

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –
CHIEF JUDGE**

FRIDAY, 19TH MAY, 2017

CHARGE NO. B/ICPC/2/13

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA í ...í í í í í í COMPLAINANT

AND

HON. ETINOSA IKPONMWOSA OGBEIWI í í í í ACCUSED

R U L I N G

The accused stands charged in three courts as follows:

STATEMENT OF OFFENCE

COUNT ONE: Using position to confer unfair advantage upon self

contrary to and punishable under Section 19 of the Corrupt
Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE:

Hon. Etinosa Ikponmwosa Ogbeiwi being a Public Officer to wit:
Hon. Member representing Orhionmwon 11 Constituency, Edo State
House of Assembly, Benin City in the month of October, 2008 or
thereabout in Benin did confer unfair advantage upon himself by
diverting the sum of ₦2.5 million (two million, five hundred thousand
naira) only out of the total sum of ₦4.5 million (four million five
hundred thousand naira) only being money entrusted in your care by
the Nigeria Gas Company (NGC) for the disbursement to the
representatives of Orhionmwon communities and some members of
the Edo State House of Assembly in Orhionmwon Local Government

Area of Edo State being an amount paid by the Nigeria Gas Company (NGC) in order to defray the cost incurred for the payment of compensation to the said Orhionmwon communities as a result of the Nigeria Gas Company OBEN-GEREGU PIPELINE PROJECT.

STATEMENT OF OFFENCE:

COUNT TWO: Knowingly making false statement contrary to Section 25(1)(a) and punishable under Section 25(1)(b) of the Corrupt Practices And Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE:

Hon. Etinosa Ikponmwosa Ogbeiwi sometime in the month of September, 2010 or thereabout while being a member of the Edo State House of Assembly knowingly made a false statement to Mr. Menge A. Tiku and Taiwo Olorunyomi both officers of the Independent Corrupt Practices and other Related Offences Commission (ICPC) in the course of the exercise of their duties as investigators by stating that the cost incurred by himself and his colleagues throughout the process of organizing the compensation programme for the people of Orhionmwon Communities by the Nigeria Gas Company (N.G.C.) was yet to be paid when in actual fact he had already collected the sum of ₦2.5 million (two million five hundred thousand naira).

STATEMENT OF OFFENCE:

COUNT THREE: Making of false return by an officer contrary to and punishable under Section 16 of the Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE:

Hon. Etinosa Ikponmwosa Ogbeiwi being a member of the Edo State House of Assembly and also a member of the committee set up by the Orhionmwon Local Government Area of Edo State to pursue compensation for Orhionmwon Communities from the Nigeria Gas Company (N.G.C.) for its Oben-Geregu Pipeline Project in Orhionmwon Local Government Area of Edo State, sometime in the month of October, 2010 or thereabout did collect the sum of ~~₦~~8.5 million (eight million five hundred thousand naira) only in two United Bank for Africa cheques of both ~~₦~~4million and ~~₦~~4.5 million respectively from the Nigeria Gas Company (NGC) and falsely declared a return of ~~₦~~6 million only.

The prosecution opened its case on 18/12/2014 and called eight witnesses in proof of its case, while Exhibit A, B, B1, C, C1, D, D1, D2, D3, E, F, F1 and G were tendered in evidence.

After the prosecution closed its case on 21/11/2016, K. O. Obamogie Esq. of counsel to the accused made a No Case Submission on 29/3/2017. He submitted that the prosecution has not made out a prima facie case warranting the accused person being called upon to enter his defence.

Firstly, learned counsel submitted that the charge before the court is incompetent as it is brought under a repealed law. Maintaining that the Independent Corrupt and other Related Offences Act 2000 under which the accused is charged has been repealed by Section 55 of the Independent Corrupt and other Related Offences Act 2003. He relied on the case of **Akintokun v L.P.D.C.** (2014) 13 NWLR (pt. 1423) 1 at 76 ó 77 and the

Revised Edition Laws of the Federation of Nigeria Act 2007. He urged the court to discharge the accused person.

Secondly, Obamogie Esq. submitted that the prosecution called eight witnesses and the case against the accused person was totally dislodged by the evidence of PW4 and PW5 and Exhibit C. Exhibit C did not provide for compensation to be paid to Orhionmwon Youths or Community as falsely alleged in Counts 1, 2 and 3. He maintained that even if the evidence is believed it is not sufficient to grant conviction relying on the case of **Onaguruwa v The State** (1993) 7 NWLR (pt. 303) 49 at 82 ó 83; **Abru v The State** (2011) 17 NWLR (pt. 1275) 1 at 22 ó 23. That from the evidence adduced, there is no link between the accused and offences alleged. There is no duty on the accused to prove his innocence and cited Section 286 of the Criminal Procedure Law, Laws of Bendel State applicable to Edo State.

Learned counsel submitted on count 3, that exhibit B contradicts the charge. Accused did not handle the payment to the Enigie.

In conclusion, learned counsel submitted that this is a proper case where the no case submission should be upheld.

V. O. Iwoba Esq. learned counsel for the prosecution submitted that the ICPC Act 2000 is the only known law enacted by the National Assembly and assented to by the President. The ICPC Act 2003 is unknown to law as it was never assented to although it was printed in the Laws of the Federation 2004. She submitted that publication of a document does not make it the law as the National Assembly did not make it a law. The authority relied upon does not deal with the ICPC Act.

In response to the other issues, Iwoba Esq. submitted that all the submissions by Obamogie Esq. are defences and that at this point it is important to examine the term no case submission to determine what is expected of the prosecution. See **Ajiboye v State** (1998) ACLR 359, Onoguruwa's case (supra); **Abogade v State** (1996) 5 NWLR (pt. 448) 280. She submitted that what is expected of the prosecution is to establish a prima facie case against the accused person which they have successfully done. There is a link between the accused person and the offences he is charged for.

Obamogie Esq. replied on point of law that there is a presumption of regularity.

I have soberly considered the evidence in this case as well as the arguments for and against a no case submission. I have also examined the exhibits tendered. The first issue to be tackled is whether or not the accused was charged under a repealed law. The Independent Corrupt Practices and other Related Offences Act 2000 was enacted in the year 2000 with its commencement dated as 13th June, 2000 while the Independent Corrupt Practices and other Related Offences Act 2003 has its commencement date as 18th May, 2003. However, I find that the Independent Corrupt Practices and other Related Offences Act contained in the Laws of the Federation 2004 is that cited as Cap C 31 which is the 2000 Act. The 2003 Act is not in the Laws of the Federation 2004 and the only conclusion that can be drawn is that the said law is not in existence any longer.

It is true that the Revised Edition (Laws of the Federation of Nigeria) Act 2007 gave effect to the Laws of the Federation of Nigeria 2004 as stated

in the case of **Akintokun v L.D.P.C.** (supra). However, the ICPC Act 2003 is not contained in the L.F.N. 2004, also the Laws of the Federation of Nigeria 2004 contains the Laws of the Federation as codified in the Laws of the Federation of Nigeria 1990 which the I.C.P.C. Act 2000 or 2003 are not part of. The case of **Akintokun v L.P.D.C.** (supra) considered the Legal Practitioners Act, Cap L 11 Laws of the Federation of Nigeria 2004 and not the Independent Corrupt Practices and other Related Offences Act 2000 or 2003. Consequently, I find and hold that the accused person is charged under the extant law which is the Independent Corrupt Practices and other Related Offences Act 2000 which is not repealed. The existence of the 2003 Act can only be resolved by the National Assembly and the presumption of regularity is not of help in this circumstance.

The next issue to be resolved is whether a prima facie case has been made out against the accused person warranting him to enter into his defence. In the case of **Ugwu v The State** (2013) vol. 215 LRCN 180 at 196 ó 197 the Supreme Court stated as follows: *“once the evidence called by the prosecution does not disclose prima facie case of the offence with which the accused was charged, his plea or submission of no-case to answer, ought to succeed.”* The court further stated that òí a submission of no-case to answer may be properly made and upheld in the following circumstances:

- (1) When there has been no evidence to prove an essential element in the alleged offences either directly, circumstantially or inferentially. See **Ibeziako v Commissioner of Police** (1963) 1 All NLR 61 at 69.

- (2) When the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable Tribunal can safely convict on it. See **Ibeziako v The State** (1988) 5 NWLR (pt. 94) 225.

In the case of **Egharevba v F.R.N. & Ors** (2016) vol. 254 LRCN page 85 at 104, the Court held that *“In dealing with a No Case Submission, the issue of the court believing or disbelieving the evidence or credibility of the witness could not arise and so the facts that will lead to the merit vel non of the case are not in issue. See Ajiboye v The State (1995) 8 NWLR (pt. 414) 408 at 444.”* See also the cases of **Okafor v The State** (2016) vol. 259 LRCN page 168 at 185; and **C.O.P. v Amuta** (2017) vol. 263 LRCN page 1 at 5 ó 26.

Applying the above cited authorities to this instant case, I find that the evidence of PW1 is based mainly on what he was told during investigation contrary to what the documentary evidence Exhibit C contains. A voucher was raised in the name of the accused person for ₦4,500,000.00 and in the communiqué attached and signed by the accused and Hon. Patrick Aisien Chairman, Orhionmwon Local Government Council, Abudu in which by paragraph 3 thereof it was agreed by the Nigeria Gas Company to defray the cost incurred Orhionmwon, Edo State House of Assembly members for organizing several fora on the above issue.

Count one on the charge deals with the accused person using his position as a Public Officer to confer unfair advantage upon self contrary to and punishable under Section 19 of the Corrupt Practices and other Related Offences Act 2000. Under this charge the questions that come to mind are

(i) who is a public officer and (ii) did the accused act as a public officer when he entered into negotiations with the Nigeria Gas Company on behalf of Orhionmwon community.

According to Section 2 of the Corrupt Practices and other Related Offences Act 2000 a public officer is: òa person employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporation or private company wholly or jointly floated by any government or its agency, including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in Magistrateø, Area or Customary Courts or Tribunals.ö From this definition, it is clear that the accused person fits the description of a public officer under the Act as he is a politician and a member of the Edo State House of Assembly. He is not employed by any body or organization as stated by PW1 under cross examination. PW1 also stated that the accused told them he incurred personal costs which he used for the negotiations. According to PW3, Moses Enadegheø evidence, it was the youths that called on the accused to enter into discussion with the Nigeria Gas Company on behalf of the community not the Edo State House of Assembly.

Flowing from the above, it is clear that the accused person though a public officer within the contemplation of the Act, did not act in the capacity of a public officer when he was negotiating with the Nigeria Gas Company on behalf of his community. The fact that the accused person though a public officer was not acting in his capacity or in the course of his duty as a member of the Edo State House of Assembly. He was not authorized by the

House and therefore this knocks the bottom of this charge. Furthermore, the evidence of PW2 Patrick Aisien (Chairman of Orhionmwon Local Government Area) under cross examination that: òhe did not know when they returned from Warri, that there were two cheques as he was only told of ~~₦~~6million compensation. It was at the House of Assembly Complex that he knew there was another cheque for ~~₦~~2.5 million. It is not to his knowledge that the sum of ~~₦~~2.5 million was not to meet the costs incurred by the accused person in organizing òfora at the Edo State House of Assemblyö does not link with the charge in Count one having regard to the exhibits C and C1 which gave the breakdown of payment i.e. two cheques, one for ~~₦~~4 million for Enogies e.t.c and the other ~~₦~~4.5 million for the expenses incurred by the committee members and Edo State House of Assembly members. The accused person did not use his office to divert funds for himself or confer unfair advantage upon himself. He may have kept a lionø share for himself but this is not sufficient to make the accused person enter into his defence with respect to Count one.

As for Count two which deals with knowingly making false statement contrary to Section 25(1)(a) and (b) of the ICPC Act, to the I.C.P.C. officials, the officials in question are PW1 (Taiwo Olorunyomi) and PW7 Menge Andrew Tiku and the statements are exhibits B and B1. In both statements the accused person disclosed that he collected ~~₦~~2.5 million for his expenses. In page 4 of exhibit B the accused stated inter alia í ö It was at this meeting that two separate cheques of four million and four million five hundred thousand naira was written in my name for and on behalf of my people and for onward transmission to Hon. Patrick Aisien to be disburse in

line with what was contained in the communiqué. Having cleared the cheque, I gave Hon. Patrick Aisien six million naira (~~₦~~6,000,000.00) only for disbursement í while the balance of two million five hundred thousand naira was still with him.ö In exhibit B1 the accused person stated inter alia öIn addition to my earlier statement of 23rd September, 2010 the cost implication of the expenses we incurred in putting together the entire programme was pegged at two million five hundred thousand naira (~~₦~~2.5 million) only í and was exclusively meant for the Honourable members in the State House of Assembly from the constituency that took the responsibility of organizing the programme as captured in the communiqué.ö PW1 and PW7 both testified that from the accused person's statement he admitted receipt of ~~₦~~8.5 million from the Nigeria Gas Company on behalf of Orhionmwon communities and the company agreed to defray the expenses incurred in the cause of the negotiation on behalf of the Orhionmwon communities. From the statements and the evidence of PW1 and PW7 it cannot be said that the accused person knowing gave false statements to the I.C.P.C. officials. Therefore, there is absolutely no basis for this charge.

For Count three which deals with making of return by an officer contrary to and punishable under Section 16 of the Corrupt Practices and other Related Offences Act, 2000, the arguments in count one above will suffice. Also a critical examination of exhibits C and C1 will show that the accused did not make a false return. In exhibits B and B1 (statements of the accused person at the I.C.P.C. Office) the accused person gave a detailed account of what transpired during and after the negotiations with the Nigeria

Gas Company and how the money was disbursed. The evidence before the court does not support the charge as they are at variance with each other.

In sum, I find that no prima facie case has been made out against the accused person by the prosecution. The prosecution has failed to prove the elements of the offence in each count. Secondly, the evidence adduced by the prosecution has been discredited under cross examination that this court cannot safely convict on it. Consequently, the accused person is discharged in each of the three counts of the charge under Section 286 of the Criminal Procedure Law, Laws of Bendel State applicable to Edo State.

Hon. Justice E. F. Ikponmwen
Chief Judge

Counsel:

V. O. Iwoba Esq. for the Prosecution.

K. O. Obamogie Esq. with O.S. Odemwingie Esq. and A. Y. Thomas Esq.
for the accused person.