

THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT NO. 9 GUDU, ABUJA

BEFORE HIS LORDSHIP: **HON. JUSTICE A. M. TALBA**

SUIT NO: FCT/HC/CR/62/2008
ON THE 10TH DAY OF OCTOBER, 2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ----- COMPLAINANT

AND

SULAIMAN YUSUF SHERIFF --- ACCUSED PERSON

JUDGMENT

The defendant Sulaiman Yusuf Sheriff was arraigned on a three court charge which reads:

COUNT 1

That you Sulaiman Yusuf Sheriff on or about November 2007 at Kubwa in Abuja being a public servant did solicit for the sum of N560,000 (Five Hundred and Sixty Thousand Naira) from Mrs. Adekunbi Ajadi as gratification before she can collect her offer letter in respect of block 13 flat 2 Federal Capital Development Authority (FCDA) owners occupier Kubwa and thereby committed an offence contrary to and punishable under section 18 (d) of the corrupt practices and other related offences Act 2000.

COUNT 2

That you Sulaiman Yusuf Sheriff on or about November 2007 at Kubwa Abuja being a Public Servant did accept the sum of N560,000 (Five Hundred and Sixty Thousand Naira) as gratification from Mrs. Adekunbi Ajadi in order to assist her collect her letter of offer of sale in respect of Block 13 Flat 2 Federal Capital Development Authority (FCDA) owners occupier houses in Kubwa Abuja and thereby committed an offence contrary to and punishable under section 18 (d) of the corrupt practices and other related offences Act 2000.

COUNT 3

That you Sulaiman Yusuf Sheriff on or about November 2007 at Kubwa pretended to be an official of the Federal Capital Development Authority Abuja (FCDA) responsible for sale of Federal Government Houses and in Such assumed character did receive the sum of N560,000 (five hundred and sixty thousand naira) from Mrs. Adekunbi Ajadi before she can collect her offer letter in respect of Block 13 Flat 2 Federal Capital Development Authority (FCDA) owners occupier Kubwa and thereby committed an offence contrary to an punishable under section 132 of the penal code.

The defendant pleaded not guilty to all the three counts charge. In an effort to prove its case the prosecution called five witnesses and also tendered in evidence the following exhibits thus:

1. A petition written to ICPC Exhibit A
2. A letter of undertaking acknowledging the receipt of N560,000.00 by the defendant exhibit B
3. Statement of PW2 Adira Akinson Exhibit C
4. 510 pieces of N1000 denomination exhibits D (a) 1 – 510 100 pieces of N500 denomination exhibits D (b) 1 – 100
5. Photocopies of the serial No's of the sum of N560,000.00 being an entry made by the PW 4 Chukwura Alexandra in the exhibit register of special duties department ICPC. And photocopies of original N560,000 already admitted in evidence exhibit E.
6. Statement of PW5 exhibit F.

The summary of the offences for which the defendant is standing trial are thus, being a public servant he solicited for the sum of N560,000 from Mrs. Adekunbi Ajadi as gratification before she can collect her offer letter in respect of block 13 flat 2 FCDA owners occupier. Kubwa. Accepting gratification in the sum of N560,000 from Mrs. Afekunbi Ajadi before she can collect her offer letter in respect of block 13 flat 2 FCDA owners occupier Kubwa. And being a public servant falsely represented himself as a staff of FCDA and in such assumed character he received the sum of N560,000 from Mrs. Adekunbi Ajadi before she can collect her offer letter in respect of Block 13 Flat 2 FCDA owners occupier Kubwa. All these offences fall under sections 18 (d) ICPC Act 2000 and 132 of the penal code law respectively. These sections provides.

Section 18 (d) ICPC Act 200.

“Any person who offers to any public officer or being a public officer solicits counsels or accepts gratification as an inducement or reward for

(d) showing or forbearing to show any favour or disfavor in his capacity as such officer, shall notwithstanding that the officer did not have the power right or opportunity so to do or the inducement or reward was not in relation to affairs of the public body be guilty of an offence and shall on conviction be liable to five (5) years imprisonment with hard labour.

Section. 132 penal code law

“Whoever pretends to hold any particular office as a public servant knowing that he does not hold such office or falsely personates any other person holding such office and in such assumed character does or attempts to do any act under colour of such office shall be punished with imprisonment for a term which may extend to three (3) years or with fine or with both.

It is settled law that in a criminal trial the onus rest throughout the proceedings on the prosecution to prove the guilt of the accused beyond all reasonable doubt; however does not mean proof beyond any shadow of doubt. In order that an accused person be entitled to the benefit of doubt the doubt must be genuine and reasonable arising from evidence before the court; see *The State Vs Aibangbe* (1988) 7 8c (pt 1) 96 at 132-133. *Tanko Vs State* (2008) 16 NWLR (pt 114) 597.

The ingredients for the offence of accepting gratification are as follows.

1. That the accused is a public officer.
2. That he accepted or obtained or agreed to accept from some person a gratification for himself or any other person
3. That the gratification was not legal remuneration
4. That he accepted the gratification a motive or reward
 - (a) For doing or forbearing to do any official act or
 - (b) For showing or forbearing to show in the exercise of his official function favour or disfavor to someone or

(c) For rendering or attempting to render any service or disservice to someone with any department of the public service or with any public servant. And the ingredients for the offence of personating a public servant are thus:

1. That the accused personated a public servant or that he pretended to hold the post of a public servant
2. That he was not such a servant or did not hold the post pretended
3. That he acted falsely or that he knew that he did not hold the office in question

4. That he, when assuming the character did or attempted to do something under colour of his assumed office. PW1 Mrs. Adekunbi Olushola Ajudi is the principal witness in this case. She told the court that she live at FCDA owner occupier block 13 flat 2 Kubwa. She work with FCDA Secondary Education Board. She said, she was posted to Kubwa but formally she was at Jabi Government day secondary school she said she knows the accused as Yusuf. In 2003 she was given letter of allocation by FCDA in respect of their houses with her neighbours owner occupier houses. At that time there was no sale of Government houses. They moved in 2005, that was when Government Started selling houses. She realized that some of her neighbours were given letter of offer for the sale of FGN houses but she was not given the letter. She went to room 109 at Area 11 office of the sale of Government house. She asked them why she was not given a letter of offer. They told her that she will be given a letter. She went to their office without getting the letter. One day she saw Yusuf. He came and knocked at her house, he said he work with FCDA. He is working in room 109. She now gave him attention. He told her that if she needed her house she should give him N560,000.00. He said he has to give money to some people to facilitate her letter. She now believed him hence she went to room 109 without any result for over a year. She told him to give her time to source for the money. He came back one day to tell her that one Chinyere has bought her house and if she want the house she should give him the money to get her the letter of offer.

If she can pay the money he can get her house back. He showed her the letter with the block number and flat number. She believe him and she told her husband that Yusuf told her to pay him 10% of the value of the house N5.6m, which is N560,000. Her husband said she should complain to ICPC, hence Yusuf is not the landlord.

She now petitioned ICPC vide exhibit A and as a result PW2 Adira Akinsan, PW3 Bolanle Oturu and PW4 Chukwura Alexander went on a sting operation. They went to the house with the sum of N560,000.00, exhibits D (a) 1-510 and D (b) 1 – 100. The money was given to the defendant and he wrote an undertaking acknowledging the receipt of the money, exhibit B. The defendant was then arrested by the ICPC detectives PW2, PW3 and AW4. PW1 said she never knew the accused before the incident. He came to her house and he introduced himself as a staff of FCDA.

During Cross-examination PW1 said her house was not offered to her as it was offered to her neighbours by the committee on sale of Government houses. She said she was going to the office of the Adhoc committee for over one year but they refused to give her the offer letter for the house. She said she is not familiar with the officers in the committee on sale of FG Houses. And at a time she met Mr. Abbas. Mr. Yusuf said she should bring 10% and she did not believe him that was why she called ICPC. Mr. Yusuf told her that somebody has bided for the house He did not inform her that somebody had bought the house she said in her evidence in chief she said Yusuf told her that one Chinyere bought the house. PW1 said in her petition (exhibit A) she wrote that Mr. Yusuf told her he is working with FCDA room 109. She never saw Mr. Yusuf in room 109. PW1 also told the court that the house was offered to here and she paid for it. She got the house through ICPC. PW2 Adira Akinson, PW3 Bolande Oturu and PW4 Chukkwura Alexandra, they are ICPC detectives who investigated the case which led to the arrest of the defendant. They all gave evidence on the

roles they played in the investigation of the case. But PW5 is Mrs Chinyere Izunobi Catherine. She told the court that the accused person came to her house around 8:00pm on the 15/11/2007 and he asked her to help him out. He told her he work with FCDA. He said he wants her to sign a document saying that she bided for a house at Kubwa. She refused to sign, because she did not bid for a house at Kubwa. A day or two later she got a call from ICPC inviting her to their office regarding the accused. At the ICPC they told her that the accused wanted to sell a house in her name. And if she has any thing to do with him. She told them she didn't. She was asked to write a statement which she did. She said they bided for a house at Kado with her husband but they were told that somebody bided higher. They did not get the house, they were offered another house at Kubwa, which they rejected. They asked for the refund of the draft but they were told that they cannot get it immediately so they had to stop the draft.

During cross-examination PW5 said one Mr. Muktar informed them that they did not win the bid. She said she did not submit the bid herself. She instructed Muktar to do the bid for her. Muktar told her that they did not win the bid and they were offered an alternative at Kubwa. She said she do not know if Muktar did not do the bid himself. She said Muktar is a friend of her husband she did not agree to give Muktar commission. The negotiation was done between Muktar and her husband. She did not know how Muktar went about the bid. She gave Muktar the draft and he went ahead to do the bid on her behalf.

It is settled principle of law that the prosecution has the burden of proving its case beyond reasonable doubt, and where there is any 10ta of doubt it must be resolved in favour of the accused. In the instant case in all the three court charge it is stated that the defendant solicited for the sum of N560,000 from Mrs. Ajadi as gratification before she can collect her offer letter in respect of block 13 flat 2

Federal Capital Development Authority (FCDA) owner occupier Kubwa. Secondly being a public servant, he accepted the sum of N560,000 from Mrs. Ajadi in order to assist her collect her letter of offer of sale in respect of Block 13 flat 2 FCDA owner occupier houses in Kubwa.

Thirdly he pretended to be an official of the FCDA responsible for sale of Federal Government houses and in such assumed character he received the sum of N560,000 from Mrs. Ajadi before she can collect her offer letter in respect of Block 13 flat 2 FCDA owners occupier Kubwa.

In her evidence in Chief Mrs. Ajadi told the court that she was not given an offer letter by the committee on sale of Federal Government houses. And on exhibit A the petition written by Mrs. Ajadi to the Chairman ICPC, she stated that she was not given letter of offer due to months rents deduction. It is crystal clear that Mrs. Ajadi had no letter of offer in respect of Block 13 flat 2 owner occupier Kubwa as at the time she met with the defendant. Therefore the charge before the court does not correspond with the evidence before the court. in other words the charge is at variance with the evidence led. In Mohammed Ibrahim VS State (2015) 61 NSCQR 1097 at 1767 Akahs JSC held thus:

“There is therefore a discrepancy between the location of the alleged crime (locus criminis) and the evidence led. In spite of this discrepancy the prosecution did not apply to amend the charge to align with the evidence adduced to the charge. The law is that where the charge laid is at variance with the evidence tendered the conviction of the appellant will not stand”.

PW1 Mrs. Ajadi told the court that she got her offer through ICPC. That confirms the fact that at the time she met the defendant there was no letter of offer or rather she had no letter of offer. The letter of offer that was given to the

defendant is exhibit J. it is dated 22 May, 2007 in the name of Chinyere Izunobi. And the letter of offer is in respect of block 13 flat 2 owner occupier Kubwa Abuja, the subject matter of this case.

Secondly in exhibit A PW1 Mrs. Ajadi stated thus;

"Mr. Yusuf came to me and said if I want my flat I should bring 10% of the value price totaling N560,000 or else I will forfeit the flat." The question to ask is how does the 10% turn out to be a bribe. In her evidence in chief PW1 stated that Mr. Yusuf told her that if she needed her house she should give him N560,000 he said he has to give money to some people to facilitate her letter.

When the sum of N560,000 was given to the defendant (exhibits D (a) 1-510 and D (b) 1-100). The defendant acknowledged the receipt of the money. Exhibit B reads.

"I Suleiman Yusuf of Block 32 flat 2 Kwali Street 2/1 Kubwa received the sum of five hundred and sixty (560,000.00) thousand Naira from Mrs. Ajadi of Block 13 flat 2 FCDA owner occupier Kubwa for being 10% in respect of the house of above address as 10%."

Exhibit B was signed by both the defendant and Mrs. Ajadi. Again how could a person collect a bribe and at the same time acknowledge the receipt of a bribe, looking at the whole circumstances of this case would it be right to say that there is actus reus and mens rea for the receipt of the sum of N560,000 as a bribe. Now let us look at the evidence led by the defence. In his evidence in Chief DW1 Yusuf Suleiman Sheriff told the court that he met Abdullahi through a friend by name Adamu. He later agreed with Adamu to help Abdullahi bid for a house at Kado Estate for one Chinyere Izunobi for a consideration of 10% of the bid price. He collected the bid documents and the bank draft for the sum of N6.3 Million See exhibits H and I. And he gave the documents to Shehu Garba who agreed to go through

the rigorous bid process for the agreed consideration of 10%. Both the defendant and Shehu Garba went to the International Conference Centre for the bid. They spend the night to queue up for the bidding. The Defendant bid for his house while Shehu Garba bid for Mrs. Chinyere Izunobi (Pw5). Upon getting into the hall after a whole day on the queue Shehu Garba found that the House at Kado was not available and he was given an alternative. The defendant told Shehu Garba to bid for the alternative house after he got clearance from Abdullahi. The alternative house is in Kubwa block 13 flat 2 FCDA owners occupier. After a successful bid and payment for the house in the name of Mrs. Izunobi, she rejected the house. Shehu Garba having successfully bid for the house he was asking for the 10% of the bid sum as agreed. The defendant then decided to look for the occupant of Block 13 flat 2 FCDA owners occupier. The defendant met PW1 Mrs. Ajadi for the first time and he explained to her the situation. Mrs. Ajadi agreed to raise a draft of N6.3 million and to pay the 10% commission. The defendant tendered in evidence the receipt for the sum of N6.3 Million exhibit K issued by the Adhoc committee on sale of FGN house in Abuja, in the name of Chinyere Izunobi.

In her Evidence in Chief PW5 Mrs. Chinyere Izunobi told the court that she instructed Muktar to do the bidding for her in respect of a house at Kado Estate. She said she did not submit the bid herself. And Muktar told her that they did not win the bid and they were offered an alternative at Kubwa. She did not know how Muktar went about the bid. She did not submit the bid herself. She gave Muktar the draft and he went ahead to do the bid in behalf. Pw5 also told the court that she rejected the alternative house offered to her at Kubwa. The evidence of PW5 had corroborated the evidence of the defendant in all material facts.

DW2 Adamu Musa he also corroborated the evidence of the defendant. He told the court that one Abdullahi a friend

approached him to find out if he knows somebody that could help to bid for a house and he called the defendant who in turn called Shehu Garba to help in the bid process. He said the house to be bided for was on Kado Estate. And Abdullahi said after the bid they will be given 10% of the bid value. Abdullahi brought completed forms with a draft of N10,000 and a draft for the house. He handed them over to Suleiman. After the bidding the next day Suleiman called him and told him that there was no house at Kado Estate but they were given an alternative at Kubwa owner occupier. He told Abdullahi who said he will get back to him. After three or four days Abdullahi told him that the woman said she is not interested in the house, she is going to block her draft.

DW3 Shehu Garba he also Corroborated the evidence of the defendant. He told the court that he was the one who bided for the house at Kubwa on behalf of Mrs. Chinyere Izunobi, when he was told that the preferred house at Kado Estate was not available. He said the bid document was given to him by the defendant and he bided as instructed with an agreement that 10% was going to be paid to them as commission. He said nothing has been paid to him.

PW1 in her evidence in Chief she stated thus:

"He came back one day to tell me that one Chinyere has bought my house."

And during cross-examination she stated that:

"Mr. Yusuf told me that somebody has bided for the house. He did not inform me that somebody had bought the house."

PW1 Mrs. Ajadi is not a witness of truth, neither does she have the fear of God. If the defendant did not look for her being the occupier of the house, how could she be able to get the house; when she was not offered the house hence

she did not submit evidence of rent deductions. As such she was not qualified to be issued an offer letter. And more so the house went into public bidding and she did not bid for the house. If PW5 Mrs. Chinyere Izunobi had not rejected the house PW1 Mrs. Ajadi would have been thrown out of the house. And yet she was not grateful to God for having known the situation of the house through the defendant.

In view of the above findings I hold that the prosecution has failed to establish its case against the defendant beyond reasonable doubt. As a matter of fact the evidence of the prosecution is full of doubt and I have no option but to resolve the doubt in favour of the defendant.

Consequently the defendant is hereby discharged and acquitted on all the three count charge.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
10/10/2017

Patricia Ikpegbu with 1. T.C.C Ibezim
2. Olu Okow Mrs. For the prosecution

Defendant absent not represented

CC. The defendant is not aware of today's date. It shows 30/10/2017.

Court: The case is adjourned was 16/10/2017 for judgment before it brought down to 10/10/2017

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
10/10/2017

16 - 10 - 2017

Patricia Ikpegbu with T. N. Akureto for the prosecution Desmond Yamah with

1. Ado Ramart Mrs.
2. B. O. Ekpenobi
3. Rosemary Ogazi for the defendant

Court: Judgment delivered.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
16/10/2017