

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 8TH DAY OF JULY 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO - ABUJA

CHARGE NO. CR/321/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA... ..COMPLAINANT

AND

1. MOHAMMED MUSA ABIMIKU } DEFENDANTS
2. ALEXANDER MICAH PAMAN }

JUDGMENT

It is indeed an irony that those officially recognized as vanguards of anti-corruption in Government establishment happened to have found themselves enmeshed in allegations and charges of corruption as this case presents. The Defendants were originally arraigned before this Court on 10/01/2018 on a ten-

Count Charge, which, by amendment granted on 19/09/2019, was reduced to a **five-Count Charge** of making false statements and conferring corrupt advantage upon themselves contrary to and punishable under the provisions of s. **16** and **19** of the **Corrupt Practices and Other Related Offences (ICPC) Act, 2000**.

At the plenary trial, the prosecution fielded all the six (6) witnesses listed in the proof of evidence, namely:

- **PW1 – Gudi Johnson Daniel** – Staff of ICPC with the Financial Investigations Unit.
- **PW2 – Uche Omerenma** – Staff of United Bank For Africa Plc.
- **PW3 – Ikechukwu Onyeachonam** – Staff of Diamond Bank Plc, Maitama Branch, Abuja.
- **PW4 – Dikko Hassan Idris** – former Director of Special Duties, Federal Ministry of Works.

- **PW5 – Mbang Esu** – Assistant Chief Superintendent/Investigator with the ICPC.
- **PW6 – Anukam Stella (Mrs.)** – Director, Federal Ministry of Justice and former State Counsel at the Federal Roads and Maintenance Agency (FERMA).

At the conclusion of the prosecution's case, the Defendants, through their learned counsel applied to make a no-case to answer submission, pursuant to the provision of s. **302** of the **Administration of Criminal Justice Act, 2015 (ACJA)**; which this Court partly overruled on 13/11/2019.

For their defence, the two Defendants testified in person and called no other witness(es). He tendered **two (2)** documents in support of his defence and was cross-examined by the prosecution learned counsel.

At the close of plenary trial, parties filed and exchanged written final addresses as agreed to by them.

As rightly identified by learned counsel on both sides, the only issue that the Court has to determine in this case is as to whether, on the basis of the totality of the evidence adduced in the course of trial, the prosecution has succeeded in establishing the guilt of each of the Defendants in respect of the offences for which they stood trial.

In determining this issue, I had also carefully considered the totality of the written and oral arguments canvassed by the respective learned counsel and I shall endeavour to make specific reference to their submissions as I deem needful in the course of this judgment.

As a starting point, it is pertinent to re-state the fundamental principles of a criminal trial, as also

rightly canvassed by the prosecution learned counsel, to the effect that the prosecution could discharge the burden placed on it by the provisions of s. **135(2)** and **(3)** of the **Evidence Act**, to prove the guilt of an accused defendant beyond reasonable doubt, in any of the following well established and recognized manners, namely:

1. By the confessional statement of the accused defendant which passes the requirement of the law; or
2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or
3. By circumstantial evidence which links the accused defendant and no other person to or with the commission of the crime or offence charged.

See Lori Vs. State;¹ Emeka Vs. State;² Igabele Vs. State;³ Iorapuu Vs. State.⁴

On the basis of these well settled legal principles as espoused in the authorities cited in the foregoing, I now proceed to examine the instant Charge, in the light of the evidence adduced by the prosecution witnesses and the Defendants, in order to determine whether or not the prosecution has proved commission of the offences in the Charge against the Defendants beyond reasonable doubt as required by law.

The 1st Defendant stood trial for the offence in Count (2) of the Charge only; whilst the 2nd Defendant stood trial for the offence in Counts (3) and (5). The Counts are reproduced as follows:

COUNT 2

¹ [1980] 8 - 11 SC 81

² [2001] 14 NWLR (Pt. 734) 668

³ [2006] 6 NWLR (Pt. 975) 100

⁴ [2020] 1 NWLR (Pt. 1706) 391 @ 395

That you Mohammed Musa Abimiku (m) sometime between November, 2014 and January, 2015 or thereabout, in Abuja, while being in the employment of the Federal Ministry of Works, Abuja, as Deputy Director, Special Duties Department overseeing the Anti-Corruption and Transparency Unit (ACTU) of the said Ministry did use your position to confer corrupt advantage upon yourself when you transferred the sum of ₦979,000.00 (Nine Hundred and Seventy-Nine Thousand Naira) only into the account of Alexander Micah Paman with account number 1004556904 domiciled with UBA from the total sum of ₦5,000,000.00 (Five Million Naira) approved by the Permanent Secretary, Federal Ministry of Works, Abuja and paid into your Diamond Bank Account No. 0012771588 on the 4th of November, 2014 for the observance of the International Anti-Corruption Day on the 9th of December, 2014 by the Anti-Corruption and Transparency Unit (ACTU) of the Ministry and its Parastatals and converted the balance of

₦4,021,000.00 (Four Million and Twenty-One Thousand Naira) to your personal use; and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2020.

COUNT 3

That you Alexander Micah Paman (m), sometime in December, 2014 or thereabout, in Abuja, while being in the employment of the Federal Ministry of Works, Abuja, used your position as a Assistant Director and Chairman, Anti-Corruption Transparency Unit (ACTU) of the Ministry of Works, Abuja knowingly furnish false return of retirement claims in respect of the total sum of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) out of the ₦5,000,000.00 (Five Million Naira) approved by the Permanent Secretary, Federal Ministry of Works, Abuja and paid into personal Diamond Bank Account No. 0012771588 of Mohammed Musa Abimiku on the 4th of November, 2014 for the observance of the International Anti-Corruption Day on the 9th of December,

2014 by the Anti-Corruption and Transparency Unit (ACTU) of the Ministry and its Parastatals, that the said sum was expended for that purpose, when you knew it was not; and you thereby committed an offence contrary to and punishable under Section 16 of the Corrupt Practices and Other Related Offences Act, 2000.

COUNT 5

That you Alexander Micah Paman (m), sometime in March, 2015 or thereabout, in Abuja, while being in the employment of the Federal Ministry of Works, Abuja, used your position as a Assistant Director and Chairman, Anti-Corruption Transparency Unit (ACTU) of the Ministry of Works, Abuja to confer corrupt advantage upon yourself when you received and expended for your personal use the sum of ₦400,000.00 (Four Hundred Thousand Naira) being contribution from the Office of the Surveyor-General of the Federation to support the observance of the International Anti-Corruption Day on the 9th of December, 2014 by the Anti-

Corruption and Transparency Unit (ACTU) of the Ministry and its Parastatals; and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

The provision of **s. 19** of the **ICPC Act**, under which the 1st Defendant was charged with Count (2) and the 2nd Defendant with Count (5) *supra*, states as follows:

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

Learned counsel on both sides are in agreement as to the elements or ingredients of the offence provided in **s. 19** of the **ICPC Act**; which are stated as follows:

1. That the Defendant is a public officer;

2. That the Defendant conferred on himself or some other person(s) some advantages which are either corrupt or unfair: and
3. That the Defendant did so using his position or office.

See FRN Vs. Umar Musa;⁵ FRN Vs. USMAN;⁶ Okoh Vs. FRN.⁷

Evidence on record, which is not in dispute, is that the two Defendants were, at the material time, civil servants. They both worked in the Federal Ministry of Federal Ministry of Works. Whilst the 1st Defendant, at the material time, was the Assistant Director (Special Duties) of the Federal Ministry of Works;⁸ the 2nd Defendant was an Assistant Director, Administration and at the material time the Chairman of the Anti-

⁵ [2013] 1 ICPCLR 50

⁶[2018] LPELR-43894(CA)

⁷ [2019] LPELR-37442(CA).

⁸ See the 1st Defendant's Extra-Judicial Statement to the ICPC – **Exhibit P13**

Corruption and Transparency Unit (ACTU) of the Federal Ministry of Works.⁹

Sometime in 2014, three (3) units of Anti-Corruption and Transparency Monitoring Units in the Federal Ministry of Works and its parastatals, namely Office of the Surveyor General of the Federation (OSGOF) and the Federal Roads Maintenance Agency (FERMA), represented by their respective Chairmen – **Mr. Alexander Micah Paman (FMW); Miss H. O. Iyoha (OSGOF);** and **Barrister Stella Anukam (FERMA)** came together to hold a collaborative meeting towards the observance of the International Anti-Corruption Day, scheduled for 9 December, 2014. At the said meeting, a Five-Man Planning Committee headed by **Mr. Alexander Micah Paman (2nd Defendant)**, was set up. Other members of the Committee were – **Mr. S. A. Abdulahi** (representing FERMA); **Surveyor A. N. Nwocha** (representing the

⁹ See the 2nd Defendant's Extra-Judicial Statement to the ICPC – **Exhibit P14**

OSGOF); **Mr. A. Gbeminiyi** (representing the FMW); and **Mrs. Mercy Onuntuei** (also representing the FMW), as the Secretary of the Committee.

The Committee was to be responsible for determining the venue of the event, the details of the activities for the Day, the resource persons and the cost of implementation.

The Three-Man Collaborative meeting, after deliberations, came up with a budget of the sum of **₦7,541,325.00**, to organize the Day and conveyed their decisions to the Permanent Secretary of the Federal Ministry of Works, as revealed in **Exhibit P7**, tendered by the **PW1**.

Undisputed evidence further reveals that of the said sum, it was agreed that the FMW shall contribute the sum of **₦5,000,000.00**; whilst the duo of OSGOF and FERMA shall contribute the sum of **₦1,270,662.50** each. The 2nd Defendant therefore communicated the

decisions of the Committee in that regard to the respective offices of OSGOF and FERMA to intimate them of the decisions at the Committee meetings, *vide* **Exhibits P2** and **P3** tendered in evidence by the **PW1**.

The undisputed evidence on record is further that the Permanent Secretary of FMW approved its own component of the contribution in the sum of **₦5,000,000.00** which was paid through the Bank Account of the 1st Defendant, who at the material time was the Deputy Director overseeing Special Duties at the FMW. This payment was admitted by the 1st Defendant in his extra-judicial Statement, **Exhibit P13**.

The 2nd Defendant equally confirmed this fact in his extra-judicial Statement, **Exhibit P14**. The payment is also reflected in the transaction of 4 November, 2014, in the 1st Defendant's Bank Statement with Diamond Bank Plc.¹⁰

¹⁰ Tendered in evidence as **Exhibit P16**, by the **PW3**, staff of Diamond Bank, Maitama, Abuja, Branch

The undisputed evidence on record, to which the 2nd Defendant admitted, is that the OSGOF disbursed the sum of **₦400,000.00**, being its contribution to the ACTU Day Celebration to the Committee, through his Bank Account with United Bank for Africa Plc. (UBA Plc.).¹¹

It is essential to note that the 2nd Defendant stated in his extra-judicial Statement that the Committee reported directly to the 1st Defendant, in view of his position as the Deputy Director, Special Duties, in the FMW.

The 1st Defendant also stated in his extra-judicial statement that at the time approval for the **₦5,000,000.00** Anti-Corruption Day programme was granted, the Ministry was experiencing some financial difficulties and that he went to appeal to the Director of Finance and Accounts Department (DFA) to pay the money to him directly and that the DFA asked him to

¹¹ See Exhibits P4, P5, P5A, P6, P6A and P15 respectively

provide his Bank account details and that when funds were available the money was paid to his Bank account directly. He also admitted in his evidence in chief at the trial to have received the said sum of **₦5,000,000.00** in his Bank Account.

Now, the Complainant alleged, by Count (2) of the Charge, that the 1st Defendant gratified and conferred corrupt advantage to himself in that, of the **₦5,000,000.00** paid through his Bank Account, he transferred the sum of **₦979,000.00** to the 2nd Defendant and converted the balance to or for his personal use.

In other to substantiate this allegation, the **PW3** was shown the 1st Defendant's Statement of Account, **Exhibit P16** and he identified the transaction of 04/11/2014 which reflected that an inflow of the sum of **₦5,000,000.00** came from the Federal Government of Nigeria to the 1st Defendant's account; that as of that date, the 1st Defendant had a credit balance of

the sum of **₦557,911.26** in his account. The witness went on to further point out in the Statement of Account transfers that were made to **Paman Alexander**, the 2nd Defendant, which he identified as follows:

1. On 20/11/2014 the sum of **₦100,000.00**;
2. On 10/12/2014 the sum of **₦355,000.00**;
3. On 17/12/2014 the sum of **₦244,000.00**;
and
4. On 23/12/2014 the sum of **₦280,000.00**.

The **PW3** went on to further highlight various other significant withdrawal transactions that were effected in the 1st Defendant's Bank account, as reflected on **Exhibit P16** from the date the said sum of **₦5,000,000.00** was lodged, up to 28/02/2015, when the account was completely depleted with a credit balance of **₦1,093.29**.

The **PW3**, Staff of United Bank for Africa Plc, tendered the 2nd Defendant's Bank Statement with the Bank as

Exhibit P15; but he highlighted transactions that occurred on the account as reflected in the Bank Statement on 02/01/2014; 03/01/2014; 10/01/2014; 28/01/2014; 26/02/2014; 25/03/2015; and 04/01/2016 respectively. With particular reference to the transaction of 25/03/2015, the **PW3** narrated that the sum of **₱400,000.00** was paid by the FGN to the said 2nd Defendant's account on that day.

The **PW3** gave further evidence with respect to the said 2nd Defendant's Statement of Account, **Exhibit P15** when he was led to compare same with the 1st Defendant's Statement of Account, **Exhibit P16**. The witness demonstrated how each of the transfers he highlighted as they occurred in **Exhibit P16** from the 1st Defendant to the 2nd Defendant were actually reflected as inflows in the 2nd Defendant's account, **Exhibit P15** on the stated dates.

Under cross-examination by the Defendants' learned counsel, the **PW3** stated further that he did not know the purpose for the inflows from the 1st Defendant's Bank account into the 2nd Defendant's Bank account, which he highlighted in his evidence in chief.

In his testimony, the **PW1**, investigator with the ICPC, stated that whilst the 1st Defendant stated in his extra-judicial statement to the ICPC that he disbursed the sum of **₦4,000,000.00** to the 2nd Defendant to prepare for the International Anti-Corruption Day scheduled for 9 December, 2014; the 2nd Defendant, in his extra-judicial statement to the ICPC stated that the 1st Defendant disbursed **₦4,500,000.00** to him; but that upon analysis of the Statements of Accounts of the 1st and 2nd Defendants, it was discovered that a total sum of **₦979,000.00** was actually paid by the 1st Defendant to the 2nd Defendant out of the **₦5,000,000.00** credited into the 1st Defendant's account for the organization of the said programme.

The 2nd Defendant, under cross-examination was shown his bank statement, **Exhibit P15** and he admitted to the fact that the sums alleged to have been transferred to him by the 1st Defendant as reflected in **Exhibit P15**, were correct and indeed received by him.

The **PW1** further testified that a further analysis of the 1st Defendant's statement of account, **Exhibit P16** revealed that he personally withdrew close to **₱2,000,000.00** from his account at the material period after the said **₱5,000,000.00** was credited to his account; and that he transferred monies to other individuals within the same period, the purpose for which he could not give account.

It is significant to note that the **PW3** corroborated the testimony of the **PW1** when he carefully highlighted the various transfers and withdrawals that occurred and reflected in the 1st Defendant's Statement of Account, **Exhibit P16**, after the said sum of **₱5,000,000.00** was

credited to the account, to different persons within the stated period, apart from the sums paid to the 2nd Defendant at the material time. The outflows either by way of transfer or cheque withdrawals highlighted by **PW3** in the 1st Defendant's account, **Exhibit P16** are listed as follows:

1. 20/11/2014 – to **Zanya Yusuf Achuk** – **₦100,000.00**
2. 21/11/2014 – to **Zanya Yusuf Achuk** – **₦250,000.00**
3. 25/11/2014 – **Philibus Ibrahim DA** – **₦406,000.00**
4. 04/12/2014 – **Mohammed Sani Abdul** – **₦120,000.00**
5. 05/12/2014 – **Joy L. Ejiga** – **₦400,000.00**
6. 17/12/2014 – **Isa Zaidu** – **₦700,000.00**
7. 16/01/2015 – **Achuku Y. Zanyu** – **₦150,000.00**
8. 16/01/2015 – **Zanyu Yusuf Achuk** – **₦150,000.00**
9. 03/02/2015 – **Achuku Y Zanyu** – **₦150,000.00.**

Furthermore, the **PW3** highlighted the withdrawals made by the 1st Defendant, **Mohammed Musa Abimiku**, in person from the said account within the same period as follows:

1. 29/11/2014 – **₦500,000.00**
2. 05/12/2014 – **₦100,000.00**
3. 12/12/2014 – **₦200,000.00**
4. 17/12/2014 – **₦100,000.00**
5. 23/12/2014 – **₦200,000.00**
6. 30/12/2014 – **₦100,000.00**
7. 22/01/2015 – **₦400,000.00**
8. 30/01/2015 – **₦200,000.00**

Under cross-examination by the prosecution learned counsel, the 1st Defendant was confronted with his Statement of Account, **Exhibit P16**. Although he claimed he could not read the statement because of bad eyesight; he however agreed that the transactions highlighted in the statement by the **PW3** in his testimony as relating to the **₦5,000,000.00** paid into

his account with respect to the ACTU Day Celebration were correct.

The **PW1** further tendered in evidence as **Exhibit P8A**, document issued by the 1st Defendant to the 2nd Defendant by which he requested the 2nd Defendant to acknowledge the total sum of **₦4,500,000.00** disbursed to him for the ACTU Day Celebration.

The statement in **Exhibit P8A** is reproduced as follows:

“AD(ACTU)

Please acknowledge the receipt of all monies disbursed to you the total sum of Four Million Five Hundred Thousand Naira only for the ACTU Day Celebration.

I need a detailed breakdown of expenditures carried out to enable me update my records.

Mohammed Musa Abimiku

DD (SD) 15 December, 2014”

The **PW1** further tendered in evidence the document **Exhibit P8**, the 2nd Defendant's purported report of the ACTU Day Celebration, which he addressed to the 1st Defendant. The document also states in part, as follows:

“DD (SD)

REPORT OF ACTU DAY CELEBRATION IN THE THEN FEDERAL MINISTRY OF WORKS, HEADQUARTERS, MABUSHI, ABUJA, HELD ON TUESDAY, 9th DECEMBER, 2014 AT THE MINISTRY'S LARGER HALL.

Note: The approved sum of money for the Programme was in the sum of Five Million (N5,000,000) Naira only.

2. Below were the expenditures and distributions of the sum of N4,500,000.00 released to me:

....

Total = N4,490,000

NB: I cannot lay hand on most of the receipts because both electronics and Print Media do not give receipts at occasions at all

(Signed)

AD (ACTU)''

In his testimony under cross-examination by the prosecution learned counsel, the 2nd Defendant admitted that he received **Exhibit P8A** from the 1st Defendant; and that he produced **Exhibit P8** in response to **Exhibit P8A**. He further testified that the amount of **₦4,490,000.00** contained in **Exhibit P8** represented the total sum of money expended to organize the ACTU Day Celebration.

With respect to the allegation in Count (5) that the 2nd Defendant conferred corrupt advantage to himself by receiving and expending for himself the sum of **₦400,000.00 (Four Hundred Thousand Naira)** only, being the contribution of the OSGOF towards the ACTU Day Celebration, the **PW5** testified that the 2nd

Defendant failed to declare the sum to anyone but that he put the money to his personal use.

In his testimony, the 2nd Defendant admitted receiving the said sum of **₦400,000.00** from the OSGOF in his bank account. He however claimed that the money was spent to offset debts incurred during the programme.

Hear him:

“Money from OSGOF came around February, 2015, but FERMA did not contribute. The OSGOF gave us ₦400,000.00 out of the ₦600,000.00 promised us. The ₦400,000.00 was paid into my account. This we used to settle the outstanding payments to the press. I cannot remember exactly how much we paid to the press. We paid ₦100,000.00 each to AIT and Pilot Newspaper. I cannot remember the rest. But we exhausted the ₦400,000.00. We also did photo albums for the FMW and the two agencies.”

I had carefully analyzed the totality of evidence adduced by the prosecution in order to sustain this Charge. I had also analyzed the testimonies offered by the two Defendants.

With respect to Count (2), the prosecution witnesses indeed established that a total sum of **₱5,000,000.00** was paid into the 1st Defendant's account for the organization of the ACTU Day Celebration, out of which a total sum of **₱979,000.00** was transferred to the 2nd Defendant's account. The 2nd Defendant indeed admitted under cross-examination by the learned counsel for the prosecution that he received the said sum.

The question now is whether the prosecution proceeded to establish that the 1st Defendant conferred undue advantage to himself and gratified himself by expending or converting the balance of **₱4,021,000.00** to his personal use.

Now, the two Defendants stated in their extra-judicial statements that the total sum of **₦4,500,000.00** was disbursed by the 1st Defendant to the 2nd Defendant for the event. The prosecution witnesses, especially **PW3**, highlighted a catalogue of other debit activities that occurred in the 1st Defendant's account after the said sum of **₦979,000.00** is shown to have been disbursed to the 2nd Defendant. For instance, as highlighted by the **PW3**, name of **Zanya Yusuf Achuk** appeared severally as beneficiary of various amounts of money as reflected in **Exhibit P16**, the 1st Defendant's Statement of Account, as already set out in the foregoing. For instance, the said **Zanya Yusuf Achuk** was paid the sums of **₦100,000.00** and **₦250,000.00** respectively as reflected in the narrations shown on **Exhibit P16** for 20/11/2014 and 21/11/2014, before the event took place.

When questioned under cross-examination by the prosecution learned counsel, the 1st Defendant

identified the said **Mr. Yusuf Achuk** as the vendor that produced stickers, banners and flexes for the programme.

Again, the breakdown of expenditure produced by the 2nd Defendant in **Exhibit P8** further established that 6 flexes were produced for **₦150,000.00**; whilst the cost of posters/stickers was put at **₦100,000.00**.

What this testimony reveals is that the 1st Defendant was able to at least establish some link between the said **Mr. Achuk** and the work he purportedly undertook for which the sums of **₦100,000.00** and **₦250,000.00** were paid to him by the 1st Defendant as reflected in the transactions of 20/11/2014 and 21/11/2014 respectively. I so hold.

Now, the prosecution adduced no evidence on record that a further investigation was undertaken to establish whether the said **Zanya Yusuf Achuk** indeed undertook any work towards the ACTU Day

Celebration in order to verify the claim of the 1st Defendant. This is because, apart from the transfers to the said **Zanya Yusuf Achuk** under reference, there were other transfers made to him on dates after the event had held, even up to 3rd February, 2015.

The 1st Defendant, further in his testimony under cross-examination by the prosecution learned counsel, also acknowledged that he disbursed cash sum of **₱500,000.00** to the 2nd Defendant in connection with the ACTU Day Celebration planning. **Exhibit P9** is the handwritten note issued by the 2nd Defendant on 02/12/2014, to acknowledge receipt of the said sum of **₱500,000.00** cash paid to him by the 1st Defendant. My finding is that on the same day, 02/12/2014, the 1st Defendant withdrew cash sum of **₱500,000.00** from his account as reflected on **Exhibit P16**. The proper inference to be drawn here is that it was the cash withdrawn by the 1st Defendant on 02/12/2014 from his account that he handed over to

the 2nd Defendant as further disbursement with respect to the planning of the ACTU Day Celebration on the same day. I so hold.

What the foregoing analysis establishes is that apart from the sum of **₦979,000.00** shown to have been transferred directly by the 1st Defendant to the 2nd Defendant towards the planning of the ACTU Day Celebration through Bank transfers, the 1st Defendant is shown to have disbursed more funds from his bank account towards the planning of the same event. I so hold.

What is seen here is that the Complainant, rather than undertaking further investigation of the purpose for the various other outflows from the 1st Defendant's account of the **₦5,000,000.00** paid therein for the ACTU Day Celebration; merely came to an assumption that the 1st Defendant must have converted the balance of the total sum of **₦4,021,000.00** to his personal use.

However, the evidence, as I had analyzed in the foregoing does not so suggest.

The trite position of the law has always been that it is not the duty of the Court to speculate or conjecture on evidence not well laid before it.¹² In the present case, it is not the place of this court to speculate as to the purposes for which the various transfers made by the 1st Defendant from the remainder of the **₱5,000,000.00** ACTU Day Celebration fund, as shown in his statement of account, **Exhibit P16**, were made to the beneficiaries at the material time without any clear evidence in that regard. I so hold.

What is not in doubt is that the ACTU Day Celebration indeed held on 9 December, 2014, as scheduled, as evidence adduced by the respective Defendants established. What is also not in doubt is that monies were expended to execute the programme. The prosecution has failed to show that it was only the sum

¹² See Unity Bank Plc. Vs. Raybam Engineering Ltd. [2017] LPELR-41622(CA)

of **₱979,000.00** transferred directly by the 1st Defendant to the 2nd Defendant, as established by **Exhibits P15** and **P16** respectively, without more, that was expended to execute a programme of such magnitude. Or to put it in another sense, the prosecution has failed to prove that the 1st Defendant misappropriated or spent the balance of the sum of **₱4,021,000.00** for his person use as alleged. I so hold.

My conclusion is therefore that Count (2) of the Charge cannot be sustained. This is for the reason that the prosecution has failed to clearly establish that the 1st Defendant indeed converted to his personal use, the entire sum of **₱4,021,000.00** stated in the Charge, being balance after deducting the sum of **₱979,000.00** he paid to the 2nd Defendant of the sum of **₱5,000,000.00** released to him for the execution of the ACTU Day Celebration.

Even though I note that some of the monies were withdrawn from the 1st Defendant's account long after the event held, it is not enough to find the 1st Defendant guilty of converting the entire sum of **₦4,021,000.00** to his personal use. The position of the law is that where the prosecution proves that a Defendant stole or misappropriated an amount of money lesser than what he is charged for, the Defendant cannot be found guilty of either the whole amount or the lesser amount. This is the position of the Court of Appeal in Dr. Olu Onagoruwa Vs. The State,¹³ where the Court of Appeal, per **Tobi, JCA** (as he then was), held as follows:

“I am in very grave difficulty to go along with the submissions of learned counsel for the respondent that proof of a lesser amount is enough to sustain conviction in this case. While that may well be so in a case where the charge or count is divisible. I do not agree that it applies in this case where the

¹³ [1993] LPELR-43436(CA)

charge is indivisible. I do not think that is the proper function of the criminal law in the instant case.

If all the responsibility of the prosecution is simply to prove part of the money stolen in a single unbroken charge, as basis for conviction of an accused, I must say that the prosecution will have the best of two worlds if there are two worlds at all. In my humble view, the concept of criminal jurisprudence and criminality, in the context of apportionment of guilt, is stricter than the way learned counsel has put it. An offence committed is an exact human conduct and a'fortori, stealing a particular amount. Therefore, if an accused is charged with stealing a particular amount or named amount, the prosecution must stand or fall by proving the particular amount or by failing to prove same, respectively. The legal position is as exact as that. A contrary position will not only be oppressive to the accused but will certainly run against the provision of Section 33(5) of the Constitution of the Federal Republic of Nigeria 1979 where the accused is presumed

innocent until he is proved guilty. How can an accused be proved guilty if evidence is not led on the exact amount of money stolen in an indivisible charge such as the one the appellant faced? That will be tantamount to reversing justice and we, in this Court, cannot be a party to such reversion.”

In the instant case, Count (2) of the Charge is indivisible and unbroken. The amount alleged to have been converted to personal use by the 1st Defendant is certain. In the circumstances of the instant case therefore, failure of the prosecution to establish beyond reasonable doubt that the 1st Defendant converted the exact sum of **₦4,021,000.00** as charged renders the offence unproven and the charge unsustainable. I so hold.

The result is that I must acquit and I hereby discharge and acquit the 1st Defendant of Count (2) of the Charge.

With respect to Count (3) of the Charge, the prosecution here alleges that the 2nd Defendant made a false retirement of the sum of ~~₱~~**₱4,500,000.00** purportedly disbursed to him out of the ~~₱~~**₱5,000,000.00** approved by the Permanent Secretary of the FMW and paid into the 1st Defendant's bank account for the planning and execution of the ACTU Day Celebration which took place on 9 December, 2014.

The provision of s. **16** of the **Corrupt Practices and Other Related Offences Act, 2000** under which the 2nd Defendant stood trial for Count (3) of the Charge states as follows:

“S.16. Any person who, being an officer charged with the receipt, custody, use or management of any part of the public revenue or property, knowingly furnishes any false statement of return in respect of any money or property received by him or entrusted to his care, or of any balance of money or property

in his possession or under his control, is guilty of an offence, and shall on conviction, be liable to seven years imprisonment.”

As correctly canvassed by the prosecution learned counsel, the elements required to be proved under the provision of **s. 16** of the **ICPC Act** *supra*, are as follows:

1. The offender must be an officer;
2. He must be charged with the responsibility to receive, use or manage public revenue or property;
3. He must knowingly furnish false statement of return in respect of money or property received by him or entrusted in his care; or balance of such money or property in his custody or under his control.

In the instant case, it is not in dispute that the 2nd Defendant is a public officer. It is also well established that, as the Chairman of ACTU of the FMW, public

money was committed to his care for the planning and execution of the 2014 ACTU Day Celebration held on 9 December, 2014. It is also established by evidence that the 2nd Defendant produced and authored the document, **Exhibit P8**, being “**Report of ACTU Day Celebration In The Then Federal Ministry Of Works, Headquarters, Mabushi, Abuja, Held On Tuesday, 9th December, 2014 At The Ministry’s Larger Hall,**” referred to *supra*.¹⁴ The document is in response to the document, **Exhibit P8A** (also reproduced *supra*)¹⁵, made by the 1st Defendant on 15 December, 2014, requesting the 2nd Defendant to give a detailed breakdown of expenditure of the sum of **₦4,500,000.00** disbursed to him for the ACTU Day Celebration.

In the document, **Exhibit P8**, the 2nd Defendant furnished a breakdown of expenditure of the total sum of **₦4,490,000.00**, which he claimed was expended

¹⁴ At page 23 of this judgment

¹⁵ At page 22 of this judgment

towards the programme. It is to be noted that the breakdown were not backed up by any single receipt as required by the financial and accounting regulations of the Civil Service of the Federation. It is also to be noted that the 2nd Defendant stated in the document, **Exhibit P8** as follows:

“NB: I cannot lay hand on most of the receipts because both electronics Print Media do not give receipts at occasions at all.”

However, evidence on record revealed that apart from the sum of **₦979,000.00** transferred by the 1st Defendant to the 2nd Defendant’s account at the material time; as well as the cash sum of **₦500,000.00** paid to him by the 1st Defendant, which he acknowledged by **Exhibit P9**, there is no further evidence of any further direct disbursements by the 1st Defendant to the 2nd Defendant.

What is more, even though the 2nd Defendant claimed to have expended the said of **₦4,490,000.00** as at

15 December, 2014, when the 1st Defendant wrote to him to demand for breakdown of money already expended in the sum of **₱4.5 million**, my finding is that the prosecution witnesses, especially the **PW3**, were able to establish that substantial sums out of the **₱5,000,000.00** paid into the 1st Defendant's account were withdrawn or expended way after 9 December, 2014, when the event held.

Again, in his examination in chief, the 1st Defendant claimed that he paid the sum of **₱400,000.00** to a woman brought by the 2nd Defendant for purposes of providing food and drinks as part of entertainment for the event. However, the breakdown in **Exhibit P8** did not reflect that any amount whatsoever was expended on entertainment.

The implication of the revelations in the foregoing is therefore that the 2nd Defendant merely cooked up the document, **Exhibit P8** to justify the money advanced to

him but which he did not completely expend towards the ACTU Day Celebrations. I so hold.

To further establish that the 2nd Defendant concocted **Exhibit P8** with the intention of covering up misappropriation of funds, he admitted that the OSGOF paid the sum of **₱400,000.00** to his account as the contribution of that office to the execution of the ACTU Day Celebration. Evidence however revealed that the said sum was credited to his bank account, **Exhibit P15**, on 25/03/2015, over three months after the event had held and long after he had produced his expenditure document, **Exhibit P8**.

It is noted that in **Exhibit P8**, the 2nd Defendant stated that sums of **₱700,000.00**; **₱60,000.00** and **₱300,000.00** respectively were spent on media and publicity, including press coverage, video coverage, and production of photo books for the event. Whereas, when he was cross-examined as to how he spent the said **₱400,000.00** paid to his account by the

OSGOF, he claimed that he spent the money to settle outstanding payment to the press; whereas there is nothing in **Exhibit P8** that suggested that after expending the sum of **₱700,000.00** on press coverage, there was any other outstanding payment.

In his testimony under cross-examination by the prosecution learned counsel, the 2nd Defendant stated that the sum contained in **Exhibit P8** represented the total sum expended for the whole event.

Further in his testimony under cross-examination by the prosecution learned counsel, the 2nd Defendant claimed that he expended **₱5,000.00** each on 5 ushers but that item of expenditure is not reflected in **Exhibit P8**.

From the foregoing analysis, I am satisfied that the prosecution established beyond reasonable doubt that **Exhibit P8** is a false statement of expenditure which the 2nd Defendant deliberately and knowingly cooked

up and concocted to cover up misappropriation of funds disbursed to him for the execution of the ACTU Day Celebration held on 9 December, 2014. I so hold.

Without any further ado, I find the 2nd Defendant guilty of Count (3) of the Charge.

With respect to Count (5) of the Charge which accused the 2nd Defendant of expending the sum of **₱400,000.00** donation by OSGOF towards the ACTU Day Celebration for his personal use, the clear evidence on the record is that the said sum was paid into the 2nd Defendant's account on 25/03/2015, over three (3) months after the event was held.

It has also been established that the 2nd Defendant lied when he claimed that he spent the money to settle outstanding debt on media coverage, whereas the sum of **₱700,000.00** is already captured on **Exhibit P8** as total sum expended for media coverage.

To further reveal that the 2nd Defendant spent the money to gratify himself, a cursory examination of his statement of account, **Exhibit P15**, revealed that after the said sum of **₦400,000.00** hit his account on 25/03/2015, he withdrew substantial sums of the money in bits through the Automated Teller Machine (ATM) from various locations in Abuja and at the University of Jos. This thus revealed that the 2nd Defendant's claim that he spent the money to settle outstanding balances to media organizations is an obvious lie. I so hold.

Without any further ado, I am clearly satisfied, by compelling circumstantial evidence, that the prosecution proved the guilt of the 2nd Defendant with respect of Count (5) of the Charge beyond reasonable doubt. He indeed conferred undue corrupt advantage to himself by expending the sum of **₦400,000.00** paid to his account for the purpose of undertaking an official

assignment for his personal use. Accordingly, I hereby convict the 2nd Defendant of Count (5) of the Charge.

OLUKAYODE A. ADENIYI

(Presiding Judge)

08/07/2020

SENTENCE

I had carefully listened to and considered the plea of allocutus made on behalf of the convict by his learned counsel.

As I remarked at the commencement of this judgment, the 2nd Defendant was supposed to be the symbol of Anti-Corruption vanguard in the Federal Ministry of Works where he was the ACTU Chairman. It was therefore an irony that he chose to enmesh himself in corrupt practices whilst organizing Anti-Corruption Day Celebration; meaning that his practices were clearly antithetical to his preaching.

The provision of **s. 16** of the **ICPC Act** under which the convict had been found guilty of Count (3) of the Charge provides a strict penalty of seven (7) years imprisonment.

Again, s. 19 of the ICPC Act under which the convict was found guilty of Count (5) of the Charge also provided a strict penalty of five (5) years without an option of fine.

In the circumstances, the hands of the Court are tied in that the Court lacks the jurisdiction and competence to exercise any discretion to unilaterally reduce a sentence strictly fixed by law.

As such, I hereby sentence the convict to seven (7) years imprisonment with respect to Count (3) of the Charge. With respect to Count 5 of the Charge, the convict is equally sentenced to five (5) years imprisonment. Both sentences shall however run

concurrently, implying that the convict shall serve five (5) year term of imprisonment.

OLUKAYODE A. ADENIYI

(Presiding Judge)

08/07/2020

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