



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/128/2011

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

EHIMEN OKODOLOR.....DEFENDANT

JUDGMENT

Mr. Ehimen Okodolor is standing trial before this Court on a two count charge of knowingly making false statement to the operatives of the Independent and Corrupt Practices Commission contrary to Section 25 (a) and punishable under Section 25 (b) of the Corrupt Practices and Other Related Offences Act 2000 and conferring corrupt advantage to himself by converting the sum of N104, 000. 00 (One Hundred and Four Thousand Naira) belonging to one Patrick Samuel to his personal use contrary to and punishable under Section 19 of the same law.

He pleaded not guilty to the two count charge. The prosecutor called four witnesses to prove his case. The case as a matter of fact

suffered several delays as a result of non availability of prosecution witnesses and eventually the death of the prosecuting counsel, Mr. Chinedu Umeh (may God bless his soul). Nevertheless, after the Commission found a replacement to prosecute the case, the Court somehow managed to conclude the trial in this case.

The brief facts of the case is that sometimes in January, 2010 the Complainant, Mr. Patrick Samuel who was a Mechanic retained by the Edo State Liason Office Abuja as its Mechanic was contracted to repair a Toyota Hilux with Registration No. ED GH 125. A quotation of N104, 000. 00 (One Hundred and Four Thousand Naira) was approved for the work.

At the time trial commenced in this case, he was said to have died. The circumstance was not stated (may his soul rest in peace). The payment for this work was made to the Defendant who was the Head Driver to the Liason Office by the PW3 for onward transmission to the Complainant sometimes on the 29/01/2010. After this payment, the PW3, Mr. Abu Kadiri who was the Accountant to the Liason Office demanded for the receipt supposedly received from the Complainant to enable him retire the advance but the Defendant could not produce it. He kept asking for time to bring it.

Sometimes on 24/09/2010 several months after the payment, the Complainant complained to the PW3 and the Director General that he had not been paid. He was directed to write and he wrote a petition against the Defendant for misappropriating his money. The Director General set up a Committee to investigate the petition and the Committee found that the Defendant did not remit the money to the Complainant. The report of the Panel was admitted as exhibit P1 in this trial. Despite this finding, the Defendant did not pay the Complainant his money. At the end of the day, the Complainant reported the case to the Independent and Corrupt Practices Commission for investigation.

At the trial, the prosecution called four witnesses, the Complainant having died and the prosecution being unable to procure the Director General in charge of Edo State Liason Office. About thirteen documents were also tendered as exhibits. All the witnesses were fully cross examined by learned counsel to the Defendant, Mr. Cyril Okpoboro.

The PW1 is Mr. Ilebode Samuel. He was a Special Assistant to the Governor of Edo State and attached to the Liason Office then. He testified about the repairs carried out by the Complainant and payment of N104, 000. 00 (One Hundred and Four Thousand Naira) to the Defendant to be passed to the Complainant. He also told the

Court how the money was not passed over to the Complainant for upwards of eight months until he discovered from the Accountant (PW3) that the money had been paid and collected on his behalf by the Defendant. He testified that the Complainant reported the matter to the Director General Edo State Liason Office who set up a Panel which he chaired to investigate the matter. That after deliberation by the Panel in which the Defendant and witness were heard, it was discovered that the Defendant did not pass the N104, 000. 00 (One Hundred and Four Thousand Naira) he collected from the Accountant (PW3) to the Complainant. The report of the Panel was admitted in this proceeding through the PW1 as exhibit P1.

The PW2 is Menge Andrew Tiku. He is an operative with the ICPC and the officer who investigated this case. He told the Court that a petition was written to the Chairman of ICPC by the Complainant against the Defendant and was referred to his team for investigation. A copy of the petition was tendered and admitted as exhibit P2. During investigation, a statement was obtained from the petitioner. The statement was admitted as exhibit P3. According to the PW2, the Defendant was cautioned and he volunteered a statement. The statement was admitted as exhibit P4. The voucher which was signed by the Defendant at the Accounts Department when collected the money was admitted as exhibit P5. Prosecution attempted to

tender photocopy of the receipt which the Defendant submitted as acknowledgment of payment by the Complainant, but the attempt was resisted and turned down by the Court, as necessary foundation was not laid. The witness further testified that it was discovered that the receipt was not genuine as it was compared with the specimen produced by the Complainant and found to be different. A copy of this receipt was admitted through the witness as exhibit P6. Concluding his evidence, the PW2 told the Court that investigation revealed that the Defendant did not submit any receipt to the Accountant (PW3) after payment.

The PW3 is named Abu Kadiri. He was the Accountant to the Edo State Liason Office at the time of the repairs. According to him, the Defendant approached him with a quotation for repairs of one of the office vehicles, a Memo to the Director General for the repairs and the Director General's approval of the Memo for payment. On the strength of this approval, the PW3 prepared a Voucher No. 906 in the sum of N104, 000 (One Hundred and Four Thousand Naira) and paid the money to the Defendant. The PW3 further told the Court that the Defendant signed the cash register for him. The quotation was admitted as exhibit P7, the Memo for approval of payment was admitted as exhibit P8, the voucher which was raised by the PW3 admitted as exhibit P9 while the cash register duly signed by the Defendant was admitted as exhibit P10. The witness told the Court

that the Defendant was expected to deliver the acknowledgement receipt to him to enable him retire the advance but until the time of trial, he had not. Witness finally told the Court how he previously gave a statement to the ICPC during investigation. His statement was tendered and admitted as exhibit P11.

The 4th witness called by the prosecution is Abu Yakubu. He too is an operative of the ICPC. He told the Court that one Esia Emos Aruel was invited and he gave statement to the ICPC in respect of this case. He identified the statement of the said Esia and it was tendered and admitted as exhibit P12. He told the Court that the maker of exhibit P12 could no longer be located. Witness also told the Court how he took the statement of Tony Aiyejina. That the said Tony could not be brought to Court as he always complained of being busy. His statement to the ICPC was identified by the witness and admitted as exhibit P13, pursuant to Section 39 (a) and (b) of the Evidence Act, 2011.

At the end of the case for the prosecution, the learned counsel to the Defendant made application for a “no case submission”. This application was however overruled in a well considered Ruling delivered by the Court and dismissed. As a result of this development, the Defendant entered his defence wherein four witnesses testified.

The first witness for the defence is Onogholo Christopher. He was a former Driver with Edo State Liason Office. He worked under the Defendant who was the Chief Driver. He told the Court that sometimes about the end of January, 2010 the Defendant invited himself and one Johnson Afama to accompany him where he was going to pay the Complainant the disputed money at Wema Bank. He testified that the Defendant paid the money over to the Complainant and the latter issued a receipt in respect thereof in his presence. He also told the Court that the Defendant demanded for an acknowledgement and the Complainant also issued it. He testified further that when they returned to the office, the Defendant made a copy of the receipt and delivered the original to the PW3 (the Accountant) and that he was surprised when the Complainant denied receiving the money after some months.

The DW2 is Johnson Afama. He too was a Driver with Edo State Liason Office at the time of the incident. He told the Court how he accompanied the Defendant with the DW1 in company to pay the disputed money to the Complainant at Wema Bank and how the Complainant acknowledged the payment and issued a receipt.

The DW3 is called Festus Osagie Osaigbovo. He was the Desk Officer in charge of repairs at the Edo State Liason Office at the relevant time. He testified that in 2010, the Complainant complained to him

that he had not been paid and he directed him to put his complaint in writing which the Complainant did and was passed to the Director General. The witness told the Court how a Panel was put together by the Director General to investigate the complaint. The witness also told the Court how surprised he was that the Complainant was still working for Edo State Liason Office, having been blacklisted for acts not in consonance with Service Rules. A certified true copy of the report which indicted the Complainant was tendered and admitted as exhibit D3.

The DW4 is the Defendant himself. He gave testimony of how the vehicle in question was repaired by the Complainant and the payment for the job released to him by the PW3. He told the Court that on 26/01/2010, the PW3 called him to inform him that one lady was in his office to sign for the release of the payment and he advised him to confirm from the Complainant. That the Complainant told the PW3 that he did not send anybody. The witness further told the Court that he was paid by the PW3 on the 29/01/2010 and he handed over the money to the Complainant in the presence of DW1 and DW2 at Wema Bank. The DW4 tendered the receipt he obtained from the Complainant and acknowledgment of payment also issued to him by the Complainant as exhibit D4. The Memo the Defendant raised to the Director General for the payment and the receipt which

the Defendant obtained from the Complainant were admitted and marked as exhibits D5 and D6.

At the end of trial, the learned counsels to the defence and prosecution filed their written addresses which they adopted in support of their respective positions.

In his final written address, Mr. Cyril Okpobolo Esq submitted two issues for determination of the case:

- (1) Whether the offence created under Section 25 (a) of the Corrupt Practices and Other Related Offences Act 2000 has been established and proved beyond reasonable doubt against the accused person in this case.
- (2) Whether the offence created and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act 2000 has been established and proved beyond reasonable doubt against the accused person in this case.

For the prosecution, one issue was identified for determination of this case:

- (a) Whether the prosecution has proved the case beyond reasonable doubt as contained in counts one and two.

ARGUMENTS OF LEARNED COUNSEL

In defence of the accused person, Mr. Sunday Elisha Esq, has submitted to the Court in his written address that the prosecution has not proved the offence charged in count one beyond reasonable doubt. He stated that in this case if the prosecution is to accomplish this task, he must lead evidence to disclose the essential elements of the offence, ie, that the accused knowingly made statements or gave information that were false to the operatives of the Commission or any other Public Officer. He cited the following cases in support of this contention:

AWOSIKA VS THE STATE (2010) 9 NWLR (PT. 1198) 49 at 52; FABIAN NWATURUOCHA VS THE STATE (2011) 6 NWLR (PT. 1242) 170 at 174 and AKINYEMI VS THE STATE (1999) per Ogunbiyi JSC.

Counsel submits that the prosecution throughout the investigation carried out has not found out anything to suggest that the Defendant lied in his statement to the Commission. According to learned counsel, the statement of the nominal Complainant to the ICPC which was relied upon by the prosecution (i.e exhibit P3) who was not available in Court for cross examination should not be given serious weight. Mr. Sunday of counsel called in aid the case of

**MAFODOH OKWA VS IYERE IWEREBOR & ORS (1969) NSCC 73
at 75 per Ademola CJN (of blessed memory).**

Counsel submits that all the witnesses for the prosecution did not establish in their testimonies that the disputed money was not released to the Complainant and no surrounding circumstance exists to prove the offence. Mr. Sunday further submitted that the Defendant led uncontroverted evidence through the DW1 and DW2, that not only did he give the disputed money to the Complainant, the Complainant issued him an acknowledgment receipt and also his Company's receipt which he in turn forwarded to the PW3 (the Accountant), exhibits P5, D4 and D6 were referred to. According to learned counsel, those exhibits and the testimonies of DW1, DW2 and DW3 sufficiently controverted the testimonies of PW1 and PW2 as well as exhibits P1 to P3.

Mr. Sunday Elisha argued that the allegation by the prosecution that exhibit D6 (i.e receipt of Emman Crystal & Works Limited) was not established as to be the same Company with exhibit P6 which was tendered by the prosecution to show that exhibit D6 did not bear the same character with the said exhibit.. He stated that the Company's name on which the Complainant quoted for the job is Emman Crystal Works Limited while exhibit P6 bears Emman Crystal Eng. Works.

It was the contention of the learned counsel that the allegation of forgery of the said documents by the accused person is a mere suspicion which cannot ground conviction no matter how strong. That criminal responsibility and guilt are not based on moral speculation or suspicion but on proven facts. For this proposition, the following cases were relied upon:

ABIEKE VS THE STATE (1975) 9-11 SC 97; ANEKWE VS THE STATE (1976) 9-10 SC 255; BABALOLA VS THE STATE (1989) 4 NWLR (PT. 115) and NWANKWO VS THE STATE (1990) 2 NWLR (PT. 134) 627.

In rounding up, Mr. Sunday Elisha submits that there is a lingering doubt as the implication of the accused in offence charged and that the doubt be resolved in favour of the accused as the Court cannot draw an inference of guilt from mere suspicion. On this, he also cited the cases of:

EKPE VS THE STATE (1994) SCNJ 131; NAMSOH VS THE STATE (1993) 6 SCNJ (PT. 1) 55; ADEBOYE VS THE STATE (2011) LPELR (691) and OGISUGO Vs THE STATE (2015) ALL FWLR (PT. 792) 1602.

On issue two (2), the learned counsel submits that for the accused person to be held liable, the prosecution must prove the elements of the offence beyond reasonable doubt, that the accused is a Public Officer and that he knowingly acquired a private interest in any

contract agreement in connection with his Department or office or that he exploited his official position to gratify or confer a corrupt or unfair advantage upon himself or any relation or associate. On this point, counsel cited the case of **NWOKOLO VS FRN (2015) LPELR 2058**.

Counsel states that although the accused is a Public Officer, the second element of establishing with concrete evidence that he used his position to confer corrupt advantage to himself had not been established. He stated further that under our accusatorial system of law, the burden of prove is placed on the prosecution to lead concrete and compelling evidence to satisfy the essential elements of the offence charged. See Section 135 (1) of the Evidence Act 2011 and the cases of **ILORI VS THE STATE (1980) 8-11 SC 81** and **UGWUANYI VS FRN 2012 20 LRCN 100**.

Finally on the need for the Court to be wary and circumspect in convicting the accused, he told the Court that because the accused raised objection against the decision of the Director General Edo State Liason Office to give the job to the Complainant, having been blacklisted, the issue of malice had developed. He cited the case of **THE STATE VS MACAULAY UZOR (1973) NMLR 203 Oputa J.** (as he then was).

In response to the arguments of the learned counsel to the Defendant, it was the contention of Mr. Denis Idozo Esq, for the

prosecution that the two offences charged had been established beyond reasonable doubt. He submitted that the evidence of PW1 shows that the statement of the Complainant in his petition (i.e exhibit P2) to the ICPC and statement which he made to ICPC (exhibit P3) were consistent that the Defendant did not pay the disputed money to him. That the said PW2 also testified that from investigation it was discovered that he did not remit the money to the Complainant. Counsel further submitted that the witness statement of the Defendant that he delivered the disputed money to the Complainant which is contrary to established facts is false and meant to mislead the officers into believing that the money was delivered. That this falsehood is contrary to Section 25 (a) and punishable under Section 25 (b) of the Corrupt Practices and Other Related Offences Act 2000. On the account of this submission, counsel urged the Court to hold that count one (1) was proved and to convict as charged.

Learned counsel also submits that count two (2) of the offence charged was also proved. He referred the Court to the testimony of the PW2, the IPO where he told the Court that investigation revealed that the accused did not remit the money meant for the Complainant and PW3, (the Edo House Accountant) who led evidence that the accused had up to the time of trial not submitted receipt from the Complainant to him to enable him retire the advance payment and

that the Complainant was coming regularly to demand for the payment after same was received by the accused. Counsel conclude that from oral and documentary evidence before the Court, it has been established that the accused converted the money to his personal use and thereby liable under Section 19 of the Act.

RESOLUTION OF ISSUES

I have carefully considered the evidence led at this trial and the final written addresses filed on their behalf by the respective counsels, and it appears that having regard to the charges against the Defendant, the issue for consideration by the Court is whether or not the Defendant paid over to the Complainant the money he collected from Edo State Liason Office. That been the case, the issue for determination by the Court is whether the prosecution has proved the offences charged beyond reasonable doubt. I therefore observe that the issues formulated by the parties are appropriate except that unlike the prosecution counsel, the counsel for the Defendant raised the same issue for each of the counts.

For brevity and the need to avoid proliferation of issues, it is for me proper to determine this case on one broad but concise issue which is whether the prosecution had led evidence to prove the charged against the Defendant beyond reasonable doubt, so as to entitle him to conviction.

Before I embark on the determination of the sole issue, I wish to observe that the two charges preferred against the Defendant are tied together like sesame twins. In fact, they are intricately connected. As a matter of fact, they both fall or succeed together. For example, if it is found that the Defendant did not pay over to the Complainant the disputed money, it means he has lied to the operatives of the Commission when he told them in his statement (i.e exhibit P4) that he paid over the money to him. If on the other hand, it is established that indeed the money was paid, it means he did not convert and did not tell lie and would be liable to a discharge and acquittal.

Be that as it may, I find it expedient to start the Judgment with the determination of the second (2) count charge. The charge involves an allegation that the Defendant as Public Servant used his official position to confer unfair advantage to himself, contrary to Section 19 of the Corrupt Practices and Other Related Offences Act 2000. The gist of the evidence is that he collected the sum of N104, 000. 00 (One Hundred and Four Thousand Naira) meant for the Complainant and converted same to his use. The law is so trite, that when the commission of an offence is an issue in a trial, whether criminal or civil, the standard of prove required is beyond reasonable doubt. See Section 135 (1) of the Evidence Act 2011. See

also the case of **OLAMOLU VS THE STATE (2013) 2 NWLR (PT. 1339) 580.**

The law requires that a man accused of commission of a crime will not be convicted of the crime unless the case is proved beyond reasonable doubt. Any doubt that lingers in the mind of the Court results in the discharge and acquittal of the accused. See the case of **FRN Vs IWEKA (2013) 3 NWLR (PT. 1347) 285.**

What it means invariably, is that in this case, the prosecution must lead concrete evidence in respect of each of the charge in a way that no doubt is created in the mind of the Court about the culpability of the accused. This is what prove beyond reasonable doubt entails. The evidence led by the prosecution shows that the PW3 (the Accountant) paid the Defendant the disputed N104, 000. 00 (One Hundred and Four Thousand Naira) meant for the Complainant on the 29/01/2010 and that despite repeated demands, the Defendant refused to produce the receipt which acknowledged the payment to him to enable him retire the advance. He also testified that the Complainant had come several time to demand for payment after he released the money to the Defendant, but he did not know it was that payment the Complainant was pursuing as the Complainant had not used the name of Emman Crystal Works before.

The PW1 in his testimony told the Court how a Panel which he chaired was set up to investigate the complaint against the accused person. He told the Court that the Panel found out that the accused person did not pay over the money to the Complainant. The report of the Panel was tendered without objection and admitted as exhibit P1. According to the witness, they found as such because of the contradiction in the testimonies of the accused and the witness he called.

The PW2 told the Court how he investigated the case with his team based on the petition of the Complainant. He told the Court that the Complainant was dead at the time of trial but the petition and the statement he made to the ICPC were tendered and admitted as exhibits P2 and P3 respectively. The PW2 told the Court that based on the finding from the PW3 (the Accountant) that the Defendant did not produce any receipt to evidence payment of the money to the Complainant. They reached a conclusion that the accused did not pay the Complainant.

The PW4 is also an operative of the ICPC. He told the Court that he recorded the statements of Etim and Tony (i.e Director General Edo State Liason Office). He could not procure their presence in Court. Their statements to the ICPC were tendered through him and admitted as exhibits P12 and P13.

The defence of the accused is simply that he paid over the disputed money to the Complainant immediately he was paid on the 29/01/2010 in the presence of the DW1 and DW2. He tendered a copy of the receipt, and the handwritten acknowledgment he obtained from the Complainant (exhibits D4 and D6).

I have given an insightful consideration to the evidence lead on both sides, and I am satisfied that the prosecution has demonstrated through the witnesses that the Defendant did not pay over to the Complainant the sum of N104, 000. 00 (One Hundred and Four Thousand Naira) which he collected on his behalf. My conviction stems first from the testimony of the PW3 (the Accountant) who paid the Defendant the disputed money. He told the Court that the Defendant did not produce any receipt from the Complainant despite several demands. He told the Court:

“The accused needed to tender the acknowledgment to me to retire my advance. The accused did not supply the receipt to me. The payment is yet to be retired upto now.”

PW3 also gave statement to the ICPC. It was admitted as exhibit P11 without objection from the defence. In exhibit P11 he stated thus:

“I demanded receipt, he promised to bring the receipt the next working day. I then made him to sign the payment

voucher and cash register. The next working day which was Monday, I approached him for the receipt, to my surprise he said he was not running away that he was a staff. This went on until the Mechanic met with me and told me that we refused to pay him his money which I later discovered it was the money I gave to Ehimen.”

This piece of evidence appears to give credence and enhanced weight to the evidence of the Complainant to the ICPC, though he was dead and was not available for cross examination. The statement is exhibit P3. It was admitted without objection. He stated therein that each time he asked the accused about the money, he would reply that there was no budget. He wrote further:

“On 24/09/2009 I met the Accountant at Unity Bank and asked him of the money he then said which Company did I used, I told him, Emman Crystal. Right there he said Ehimen (Driver) has collected it. To that effect, I called Ehimen and he promise (sic promised) to pay come end of September, that he has overtime to collect.”

This piece of evidence reveals a similarity of well orchestrated ploy to deceive and convert the money by the accused. He dishonestly engaged the PW3 (the Accountant) with empty promises to produce

the receipt and the Complainant that he was going to pay until he perfected his idea to cheat him out of what belongs to him.

From the above, it is clear and not true that he paid the money to the Complainant. For me, the witnesses who testified for him are not witnesses of truth. Exhibit P1 tendered through the PW1 revealed that the DW2 and the accused controverted themselves when they appeared before the Panel which investigated the complaint at the level of Edo State Liason Office. Before the Panel, the DW1 who testified as the witness to the accused stated that after the accused released the money to the Complainant, the Complainant removed some amount out of it and gave to the accused. This piece of evidence was denied by the accused before the Panel. Besides, I am circumspect about the testimonies of the defence witnesses. I cannot understand why two persons would accompany a person who was merely going to another in the next compound when the accused on realizing that the Defendant was just in the next compound could have invited him over to collect and issue receipts.

For me, exhibits D4 and D6 are worthless. I do not believe that they were issued by the deceased (the Complainant). If the accused got them from him, he would have delivered same to the Accountant promptly. Furthermore, when the Complainant was complaining for his money, the Defendant never confronted the PW3 to state that the

receipt he gave earlier was in respect of the payment. Furthermore, the signatures on the exhibits do not resemble or bear any similarity with his signature in exhibits P7 or even P3 and P2. See Section 101 of the Evidence Act 2011.

At this point, I find it apposite to refer to the statement of Oputa J. (as he then was) in the case of **THE STATE Vs THEODORE ONYECHI CHUKWURAH (1966 -1979) Vol. 1** reported in Oputa LR:

“In deciding which side to believe, the Court usually has to decide which accounts considered in the light of all the surrounding circumstances bears the impress of probability for the stamp of probability is also generally the stamp of truth.”

I have anxiously considered the surrounding circumstances of this case, and I am satisfied that the evidence of the prosecution witnesses all bears stamp of probability. They were not discredited on cross examination. They gave evidence, especially the PW1 and PW2 as well as PW3 were very coherent and consistent.

I therefore believe them and prefer their accounts of what happened to that given by the accused and his witnesses. It is not true as submitted by the learned counsel to the Defendant that the

prosecution has not discharge the burden of prove in this case. The ingredients of the offence charged under Section 19 of the Corrupt Practices and Other Related Offences Act are:

- (1) That the accused is a Public Servant.
- (2) That he used his office to confer corrupt or unfair advantage on himself or any of his relation or associate.

During trial in this case, it was common place that he was an employee of Edo State Liason Office, Abuja and was the Driver to the Director General of the Edo House. He, it was who prepared the Memo for the payment and who collected the money using his position. It was proved as demonstrated earlier in this Judgment that he did not release the money to the Complainant. He therefore conferred unfair advantage to himself within the meaning of Section 19 of the Act.

Learned counsel to the Defendant submitted on page 10 of his address that the accused person had to go and deliver the money to the Complainant outside Edo House because he had been blacklisted and was not to be seen as his identity was been hidden.

With all due respect, this submission is not borne out of evidence before the Court. The law is clear, that submission of counsel not supported by evidence before the Court is to be ignored.

This is because it goes to no issue. Be that as it may, there is abundant evidence in this case that the Complainant personally visited Edo House when he submitted his quotation (exhibit P7) for the approval of the Director General for the repairs of the Hilux vehicle. As a matter of fact, the accused and his witnesses especially DW1 and DW2 testified before this Court that on the 02/01/2010 when the Director General invited them to take the Hilux to the Complainant for repairs, they met the Complainant with him. I also have evidence in this case that both the Complainant and his staff were always coming to Edo House for payment of his money before and after the money was released to the Defendant. It is obviously not true that the identity of the Complainant was been hidden at any time.

Learned counsel to the accused has also argued that because the accused objected to the Complainant being given the vehicle to repair because he was blacklisted, there exist ill feelings and malice. He refers me to the case of **THE STATE Vs MACAULAY UZOR (Supra)** to the effect that where there is an underlying malice between an accused and the Complainant, the Court should be wary and circumspect in convicting.

On this submission, I have referred myself to the records and it appears that the submission is not borne out of evidence. In fact, the evidence of the accused himself before the Court and statement to

the ICPC (exhibit P4) are all clear to the effect that it was the DW1 who objected to the choice of the Complainant by the Director General to repair the vehicle. On this account, this submission is also dismissed as lacking in merit. At the end, I find the following:

- (1) That the accused was a staff of Edo State Liason Office when the incident happened.
- (2) That he was paid the disputed fund as Chief Driver to Edo State Liason Office to be given to the Complainant and;
- (3) That he converted it to his personal use.

On the account of the above findings, I hold that the offence under Section 19 of the Act has been proved against him beyond reasonable doubt, and I hereby convict him as charged.

At the threshold of this Judgment, I observed that the two charges as framed in this case fall and rise together. In the course of investigation in this matter, the accused gave statement in exhibit P4 to the operatives of the ICPC. In it, he stated that he paid over to the Complainant the sum of N104, 000. 00 (One Hundred and Four Thousand Naira) subject of this trial. From my findings in count 2, that statement has turned out to be false. The discovery of this falsehood automatically translates to the constitution of the offence in the first count as charged under Section 25 (a) and punishable under Section 25 (b) of the Act. This is because the essential

elements of this offence were established by the prosecution in its evidence in support of count two (2). Accordingly, I also find the accused guilty of count one and he is accordingly convicted.

The overall result is that the Defendant is found guilty on the two (2) counts charged, and accordingly convicted.

ALLOCUTUS

Adebiyi Esq:> We are very much unprepared for the outcome of this trial. We want to passionately appeal that the Defendant is a first time offender. He is a person of good character. We appeal to the Court to consider the accused for a much lesser punishment.

Idoko Esq:> The accused has youthfulness and life before him. He is a family man and a lot of dependants on him. We urge the Court to consider the option of fine, if the Court can oblige.

SENTENCE

I have listened to the plea for leniency made by the learned counsel to the Defendant, and surprisingly by Mr. Idoko for the prosecution. The information pushed forward by the learned counsel for the Defendant, Mr. Adebiyi Esq, is that the Defendant is a first time

offender. The prosecution did not dispute this fact. As a matter of fact, he has urged the Court to exercise utmost leniency on the Defendant. I have considered the nature of the offences charged and the amount of money involved. I have also taken note of the fact that the current dispensation in the Administration of Criminal Justice Act does not emphasize custodial sentence. The philosophy is to do restoration justice and decongest prisons. That been the case, I am inclined to use my powers under Section 416 (2) (d) of the Administration of Criminal Justice Act, 2015, which provides as follows:

“416 (2) (d) A trial Court shall not pass the maximum sentence on a first offender.”

To the benefit of the Defendant, the first (1) count of the offence which is punishable under Section 25 (b) of the Corrupt Practices and Other Related Offences Act, 2000 creates a penalty of N100, 000 (One Hundred Thousand Naira) or imprisonment not exceeding two years or to both such fine and imprisonment.

I rely on Section 416 (2) (d) and Section 460 (2) of the Administration of Criminal Justice Act, 2015, the Defendant is sentenced to a fine of N50, 000 (Fifty Thousand Naira), failing which, he would serve a custodial sentence.

The second (2) count of the charge is contrary to Section 19 of the Act. The punishment is for a prison term of five (5) years. Relying on the same provision of the Administration of Criminal Justice Act, 2015, the Defendant is sentenced to a Community Service for a period of one (1) year. Accordingly, the prosecution shall take the Defendant to the Correctional Centre in the Federal Capital Territory for necessary profiling.

In addition, the Defendant shall pay over the sum of N104, 000. 00 (One Hundred and Four Thousand Naira) as compensation to the Complainant or family of the victim who is now deceased regrettably. This payment shall be made within one week.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
30/09/2020

APPEARANCE

Defendant present.
Dennis Idoko Esq, for the Prosecution.
A. A. Adebisi Esq, for the Defendant

Signed
Hon. Justice H. B. Yusuf

(Presiding Judge)
30/09/2020