndanusa called him on phone on 18th August, 2015. He then submitted that there is doubt as to the dates of which the particular offence was committed and he relied on Section 196(1) of the Administration of Criminal Justice Act 2015 and he also relied on the case of **ANKWA V THE STATE, (Supra)**.

I quite agree with the learned Counsel for the Defendants that it is trite that in criminal proceedings, a Defendant must be charged for an offence created by law and particulars of the offence or

charge stated. In the case of *MATHEW SONOMA V I.G.P*, (2013) LPELR 20833, the Court of Appeal, Abuja Judicial Division held: -

"An accused person can only be charged for an offence created by law. In charging the accused, essential elements upon which he is charged must be captured in the charge. Each count which complains about the conduct of an accused person must be specific and precise. The particulars of the offence must state the specific criminal conduct upon which the accused is arraigned otherwise. In other words, each count of the charge as framed must contain dispositions disclosing an offence against the accused person, otherwise an accused person can be discharged on such a defective charge."

See also ***OJO V FRN*, (2008) 11 NWLR (pt 1099) page 467 at 513 – 514, *EDET V STATE*, (2008) 14 NWLR (pt 1106) page 52 at 65 – 66.**

Further, by Section 196 (1) of the Administration of Criminal Justice Act 2015, it provides: -

"The charge shall contain such particulars as to the time and place of the alleged offence and the Defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably

sufficient to give the Defendant notice of the offence with which he is charged.”

In the instant case, a careful perusal of the counts charge and the offences against the Defendants, the particulars of the offence disclosed that the offences were committed on or about the 19th August, 2015 in Abuja. The particulars of the offence or information as filed by the prosecution it sufficiently described the roles of the Defendants in committing the offences charged. The date on the charge and the evidence of PW1 that the 1st Defendant called him on 18th August, 2015 is not material as raised by the learned Counsel. In fact the particulars state on or about the 19th August, 2015 and it could therefore be either before or on the 19th August, 2015. And a close look at Section 196 of Administration of Criminal Justice Act 2015 it did not talk about date but rather the charge as a mandatory requirement, must contain particulars of time and place of the commission of the offence. And by the evidence of PW1 and exhibits 6, 6(a), 7 and 7(a), the phone call placed to the witness, PW1 by the 1st Defendant was on 18th August, 2015 at about 9:15pm. This position is in consonance with Section 36 (6) (a) of the 1999 Constitution (as amended) which provides: -

“Every person who is charged with a criminal offence shall be entitled to (a) be informed promptly in the

language that he understands and in detail of the nature of the offence.”

In the instant case, charge or information against the Defendants of the offences alleged to have been committed have been precisely stated and particulars thereof supplied as to the nature of the offences.

Although the learned Counsel for the Defendants did not raise this issue to quash the charge at the initial stage of trial, but he allowed evidence adduced and i commend the foresight of the learned Counsel, Pius Ezema Esq. And the Court of Appeal in the case of *OTUNBA ADEBAYO CHRISTOPHER ALAO AKALA V FRN, (2014) LPELR 22930*, Ibadan Judicial Division held:-

“An application to quash a charge is one of which if successful can terminate a trial at inception; hence the Court must be circumspective in considering such application. The purpose of the application in most cases is to enable the Court to filter the proof of evidence filed to ensure that the accused person is not subject to the ordeal of a criminal trial with the attendant stigma when there is in fact no good reason in law to so proceed. The good in law pertains to the disclosure of a known offence in law which must also tend link the accused person to the alleged commission of the said offence. This is an essential requirement which has its sources in the 1999 Constitution of the FRN. Section

36(6) (a) of the Constitution requires that “ every person who is charge with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence.”

The Court of Appeal then posed a question:-

“ Has the Appellant then duly informed in detail of the nature of the offence? As to Counts, section 36 (12) requires that “ a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law.” Now at the inception of a trial, the Court is still very far from conviction. Further the requirement is an offence which is defined and with penalty thereof prescribed.”

In the instant case, as I said earlier, the particulars of the offence sufficiently described the roles of the Defendants, the law alleged to have been contravened and the law prescribing punishment for the offences.

Thus, the objection of the learned Counsel for the Defendants is completely misplaced, misconceived and not anchored on any relevant law or statute and it is accordingly dismissed.

Having said the above, by the evidence adduced by the prosecution including the exhibits tendered in evidence especially the evidence of PWs 1 and 2, exhibit 3 and the confessional statements of the Defendants, the prosecution have proved the

ingredients of all the 5 counts charged beyond reasonable doubt against the Defendants. Accordingly, on counts 1 and 3 for the offence of making false statement contrary to section 25(1) (a) and punishable under section 25 (1) (b) of the corrupt practices and other related offences Act, the Defendants are hereby convicted as charged. In respect of counts 2 and 4 of the charge contrary to section 132 of the Penal Code and punishable under the same section, the Defendants are hereby convicted of the offences as charged. And on the offence of criminal conspiracy contrary to section 26 (1) (c) and punishable under section 25(1) (b) of the Corrupt Practices and other Related Offences Act, 2000, the Defendants are hereby convicted as charged.

PLEA OF ALLOCUTUS:-

Pius Ezema:- in sentencing the convicts, i urged the Court to temper justice with mercy and take into account section 312 Administration of Criminal Justice Act, 2015 and i refer also to section 401 Administration of Criminal Justice Act, 2015 which encourages the Court to look at the purpose in which the sentence tends to achieve. I also refer to section 416 (2) Administration of Criminal Justice Act, 2015. We plead that in particular the 1st Defendant is an aged man of over 60years and has many dependants on him. The 1st convict has never been convicted of any crime and therefore he is a first offender. The 1st convict will also undertake not to commit any crime in future in

any form. On the part of the 2nd convict, the record has shown he is a civil servant, and he has an aged mother and the sole child of the mother. The wife of the 2nd convict is under medical care and she just lost her seven months pregnancy. The 2nd convict will also undertake to maintain good conduct and not to associate with any bad conduct that will result into crime. The 2nd convict has never committed any crime or convicted in the past. He is a first offender. The relevant laws in which the convicts were charged conferred wide discretionary powers on the Court. I apply that the Court suspend the punishment of the convicts as they are first offenders.

In the alternative such fines as are reasonable to imposed.

Akponimisingha::- In response i refer to section 312 of Administration of Criminal Justice Act, 2015 does not apply. From our record we do not have previous records of conviction. However the 1st convict in his testimonies in exhibits 6 and 6(a) that the 2nd convict took him on bail and i urge the Court to take into account section 416 Administration of Criminal Justice Act, 2015.

COURT SENTENCE

In passing the sentence on the convicts, i take into account the passionate plea of the learned Counsel on behalf of the convicts that they are first offenders and that they have never been

involved in any crime wherein they were convicted. I also take into account that both convicts especially, the 1st convict is ageing and he has dependants. Equally, the 2nd convict has an aged mother that depends on him and he equally has a family. However, i am a little bit constraint with societal ills afflicting the Nigerian society with generally the misdemeanour ordinarily referred to as "419". This does not give our country a good name and image. In any event, i have listened to the plea of the learned Counsel on behalf of the convicts. The convicts being first offenders and there is no record of previous conviction, on counts 1 and 3, the convicts are hereby sentenced to pay a fine of N50,000.00 each or 6 months imprisonment; on counts 2 and 4, the convicts are hereby sentenced to a fine of N50,000.00 each or 12 months imprisonment and on count 5, the convicts are hereby sentenced to pay a fine of N50,000.00 each or 6 months imprisonment.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
8/11/17

1st and 2nd Defendants present in Court and speaks English

E.O Akponimisingha:- For the prosecution

Pius Ezema:- For the Defendants

Akponimisingha:-Case is for judgment

Signed
Judge
8/11/17