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/100/13

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA……COMPLAINANT

AND

BARBARA OSINACHI EKEOCHA……..DEFENDANT

JUDGMENT

The Defendant, Ms. Barbara Osinachi Ekeocha is charged before this Honourable Court on a 13 (thirteen) count charge bothering on falsely making a declaration before a Commissioner for Oath, Federal Capital Territory Judiciary in the course of exercise of the duties of her office contrary to Section 25 (1)(a) and punishable under Section 25 (1) (b) of the Corrupt Practices and Other Related Offences Act, 2000.

The said false declaration was alleged to have been made on the 15th day of May, 2013 relation to plots of land with No. 86, Civil Defence Estate, Lugbe 1 Extension Layout, Abuja. Plots 41, 27 and 28 located at Sabon Lugbe, East Extension Layout in Abuja, Plots 122, 121, 120,

67, 123, 124, and Plots 122, 70 and 71 located at Civil Defence Estate Piyanko Karshi Development Area of Nasarawa State.

The Defendant pleaded not guilty to all the 13 count charge. The prosecution called two witnesses who were involved in the investigation of this case and closed its case after she made unsuccessful attempts to call others whose names were listed in the proof of evidence together with the PW1 and PW2.

At the end of the case for the prosecution learned counsel to the Defendant Mr. Joseph Tobi made a no case submission on behalf of the Defendant. This application was opposed by the learned counsel to the prosecution, Mrs Funmi Quadri.

In a considered Ruling this Court overruled the application and the Defendant entered her defence by calling one witness. At the end of trial, parties filed their final written addresses which were adopted by the respective counsel in the open Court.

The facts of this case appear to be fairly straight forward. Sometimes on 14/05/2013 the Commandant-General, Nigerian Civil Defence Corps, Mr. Olu Aboderin wrote a petition against some officers of the Corps in which it was alleged that such officers were involved in speculation and selling of land in the FCT and requested the Chairman of the I.C.P.C to investigate. The Defendant was invited by the operatives of the I.C.P.C and interrogated. The Defendant was

given I.C.P.C Form ICPC/ATRM/0399 to furnish a statement under Oath to the Commission. In compliance with this directive the Defendant made a statement before the Commissioner for Oath F.C.T High Court and stated that she had no vacant/undeveloped plots. According to the prosecution, this statement was investigated by the I.C.P.C and found to be false. The operatives of the ICPC conducted a search on the premises of the Defendant and discovered some allocation papers belonging to the Defendant in respect of some properties located in Abuja and Nassarawa State.

If the prosecution is to secure conviction of the Defendant on the offences charged it must be proved that:

(1) The Defendant made a statement or caused to be made a statement to an officer of the Commission.

(2) That the statement she made or caused to be made is false or untrue; and

(3) That the statement was made before a Commissioner for Oath.

The law requires the prosecution to prove the existence of the three elements cumulatively, meaning that the prosecution cannot secure conviction of the Defendant on any of the alleged offences if any of the three elements is not established.

The law is also clear as decided in a litany of decided cases that the standard of proof required is beyond reasonable doubt. See Section 135 (1) of the Evidence Act. It provides:

> **"If the Commission of a crime by a party to any proceeding is directly in issue in any proceedings civil or criminal it must be proved beyond reasonable doubt."**

See the following cases:

1. **BAKARE V. THE STATE (1987) 3 S.C 1;**
2. **SMART V. THE STATE (2016) 1-2 S.C (PT.II) 41; (2016) 9 NWLR (PT.1518) 447; and**
3. **ADEKOYA V. THE STATE (2017) 7 NWLR (PT.1516) 343.**

A matter is said to have been proved beyond reasonable doubt if the guilt of the Defendant is established with compelling and conclusive evidence. In **MILLER VS MINISTER OF PENSIONS (1947) 2 ALL ER 373** Lord Denning gave a classic explanation of the term as follows:

> **"The law will fail to protect the community if it admitted fanciful possibilities to defeat the course of justice. If the evidence is so strong as to leave only a remote possibility in his favour which can be dismissed with one sentence - of course it is possible**

but not in the least probable, the case is proved beyond reasonable doubt."

In **BAKARE VS THE STATE (1987) I NWLR (PT. 52) 579** OPUTA JSC (of blessed memory) also gave a graphic illustration of the terms when he stated:

"Proof beyond reasonable doubt stamps out the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt not beyond the shadow of any doubt that the person accused is guilty of the offence charged. Absolute certainly is impossible in any human endeavour including administration of criminal justice. Proof beyond reasonable doubt means what it says. It does not admit of plausible and fanciful possibilities but it does admit of high degree in cogency consistent with an equally high degree of probability."

Now enough of explanation. The 1st witness who testified for the prosecution is one Daramola Seun Olamide. He is an operative of the I.C.P.C. He testified that the Defendant was investigated upon a petition of the Commandant-General of the Civil Defence Corps. That

after inviting the Defendant, she was interrogated and she made statement to the operatives. That the Defendant was given asset declaration form to be completed and declared before a Commissioner for Oath. He further testified that the Defendant returned the form duly sworn. The PW1 informed the Court that they set out to verify the information contained in the form and discovered that the Defendant had several undeveloped land which she did not declare. The PW1 gave the identities of the plots and their locations.

The PW2 is Mark Kobe. He is an investigator attached to Asset Tracing Recovery and Management Department of I.C.P.C. According to him the Defendant was invited for interrogation upon a petition received from Ade Abolurin. He testified that during investigation it was discovered that the Defendant did not declare her vacant plots of land in the asset declaration form which she submitted. That this was brought to her attention and she agreed and brought some of the allocation papers in her names.

Witness also testified that during investigation it was discovered that some of the plots allocated to her do not exist. That they also discovered that the Civil Defence Corps Co-operative does not own any land along airport road. He also told the Court under cross

examination that the rest of the allocation papers do not have record with the Government of Nasarawa State.

After the close of the case for the prosecution the Defendant called one witness and closed her case. The sole witness for the Defendant is Ephraim Isaac Udofia. He is a Superintendent of Corps and the current Chairman of the Nigeria Security and Civil Defence Corps Co-operative in the F.C.T Command. He testified that the plots covered by the allocation letters tendered in evidence do no exit in the land records of the Co-operative. He also told the Court that the lands captured by the allocation letters are not in existence. That all the allocations were made without plots on the ground and that both the lands in Nasarawa and the ones in the F.C.T could not be found after diligent search.

The learned counsel to the Defendant has submitted in his final written address that the prosecutor has not proved the charges against the Defendant beyond reasonable doubt.

The first ground of his attack is that exhibit ICPC3. (Notice to suspect to furnish a statement was not competently issued as the Chairman of the I.C.P.C did not issue it under his hand nor signed it as prescribed by Section 44 of the Corrupt Practices and Other Related Offences Act 2000. According to him an unsigned document is worthless. He also argued that because exhibit ICPC3 was not

issued by the Chairman of the Commission, a condition precedent had not been observed and that the statement furnished by the Defendant is worthless as you cannot put something on nothing and expect it to stand. Learned counsel cited judicial authorities to support his argument.

Now my understanding of this submission by the learned counsel to the Defendant on this point is that exhibit ICPC3 i.e. the written notice issued to the Defendant upon which she furnished a statement to the I.C.P.C was not signed by the Chairman of the Commission. He has argued that the absence of his signature to show that it was he the Chairman of the Commission who issued that written notice has vitiated the statement furnished on Oath by the Defendant.

I am not sure that the learned counsel to the Defendant is correct on this line of submission. There is no doubt that exhibit ICPC3 was not signed as having been issued to the Defendant by the Chairman of the Commission or any of the operatives for that matter, but to me the failure to sign the form does not have such a significant effect as the learned counsel has tried to conjecture. The requirement of issuing a notice as in exhibit ICPC3 is a procedural step in the stream of investigation and the absence of a signature on the exhibit would not affect the status and or probative value of any evidence that may

have been discovered in the process. Therefore if the Defendant has for example disclosed in the written notice that she has landed properties such evidence would not be ignored because the written notice issued to her was not signed by the Chairman. I think that what is relevant here is the fact that the document was sworn to and signed by the Defendant. Here I mean that the issuance of notice as in exhibit ICPC 3 is not similar to the issuance of a writ of summons. The writ of summons admittedly commences an action and must be signed to be valid, but the issuance of a written notice prescribed by Section 44 of the Act is merely a procedural step in the chain of investigation. It does not start an investigation and neither does it kick start a criminal trial in the same way a writ of summons initiates a civil case.

I have read the argument of counsel to the prosecution in response to the argument of the defence counsel and it appears that she did clearly understand the point that was made by the defence. Be that as it may the contention of the learned counsel to the defence is not correct and he is overruled for the reasons I have given.

This takes me to whether or not the evidence of the prosecution witnesses has established the guilt of the Defendant in respect of the offences charged as required by the law.

In his argument the learned counsel to the Defendant has submitted that the essential elements of the offences charged have not been made out. Learned counsel submitted that the certified copies of letters of plot allocations admitted as exhibits in this case are all inadmissible documents.

According to learned counsel, the allocation letters were not issued by any Government Department but by the Co-operative Society of the Civil Defence Corps and therefore private documents. He therefore submit that under the Evidence Act the only admissible evidence of the allocation letters are the original copies; that here no foundation was laid to explain the absence of such originals and therefore, the secondary copies cannot be admitted in place of the original.

The response of the learned counsel to the prosecution is that the objection of the learned counsel to the Defendant is misplaced as the letters form public records of private documents which are admissible under Section 102 (b) of the Evidence Act 2011.

To me it appears that the controversy surrounding the status and certification of the allocation letters in respect of the plots ascribed to the Defendant appears to have been taken too far and without recourse to the evidence before the Court. The evidence of the PW1 on how the ICPC came about the allocation letters is very decisive in

settling the status and certification of the exhibits. The relevant portion of the evidence of PW1 is to this effect:

> **"Upon submitting the form to the ICPC we set out to verify the information contained in it. We discovered that there were several undeveloped lands which she did not declare. Some of these lands are in Sabon Lugbe and others are in Karshi Area contrary to her Oath that she had no landed property. We conducted a search in the house of the accused and there we discovered some allocation letters in her names. One of them is in respect of plot 86 at Sabon Lugbe East Extension and three others in the same Estate and nine other letters of allocation at Karshi."**

Now from the above excerpts of the testimony of the PW1 Mr. Daramola Seun Olamide, it is clear that the documents were not obtained from the custody of the ICPC but from the private custody of the accused when a search was conducted in her private residence. They do not belong to the class of documents prescribed in Section 102. On the account of the same evidence the submission of Mrs Quadri based on Section 102 (1)(b) of the Evidence Act must be discountenanced as they do not form public record kept of private documents.

Therefore, the allocation letters being private documents kept by a private person are not subject to certification. See Section 89 (e and f) of the Evidence Act. The certification done by the Defendant in this case is therefore a futile exercise and meaningless. It follows that being private documents the only admissible evidence are the originals of the allocation letters. The certified copies tendered in this case are secondary copies not in the form admissible after necessary foundation. I therefore agree that all the certified copies of the letters of allocation tendered in this case were wrongly admitted in evidence.

The position of law where inadmissible document is wrongly admitted through inadvertence or otherwise is very trite.

In **KUBOR AND ANOR VS DICKSON & ORS (2013) 4 NWLR (PT. 1345) 534** ONNOGHEN JSC stated thus:

> **"On the sub issue as to whether the Court has the power to expunge from its record evidence or documents earlier admitted without objection by counsel, it is settled law that the Courts can do that and has been doing that over the years."**

See **NIPC LTD VS THOMSON ORGANISATION LTD (1966) I NMLR 99 at 104** where Lewis JSC stated the law as follows:

> **"It is of course the duty of counsel to object to inadmissible evidence and the duty of the Court anyway to refuse to admit inadmissible evidence but if notwithstanding this evidence is still through oversight or otherwise admitted then it is the duty of the Court to when it comes to give Judgment treat the inadmissible evidence as if it had never been admitted."**

See also **BROSSETE NIG LTD Vs ILEMOBOLA LTD (2001) 30 NSCQR 1169** as ably cited by learned counsel to the Defendant.

Taking the argument further, it is my view that the mere possession of letters of allocation does not automatically show ownership of such land. For the Court to admit a document as sufficient evidence of ownership of such land to which the allocation letter relates, it must be established and the Court must satisfy itself that:

(a) The document is genuine and valid;

(b) That it has been duly executed.

(c) The grantor has the authority and capacity to make the grant/allocation.

(d) That the grantor has in fact what he proposed to grant and;

(e) That the grant has the effect claimed by the holder of the instrument.

See **AYORINDE VS KUFORIJI (2007) 4 NWLR (PT. 1024) 341 and DOSUMU VS DADA (2002) 13 NWLR (PT. 783) 1.**

Now quite apart from the inadmissibility of the allocation letters it is my view that they cannot pass any of the tests listed above. Each of the allocation letters proclaimed that it was issued on behalf of the Co-operative Unit of the FCT Command of the Nigerian Security and Civil Defence Corps. The Organization is not a land issuing authority. The evidence before the Court as related by the PW1 and PW2 is that the lands were first acquired by the Co-operative Society and it in turn allocated same to the Defendant. Regrettably no evidence of ownership of any land by the Co-operative either from the Hon. Minister who by virtue of the Land Use Act is the only land issuing authority in the FCT or the Governor of Nasawara State in respect of the land located in Nasarawa State and evidence of purchase of the lands from private persons were tendered.

What this mean is that the Co-operative has not been disclosed to have the lands it purported to have granted to the Defendant or that the document of allocation has been duly executed and or genuinely or validly issued. After all a party cannot give what it does not have.

I am surprised that in the investigation of this case the ICPC did not bother to see the documents of title to the affected plots issued to the Nigerian Security and Civil Defence Cooperative and Credit Society which in turn granted the plots to the Defendant.
However, it is clear from the testimonies of PW2 and DW1 that the plots covered by exhibits P2 series are non-existent.

According to the PW2:

> **"During investigation most of the plots on the allocation papers do not exist. This was the response we got from Abuja Municipal Area Council.**

The PW2 also testified under cross examination that they found out during investigation that the Co-operative does not have any land along airport road and also that the rest of the plots do not have record with the Government in respect of the lands purchased from the local indigenes. This evidence is supported by the failure of the prosecution to procure any of the indigenes who sold the plots to the Co-operative Society to testify in its favour.

The implication of all these stories is that the prosecution has not established that the Defendant has undeveloped plots covered by the allocation letters so as to render her declaration before the Commissioner for Oaths FCT High Court which she in turn submitted to the ICPC official false.

The prosecution has argued that since the Defendant has confessed to ownership of the plots covered by the allocation letters the case of false declaration in respect of these properties has been duly established.

There is no doubt and as decided in a plethora of decided cases that confession where cogent can ground conviction of the maker for the offence/offences charged.

However for the Court to rely on the confessions of the Defendant in exhibits P2, P2(b) and P2(c) I need to examine the exhibits using a six way test to determine their veracity.

See **OSENI VS STATE (2012) 5 NWLR (PT. 1293) 351 and ADESINA VS STATE (2012) 14 NWLR (PT. 1321) 429**. The tests are:

(a) Is there anything outside the confession to show that it is true?

(b) Is it corroborated?

(c) Are the facts therein stated true as far as can be tested?

(d) Had the accused person the opportunity of committing the offence.

(e) Is the confession possible and;

(f) Is the confession consistent with other facts ascertained and proved?

The veracity test is usually applied to ensure that the statement of the accused is tested closely in the light of other evidence.

Now the evidence before me based on testimonies of witnesses are to the effect that the plots covered by the exhibits (allocation letters) are not physically on ground. They cannot be found by the operatives. They do not exist in the records of the issuing authorities, the Co-operative Society and any of the land agencies. Therefore the confessions made by the Defendant with respect to the plots in question is not corroborated, is not consistent with other facts ascertained and proved and based on the contradictions in the testimonies of the prosecution witnesses there is nothing outside the confession to show that it is true.

That being the case the alleged confessions made by the Defendant do not have weight in law to ground conviction of the Defendant. This is quite apart from the fact that none of the alleged confession was taken before a superior officer for endorsement as is the usual practice.

At the end of the day it is my finding that the prosecution has not established the essential elements of the offences charged against the Defendant which in turn means that the offence are not proved beyond reasonable doubt and I hold as such.

The end result is that the accused is hereby discharged and acquitted on each of the 13th count charge.

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
03/12/2019

Appearances:

Mrs. Funmi Quadri, Esq…….. For the Prosecution

(appears with Seun Quadri esq)

Joseph Tobi, Esq……. For the Defendant

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
03/12/2019