



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



CHARGE NO: FCT/HC/CR/40/2008

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

MR. PIUS OMOSEHWOFA EKIREGHGIO.....DEFENDANT

JUDGMENT

The Defendant in this case was arraigned before this Court by the Independent Corrupt Practices and other Related Offences Commission (the ICPC) on a two count charge bothering on knowingly holding an interest in a contract emanating from a department in which he is employed being a member of a company consisting of less than 20 people, contrary to and punishable under Section 12 of the Independent Corrupt Practices and Other Related Offences Act 2000 and using official position to confer corrupt advantage on himself contrary to and punishable under Section 19 of the same law. He pleaded not guilty to the offences.

To prove the allegations against the Defendant, eight (8) witnesses were called and testified for the prosecution. About thirteen exhibits were tendered through them. All of them were fully cross examined by the learned counsel to the Defendant. At the end of the case for the prosecution a no case submission was made on behalf of the Defendant. This was opposed by learned counsel for the prosecution. At the end of the day the submission of no case was overruled by the Court in a considered Ruling.

Consequent upon this, the Defendant entered his defence and called two witnesses. The witnesses also tendered documents and were duly cross examined at the end of their testimonies.

The brief facts of the case is that sometimes on the 19/07/2006 the Chairman of the ICPC received a petition which alleged that some staff of the National Council for Colleges of Education (NCCE) were involved in the mismanagement and embezzlement of fund meant for the Council and Colleges of Education. The petition also alleged that the syndicate was coordinated by one Nairabo Saleh Mshelia with cell phone number 08045088218 who is a staff of the Finance Department.

Details of the method used by the syndicate in perpetrating the fraud were given as follows:

- (i) Award of fictitious contracts.
- (ii) Over invoicing.
- (iii) Fictitious supplies and bloated procurement cost.
- (iv) Withholding illegally, funds meant for Colleges of Education and;
- (v) Collection of bribes from funds beneficiaries (Colleges of Education) before same is released to them, etc.

The petition was referred to the PW1 and his team to investigate. The team visited the National Commission for Colleges of Education (NCCE) in the course of investigation and demanded to be furnished with some documents. The Commission obliged by releasing some documents including exhibit ICPC1 which is a letter for renewal of computer maintenance agreement for the year 2006. The PW1 and his team studied the document and realized that the Defendant recommended for the renewal of the contract and also signed the maintenance agreement on behalf of the Commission.

The PW1 and his team also wrote to the Corporate Affairs Commission to request for certified copies of Form C07, C02 and the Articles and Memorandum of Association of Multi-Link Computer Systems Ltd.

Upon receipt of the documents they discovered that the Defendant was a Director of the Company with 50% of the Company's total share capital of N100,000. It was upon the foregoing findings that the prosecution arraigned the Defendant before this Court.

The first witness for the prosecution (PW1) is Akaa Uja Akaa. He is a Financial Investigator and Senior Accountant attached to the Financial Investigation Unit of the Accounts Department of the Independent Corrupt Practices and Other Related Offences Commission. He testified that sometimes in September, 2006 he investigated this case based on a petition that there was embezzlement at the National Commission for Colleges of Education. That in the course of investigation he got a letter of renewal of computer maintenance. That the accused made recommendation and signed the contract for renewal of computer maintenance on behalf of the Commission. The contract renewal agreement was admitted as exhibit ICPC 1. The witness also testified that he retrieved a payment voucher for the contract dated 29th December, 2005 in the sum of N847,530.00. That he also obtained Form C07 (particulars of directors) from the Corporate Affairs Commission and the Defendant's name was listed as the highest shareholder of 50% of the total shares in the company.

The PW1 further testified that he recovered a receipt of Multi Link Computer Systems Ltd written in favour of National Commission for Colleges of Education. He also got and tendered the letter of employment of the accused.

Under cross examination the witness told the Court that the petition which is the subject matter of investigation was written against National Council for Colleges of Education. He also testified that the petition (exhibit ICPC 9) was against one Nairabo Saleh Mshelia of the department of finance. That the name of the accused person was not mentioned in the petition! That the accused recommended the award of exhibit ICPC 1. He also stated that the computer maintenance agreement was also recommended by Dr. Ojo, the Chief Internal Auditor. Finally the PW1 stated that he does not know if the ICPC Act prohibits anonymous petition.

The PW2 is one Christiana Joy Igiligba. She is an Accountant with the National Commission for Colleges of Education and Director of Finance and Supplies. She testified that the Defendant is the Chief Programming Officer in the department of Planning and Research.

Under cross examination she agrees that the Defendant does not have approval power over contracts. That the *Executive Secretary* of the Commission is the approving authority for payments at the Commission. She stated that she doesn't know if the contract was

executed. She also informed the Court that maintenance of computers has been going on for long since when the Commission was in Kaduna. Finally she admitted that she doesn't know if the Commission has lost anything as a result of the maintenance agreement.

The PW3 is one Joachim Alaneme, an Investigator and the operative who obtained the statement of the Defendant. Under cross examination he told the Court that they investigated anonymous petition at the ICPC. He conceded that exhibit ICPC 9 shows that the petition was not written against the Defendant. That there is no difference between National Council and Commission for Colleges of Education. That Saleh Mshelia was arrested during investigation. He stated that it was discovered that the Defendant conferred undue advantage to himself in the sum of N847,000.00. He agrees that Defendant does not have contract approval power. He also conceded that the contract in issue (exhibit ICPC 1) was executed. That he could not remember details of the Commission's findings during investigation. He stated that none of the allegations in the petition was found.

The PW4 is one Oluwasina Titilope, a staff of Union Bank Plc and Unit Head of Customer Service. The witness testified that the contract sum was paid to Multi Link Computer Systems Ltd through

Gwawalada branch. The statement of account of the company was tendered through this witness.

Under cross examination the PW4 stated that the cheque paid in favour of Multi Link Computer Systems Ltd was signed by the Director of Finance of the Commission. That he does not know if the Defendant sign cheques. Also does not know why the cheque was paid. He informed the Court that there is no complaint from the Commission about the payment.

The PW5 is one Friday Ichefu, a staff of First Bank Limited in charge of Customer Service. He tendered the account opening package of Multi Link Computer Systems Ltd which was admitted as exhibit ICPC 12. He also tendered the statement of account of the Multi Link Computer Systems Ltd admitted as exhibit ICPC 13. That the account is now dormant. That the cheque was paid to the bank in 2006 and there were no complaints about the payment.

The PW6 is one Folake Olowoyo, who is head of Customer Service of the branch of First Bank Ltd where Multi Link Computer Systems Ltd account is domiciled. She informed the Court that documents relating to Union Bank Plc cheque paid through her branch of First Bank Ltd had been destroyed as the documents are upto six years old.

The PW7 is Mairabo Sale Mshelia who is the Chief Accountant and the Purchasing Officer in the National Commission for Colleges of Education where the Defendant works. In his testimony before the Court he agrees that his telephone number is on exhibit ICPC9. However he disagreed that his name is NAIRABO. He also stated that the name of the Defendant is not on exhibit ICPC 09. That he made statement to the ICPC in this case.

Finally the PW8 is one Dr. Moses Olatunji Ojo, the Director of Planning, Research and Statistic at the National Commission for Colleges of Education. He informed the Court that he oversees three Units (i.e. computer sub-unit, planning, policy and research). That the accused person works under him. He informed the Court that he doesn't know anything about the transaction for which the Defendant was put on trial. That he became head of the department after the alleged contract was entered into.

Under cross examination the PW8 testified that he remembered writing to the Defendant for advice in respect of exhibit ICPC 1 and he obliged. That the Executive Secretary approves all contracts. That the Defendant does not approve contract. That the contract in this case was recommended by the Director of Internal Audit. He stated that exhibit ICPC 09 states that there is a syndicate in the Commission which specializes in contract inflation and over

invoicing. That the petition does not mention the Defendant or Multi Link Computer Systems Ltd. That the Defendant has awards for long service at various times. He further stated that exhibit ICPC 1 contains the recommendation of the Chief Internal Auditor and approval of the Executive Secretary. That the contract subject of trial was executed. That the Commission was not cheated.

At the close of the case for the prosecution the learned Counsel to the Defendant called two witnesses.

The DW1 is one Adewale Mosaku who works with the Internal Audit Unit of the National Commission for Colleges of Education. He recognized exhibits ICPC 1 and D1 as the same document. That renewal of computer maintenance agreement with the Commission was routed through the Director of Internal Audit who requested for the views of the Chief Programming Analyst on the performance of the company. That price confirmation was done and it was discovered that the price quoted was fair and reasonable. He also testified that the contract was awarded because of the recommendation of the Director of Planning. That Commission got a 35% discount on the amount quoted by Multi Link Systems Ltd.

Under cross examination he told the Court that exhibit ICPC 1 was signed by the Defendant on behalf of the Commission.

The Defendant who testified as DW2 informed the Court that Multi Link Computer Systems Ltd was registered with the Corporate Affairs Commission (CAC) with a share capital of N100,000 out of which he had 50% of the shares valued at N50,000. That at that time there was no law which prohibited public servants from membership of private companies. However, before the ICPC Act was enacted he took steps to divest himself from running the company, and relinquished his shares back to the company. That a *Deed of Appointment* was prepared and circulated to the directors of the company. This was also filed with the Corporate Affairs Commission.

The Defendant also testified that he signed the contract renewal agreement on behalf of the National Commission for Colleges of Education because he was acting for the director of planning and research then. That he had authorization to stand for the said director. Written authorization to so act dated 28/12/2005 was tendered and admitted as exhibit D2. That exhibits ICPC 3, 4 and 4(A) only revealed that the accused was a director of the company in 1998. That Julius did not make changes with the Corporate Affairs Commission. He further testified that the First Bank Ltd account he opened was for the purpose of payment for job done for Kaduna state in 1998 when the defendant was still on the board of Multi Link Computer Systems Ltd. The *Deed of Appointment* of new

director in place of the defendant was admitted as exhibit D9. That it was not the responsibility of the defendant to apply for change as it is the responsibility of the company to do so.

At the end of trial the Defendant and the prosecution filed their final written addresses which were adopted before the Court. Learned counsel to the Defendant was of the view that the prosecution who has the burden to prove the guilt of the Defendant on the offences charged has not discharged the burden. He has asked the Court to discharge and acquit him on the two counts.

Counsel submitted that from evidence led at trial the Defendant was not a member of Multi Link Computer System Limited and therefore had no interest in the contract awarded to the company at the material time the petition was written. He stated that at the time the contract in exhibit ICPC1 was entered between Multi Links Computer Systems Ltd and the Commission, the Defendant had divested himself from running the company and relinquished his shares in the company. Counsel further submitted that when the company was registered by the Defendant there was no law which prohibited the Defendant as Public Servant from holding interest in a private company.

He further submitted that the prosecution did not cross examine the Defendant on the execution of *Deed of Appointment* and that this

should be interpreted by the Court as admission of that fact for which the Court must act upon.

On the bank account opened by the Defendant in the name of the company in 2002, learned counsel submitted that the Defendant had explained that it was meant to receive payment for the job done by the company in 1998 when the Defendant was at the helms and that after the payment the Defendant never operated the account again. On the discovery that the name of the Defendant was on Form C07 and C02 in 2006 when investigation was conducted, the counsel submitted that it was the duty of the company after the Defendant left the company and a deed of appointment was executed to effect necessary changes to remove his names.

In his response in the written address learned counsel to the prosecution submitted that the prosecution has established the guilt of the Defendant in respect of the two counts. He submitted that all the prosecution witnesses adduced credible, cogent, convincing and uncontroverted evidence against the Defendant beyond reasonable doubt. Learned counsel distinguished prove beyond reasonable doubt from prove beyond all reasonable or shadow of doubt. He described the former as evidence strong enough against the accused to leave only a remote possibility in his favour which can easily be

dismissed with the fact that it is possible but not in the least probable.

On whether the Defendant resigned his membership as a Director of Multi Link Computer Systems Limited counsel submitted that Section 258(5) of the Companies and Allied Matters Act was not complied with. Counsel stated that the Defendant did not give notice of his resignation in writing to the company and neither was there evidence of acceptance of the resignation. That if the Defendant truly resigned the Board of the Company would have directed the Secretary of the Company to effect necessary changes at the Corporate Affairs Commission.

Counsel also contended that if the Defendant truly resigned from Multi Link Computer Systems Ltd in 2000 how come he was the one who opened account with First Bank Ltd in the name of the Company in 2002 with his photograph affixed to the account opening package. Counsel also drew the attention of the Court to the fact that the Defendant withdrew from the Company account the sum of N170,000.00 on the 16/01/2006 after payment of the contract sum into the said account. This according to counsel has established that the Defendant benefited from the contract and that the Defendant used his position to confer corrupt advantage on himself.

Finally counsel urged the Court to regard the account of what happened when the ICPC visited Multi Link Computer Systems Ltd's office for search including his testimony that his letter of resignation from Multi Link Computer Systems Ltd was carted away by the ICPC as hearsay since the Defendant was not present during the said search. He then urged the Court to ignore the defence of the Defendant to the charge against him and convict the Defendant as charged.

On points of law the counsel to the defence told the Court that contrary to the submission of the prosecution, exhibit D9 clearly showed that the Defendant wrote to Multi Link Computer Systems Ltd that he was resigning and the resignation was accepted by the Company. Counsel drew the attention of the Court to paragraph C of the preamble of the exhibit. Counsel quoted from the said paragraph C of the deed.

In this trial the prosecution has a duty to establish the guilt of the Defendant by leading evidence that implicates him on the alleged crimes beyond reasonable doubt. The duty imposed on the prosecution to establish the guilt of the Defendant stems from the adversarial system which this country operates. This is expressed in Section 36 (5) of the 1999 Constitution as amended. It states:

“Every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty.”

By the foregoing provision a suspect who is brought before the Court does not have duty to establish his innocence. It is the prosecution who has the burden to establish before the Court beyond reasonable doubt that the Defendant is liable for the offences charged.

See Section 135 (1) of the Evidence Act 2011. It provides:

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

See also Section 139 of the Evidence Act 2011.

The phrase reasonable doubt has received concerted judicial interpretation from the Apex Court. In **CHUKWUNYERE VS THE STATE (2017) 12 SCNJ 1** it was held that prove beyond reasonable doubt means establishing the guilty of the accused person with compelling and conclusive evidence, a degree of compulsion which is consistent with a high degree of probability.

Thus a case is proved beyond reasonable doubt when the essential elements of the offence has been established or when the evidence

led against the accused is strong 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.”

So many decisions have thrown light on this phrase but a few of them could be cited:

- 1. AJAYI VS THE STATE (2013) 9 NWLR (PT. 1360) 589;**
- 2. SABI VS THE STATE (2011) 14 NWLR (PT. 1268) 461; and**
- 3. LORI VS THE STATE (1980) 8-11 SC 81.**

COUNT ONE

In the offence under count one the defendant was charged contrary to Section 12 of the Corrupt Practices and Other Related Offences Act 2000. The particulars of the offence are to the effect that the accused as a staff in the employment of National Commission for Colleges of Education knowingly held directly or otherwise a private interest in a Company not being registered Joint Stock Company consisting of more than 20 persons in a contract awarded by the Commission to Multi Links Computer System Limited for the sum of N847, 530.19 sometimes in 2005.

The essential elements of this offence are:

- (a) That the Defendant is employed in the public service.

- (b) He knowingly acquire or holds directly or indirectly interest:
 - (i) in a contract emanating from or connected with the Department or office in which he is employed or
 - (ii) made on the account of public service otherwise than as a member of a Joint Stock Company consisting of more than 20 persons.

Now the uncontroverted evidence before the Court is that the Defendant was employed by the Commission as a Senior Planning Officer on grade level 9 in 1992 (see exhibit ICPC8). Evidence was also led to show that he was the Chief Computer Programmer with the Commission in 2005 when the alleged offence was committed. He rendered an advise to the Director of Planning, Research and Statistics in that capacity when he was asked to advise on the renewal of computer maintenance agreement for 2006. See exhibit ICPC1. He also signed the agreement in exhibit ICPC1 on behalf of the Commission. Section 2 of the Act which is the definition Section covers the Defendant.

On the account of the foregoing evidence as corroborated by the testimonies of the Defendant and other witnesses in this case, I am satisfied that the Defendant is a public servant and that the first ingredient of the offence is established.

The second ingredient is that he knowingly acquired or holds directly or indirectly otherwise than as a member of a Joint Stock Company comprising of more than 20 persons a private interest in any contract or investment. This element has double limbs - that the Defendant is a member of a Company otherwise than a Joint Stock Company comprising of more than 20 persons and that in that capacity has either directly or indirectly acquired or holds a private interest in a contract or investment.

Through the PW1 and PW3 who are the operatives who investigated this case the prosecution led evidence and tendered documents that the Defendant is a Director of Multi Link Computer Systems Ltd, a private Company comprising of three members with 50% of the share capital and that the Company was awarded contract for the maintenance of computers by the National Commission for Colleges of Education which is the employer of the Defendant. Exhibit ICPC3 (FORM C07) which discloses the particulars of Directors of Multi Link Computer Systems Ltd was tendered. Exhibit ICPC4 (A) which is a letter of consent of the Defendant to be a Director of the Company was also tendered. In the same vein exhibit ICPC6 (Memorandum of Association of Multi Link Computer System Ltd) was tendered. It indicates that the Defendant has 50% of the share capital of the Company. These documents i.e. exhibit ICPC 3, 4(A)

and ICPC6 were duly certified by the Corporate Affairs Commission where the Company was registered.

However the Defendant led evidence to establish that exhibits ICPC3, ICPC4 (A) and ICPC6 were made in 1995 prior to the coming into being of the Independent Corrupt Practices and Other Related Offences Act of 2000. That before the commencement of the operation of the Act he resigned his position as a Director and member of the Company and relinquished his shareholding in the Company which was acquired by one Julius Makinde. In witness of this fact the Defendant tendered a certified true copy of a *Deed of Appointment* of the said Julius Makinde which was filed with the Corporate Affairs Commission which I admitted and marked as exhibit D7.

Learned counsel to the prosecution has submitted that the Defendant did not comply with Section 258 of the Companies and Allied Matters Act 2004 by giving notice of his resignation to the Company in writing. He also submitted that no evidence was tendered before the Court to show that the Defendant gave notice of his resignation or that there was a resolution accepting the resignation. Counsel concluded that if the Defendant gave notice and actually resigned there would have been a letter of acceptance and that in the absence of such acceptance there is a presumption that

the Defendant is still a shareholder and Director of Multi Link Computer Systems Ltd.

In response to the above submission the learned defence Counsel while disagreeing has argued that exhibit D9 has more than disclosed that the Defendant gave the Company notice of his resignation as Director and relinquishment of his shares in the Company. He invited the Court to look at the preamble of exhibit D9 especially paragraphs a, b, c and d.

I have carefully considered the argument of learned counsel on both sides and after taking a critical look at exhibit D9 I form the view that contrary to the submission of the learned prosecutor, there is abundant evidence on the face of exhibit D9 (Deed of Appointment) to show that the Defendant had resigned as a Director of Multi Link Computer Systems Limited and relinquished the entire shares he held in the Company.

Paragraph 6 of exhibit D9 discloses clearly and without equivocation that the Defendant who was previously a director of the company and shareholder has willingly relinquished his shares and resolved to resign as director and withdraw from the management of the company. Paragraph C states categorically that the company has accepted the relinquishment of shares and resignation as director via a special resolution dated 4th January, 2000 and paragraph D has

also disclosed that upon acceptance of the notice given by the Defendant the company was filing deed of appointment of Julius Makinde to the position of the Defendant and allotment of N50, 000. 00 shares relinquished by the Defendant to Mr. Julius Makinde.

On the strength of this document it is clear that the Defendant gave notice of his resignation as a director and relinquished his shares. It is also clear that the notice he gave was accepted by the Company vide a special resolution of the company made on the 04/01/2000.

In this regard I cannot underrate the probative value of exhibit D9 which is a documentary evidence and serves as a yardstick or hanger to assess or buttress the evidence of the Defendant that he indeed resigned as a director and relinquished the totality of his shares in Multi Link Computer Systems Ltd and was therefore not a member of the Company when the contract in exhibit ICPC9 and D1 was awarded to the Company.

There are plethora decisions of the Supreme Court on the superior power of documentary evidence over oral evidence. I only need to cite two of them:

See **FASHANU VS ADEKOYA (1974) 6 SC 86**; and **ODUTOLA VS MABOGUNJE & ORS (2013) 7 NWLR (PT. 1354) 522** where

RHODES-VIVOUR JSC had this to say of the importance of documentary evidence. He said:

“When documentary evidence supports oral evidence oral evidence becomes more credible. See *Kimdey Vs Gongola State (1988) 2 NWLR (PT. 77) 473*. The reasoning being that documentary evidence serves as a hanger from which oral testimony could be assessed. See further *Omoregbe Vs Lawani (1980) 3 -4 SC 117*.”

Another decisive fact is that exhibit D9 was obtained from the Corporate Affairs Commission and duly certified. It is a public document. There can therefore be no better evidence of the resignation of the Defendant from Multi Link Computer Systems Ltd by the Defendant than such a document which was filed with the Corporate Affairs Commission.

That being the case, the argument of the learned counsel to the Prosecution that because the Company had not taken steps to effect changes in Form CO2 and CO7 it should be taken that the Defendant has not resigned is of no moment. This is because the Defendant having left the Company has no responsibility with respect to the management of the company and therefore cannot be held liable for

failure to delete his name from names/list of Directors and shareholders which was kept in the custody of the Corporate Affairs Commission.

On the account of the above I am satisfied on the totality of evidence led that the Defendant truly and effectively left the Company before exhibit ICPC 1 was awarded. This conclusion also leads to the failure of this element of the charge.

The point therefore is that although it was established at trial that the contract was awarded by a department where the Defendant works as employee, the failure to prove that the Defendant was a member of Multi Link Computer System Limited at the time the alleged contract was awarded has fatally destroyed the case of the prosecution. The reason is that the law requires that all the essential elements to be proved by the prosecution to be able to secure conviction against the Defendant.

In **OKORO VS STATE (1988) 5 NWLR (PT. 94) 255** Karibi-Whyte JSC stated the law thus:

“The burden on the prosecution is only discharged when the essential ingredients of the offences have been established and the Defendant is unable to bring

himself within the defences allowed under the law or statute creating the offence.”

Similarly in **DERIBE VS STATE (2016) LPELR 4034** it was held:

“In law the failure on the part of the prosecution to prove any or all of the essential elements that constitute the offence with which the Defendant is charged would be fatal to the charge not so proved as required by law.”

In rounding up on count one of this charge, I must mention in passing that the submission of the learned counsel to the prosecution that the accused made withdrawal from the account of Multi Link Computer Systems Ltd after the contract sum was paid does not impress me. This is because evidence of such withdrawal was not demonstrated before me in the open Court by the prosecution through any witness and neither was the Defendant challenged with this fact when he testified. To me exhibit ICPC 13 although admitted without objection does not have any probative value.

The law is settled that where a bundle of document is tendered in evidence and not demonstrated as to its value by oral evidence no duty is cast or placed on a Court to give it a probative value.

See **BELGORE VS AHMED (2013) 8 NWLR (PT. 1355) 60 at 100;**
and **FLASH FIXED ODDS LTD VS AKATUGBA (2001) 9 NWLR (PT.
717) 46.**

In the end result count one is not proved beyond reasonable doubt and upon it the Defendant is discharged and acquitted.

COUNT TWO (2)

This count is founded upon Section 19 of the Independent Corrupt Practices and Other Related Offences Act 2000. The Section 19 provides:

“Any Public Officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer shall be guilty of an offence and shall on conviction be liable for 5 years imprisonment without option of fine.”

Now the particulars of the charge is that on the 19th of December 2005 the Defendant as a Public Officer and Chief Programmer and the Head of Computer Unit of the National Commission for Colleges of Education Abuja used his position to confer upon himself corrupt advantage by recommending Multi Link Computer Systems Limited a Company in which he is a shareholder for computer maintenance contract for 2006.

To succeed under this count what is required of the prosecution is to lead evidence to show that:

- (1) The Defendant is a Public Officer.
- (2) That he used his position to confer a corrupt or unfair advantage on himself.

In respect of the first element, there is no doubt that there is un-denied evidence from the facts established before the Court that the Defendant is a Public Officer within the provision of Section 2 of the Independent Corrupt Practices and Other Related Offences Act 2000. Both the Prosecution and the Defendant are agreed before me that he is a Chief Programme Officer with the Commission when the offences were allegedly committed. This element is therefore established.

The next element is to prove that he used his official position to confer corrupt advantage on himself. To achieve this on the facts of this case prosecution need to lead evidence to show that the Defendant is a shareholder and Director of Multi Link Computer Systems Limited and in that capacity he influenced the award of exhibit ICPC1 and benefited from the contract sum paid to Multi Link Computer Systems Ltd.

In this regard the prosecutor led evidence to show that the Defendant is a shareholder with 50% of the authorized share capital

of the Company and occupies a position of a Director in the Company. Exhibits ICPC3, 4 (A) and ICPC5 were tendered to support this fact. Exhibit ICPC3 is Form C07 which carries the particulars of Directors of Multi Link Computer Systems Ltd with the Defendant on the form. Exhibit ICPC 4(A) is a letter duly signed by the Defendant in which he gave his consent to the Director-General of Corporate Affairs Commission to be a Director of Multi Link Computers Ltd while exhibit ICPC5 is the Certified True Copy of the Article and Memorandum of Association of Multi Link Computers Ltd. On page 13 it was disclosed that the Defendant as at 30/01/1995 held N50,000.00 shares in Multi Link Computer Systems Ltd.

However in his defence the Defendant has testified that although he was a member of the Company in 1995 sometimes in January, 2000 before the ICPC Act was promulgated he resigned as a Director of the Company and relinquished his N50,000.00 shares in the Company. Exhibit D9 was tendered to support this fact. The document is a Deed of Appointment executed between Multi Link Computer System Limited and one Julius Makinde dated 06/01/2000 and duly registered and deposited with the Corporate Affairs Commission. Paragraph B of the document shows that the Defendant who previously held shares and was a Director of the Company has willingly relinquished the totality of his shares to the

Company and resigned as a Director and totally withdrawn from the management of the company in consonance with the new public policy guidelines and thrust. Paragraph C is to the effect that the company had accepted the relinquishment and resignation as Director via a special resolution dated 4th January, 2000.

In consequence of the above, it was stated in paragraph D that the shares returned to the Company by the Defendant were allotted to the said Julius Makinde and he also took the position of the Defendant as a Director of the Company. Paragraph "E" states that the said Julius Makinde accepted the appointment. This document was filed with the Corporate Affairs Commission and kept in its custody.

It is my view that the effect of this exercise from the 06/01/2000 when exhibit D9 was made the Defendant ceased in law to be a Director in Multi Link Computer System Ltd and ceased to be a shareholder in the Company. I therefore do not agree with learned prosecutor's submission that the Defendant did not resign from the Company as prescribed in Section 258 of the Companies and Allied Matters Act. It is clear from the face of exhibit D9 especially from the paragraphs which I set out above that the Defendant complied with the law by giving notice of his resignation and that the notice was accepted by the Company.

The law is clear that when the content of a document is clear, express and certain the Court should give simple ordinary and actual grammatical meaning to it.

See **ASHAKA CEMENT PLC VS ASHARATUL MUBASHURUN INVESTMENT LIMITED (2016) LPELR 4019**; and **UNION BANK PLC VS OZIGI (1994) 3 NWLR (PT. 333) 385**.

Paragraphs A, B, C, D and E of exhibit D9 are couched in clear and simple grammatical language and should be given a simple meaning.

The submission of the learned counsel to the prosecution that if the Defendant truly resigned the necessary changes would have been made in exhibit ICPC3 and ICPC5 is of no moment. This is for the simple fact that the Defendant having left the Company no longer had a role to play in the management of the company. Learned Counsel to the Defendant said this much in his address.

Secondly this point being made by the learned prosecutor is merely argumentative and therefore not strong enough to displace the evidential weight of cold facts established in exhibit D9.

Furthermore exhibit ICPC 13 was merely dumped on the Court as no oral evidence was led to demonstrate the withdrawals the Defendant allegedly made from the contract sum paid to Multi Link

Computers Systems Ltd. To me the document has no evidential value.

At the end of the day it is my view that the prosecution has not established before the Court by cogent evidence that the Defendant was a director with the company and held interest in the company when the contract was awarded to the company.

The next element required of the prosecution to prove is that the Defendant used his position in the Commission to confer corrupt advantage on himself. This in this case must mean corruptly influencing the award of computer maintenance contract to Multi Link Computers Systems Ltd in which he held majority interest.

A critical look at this element would show that having come to a conclusion that the Defendant had divested himself of his interest with Multi Link Computers Systems Ltd long before the award of contract this element has automatically collapsed. Be that as it may one may need to ask if there is evidence from the prosecution that the Defendant used his position to corruptly confer an advantage.

Here the prosecution would need to establish that the advantage conferred was unfair and fraudulent. In other words by the way the offence in Section 19 is framed even if the Defendant conferred an advantage on himself (which is not established) or any other person

and such advantage is not corrupt, unfair or fraudulent the offence cannot be said to have been established.

Now the evidence before me shows that Multi Link Computers Systems Ltd was awarded contract by National Commission for Colleges of Education. That the Defendant does not award contracts. Exhibit D1 revealed that it is the Secretary of the Commission that has approval power. Apart from the view which the Defendant expressed to the Director (Planning, Research and Statistics) that the company did well in the previous year he did not do anything to influence the award of the contract. As a matter of fact the recommendation for the award was made by the Chief Internal Auditor who made his recommendation on the basis of what he saw in the agreement. I am therefore unable to agree with the Prosecution that with respect to the contract in issue the Defendant used his position to confer a corrupt advantage on himself.

At this point I need to address the submission of the learned counsel to the Prosecution to the effect that the Defendant made withdrawals from the account of Multi Link Computers Systems Ltd after the contract sum was paid. With all due respect to the learned counsel to the Prosecution no evidence of such withdrawal was established before me. What that means is that although the learned prosecutor made frantic emphasis on the purported withdrawals

the submission cannot take the place of evidence. As a matter of fact the issue of withdrawals from the account by the Defendant surfaced for the first time in the final written address of the learned prosecutor. It is now trite Law that submission of counsel not supported by evidence goes to no issue and bound to be discountenanced.

In **OFORISHE V. NIGERIAN GAS COMPANY LTD (2017) LPELR-42766 (SC)** the Supreme Court (per Rhodes-Vivour, JSC) stated the Law as follows:

“I must remind counsel that the main purpose for address is simply to assist the Court. Cases are decided not on address or alluring closing speeches but on credible evidence. So no amount of brilliant address can make up for lack of evidence to resolve any issue before the Court.”

See also **OKWEJIMINOR V. GBAKEJI (2008) 5 NWLR (PT.1079) 172** where Muhammad, JSC succinctly but pointedly stated the law as follows:

“No matter how brilliant the address of counsel is, it cannot be a substitute for pleadings or evidence.”

In a related development Exhibit ICPC 13 which was meant to show such withdrawal was merely dumped by the Prosecution. The witness from the First Bank Limited through whom it was tendered was not led in evidence to demonstrate such transaction. The Law is clear that a Court would not work with a bundle of document which is merely dumped.

Similarly none of the witnesses including PW1 told the Court that the Commission was cheated or that there was any complaint about the payment. In fact, both the PW5 the Director of Finance and PW8 the Director of Audit confirmed that the job for which the payment was made was satisfactorily executed.

For me, it does appear that apart from the fact that the Defendant is a public servant none of the elements of the offence under Section 19 of the Independent Corrupt Practices and other Related Offences Act 2000 has been established.

See SHATTA V. F.R.N (2008) 10 NWLR (PT.1149) 403.

Under Section 309 of the Administration of Criminal Justice Act 2015 where a Court finds the Defendant not guilty it shall immediately discharge him and record an Order of discharge and acquittal. In this case, having not found the Defendant guilty on any

of the two counts for which he is standing trial, he is hereby discharged and acquitted without further assurance.

SIGNED
HON. JUSTICE HUSSEINI B. YUSUF
(PRESIDING JUDGE)
24/03/2020