

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE, FICMC

ON MONDAY THE 27TH DAY OF JANUARY, 2020

SUIT NO: FCT/HC/CR/26/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

ONOJA EDACHE.....DEFENDANT

CONSOLIDATED RULING

The Defendant herein was on 3rd May 2016 arraigned in this Court on an 11-Count Charge of forgery and making of false statement to the Independent Corrupt Practices and other Related Officers Commission which reads as follows: -

“COUNT ONE

That you Onoja Edache (M) in September 2013 or thereabout at Abuja forged the Income Tax Clearance Certificate of EMBRIDEN ENERGY with TCC No. 05376681 issued on 10th April 2013, showing a turnover of about N425 Million for the year 2010 – 2012 and you thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code Cap 89 Laws of the Federation 2004.

COUNT TWO

That you Edache Onoja (M) in September 2013 or thereabout at Abuja submitted the forged Income Tax Clearance Certificate of EMBRIDEN ENERGY with TCC No. 05376681 issued on 10th April 2013, showing a turnover of about N425 Million for the year 2010 –

2012 as genuine one, to the Procurement Committee of the Independent Corrupt Practices and Other Related Offences Commission, when tendering for a contract, and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code Cap 89, Law of the Federation 2004.

COUNT THREE

That you Onoja Edache (M) in December 2013 or thereabout at Abuja made false statement to the officers of the Commission when you stated that the forged Income Tax Clearance Certificate of EMBRIDEN ENERGY with TCC No. 05376681 issued on 10th April 2013, showing a turnover of about N425 Million for the year 2010 – 2012 which you submitted to the Procurement Committee of the Independent Corrupt Practices and Other Related Offences Commission when tendering for contract, was given to you by Mr. Okpala Obiora, the Managing Director of the company and that you were not aware that it was forged, and you thereby committed an offence contrary to Section 25(1)(a) and punishable under Section 25(1)(a) of the Corrupt Practices and Other Related Offences Act 2000.

COUNT FOUR

That you Onoja Edache (M) in September 2013 or thereabout at Abuja forged the Audited Account of EMBRIDEN ENERGY LIMITED for 2010 and you thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code Cap 89, Laws of the Federation 2004.

COUNT FOUR

That you Onoja Edache (M) in September 2013 or thereabout at Abuja forged the Audited Account of EMBRIDEN ENERGY LIMITED for 2011 and you thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code Cap 89, Laws of the Federation 2004.

COUNT FIVE

That you Onoja Edache (M) in September 2013 or thereabout at Abuja forged the Audited Account of EMBRIDEN ENERGY LIMITED for 2012 and you thereby committed an offence contrary to Section

363 and punishable under Section 364 of the Penal Code Cap 89, Laws of the Federation 2004.

COUNT SIX

That you Edache Onoja (M) in September 2013 or thereabout at Abuja forged the Audited Account of EMBRIDEN ENERGY LIMITED for 2010 as genuine one to the Procurement Committee of the Independent Corrupt Practices and Other Related Offences Commission, when tendering for a contract, and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code Cap 81, Laws of the Federation 2004.

COUNT SEVEN

That you Edache Onoja (M) in September 2013, or thereabout at Abuja submitted forged Audited Account of EMBRIDEN ENERGY LIMITED for 2011 as genuine one to the Procurement Committee of the Independent Corrupt Practices and Other Related Offences Commission, when tendering for a contract, and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code Cap 81), Laws of the Federation 2004.

COUNT EIGHT

That you Edache Onoja (M) in September 2013, or thereabout at Abuja submitted the forged Audited Account of Embriden Energy Limited for 2012 as genuine one to the Procurement Committee of the Independent Corrupt Practices and Other Related Offences Commission, when tendering for a contract, and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code Cap 81), Laws of the Federation 2004.

COUNT NINE

That you Edache Onoja (M) in September 2013 or thereabout at Abuja made false statement to the officers of the Independent Corrupt Practices and Other Related Offences Commission when you stated that the forged Audited Account of Embriden Energy Limited for 2010 which you submitted to the Procurement committee of the Commission was given to you by the Managing

Director of the company Mr. Obiora Okpala and you thereby committed an offence contrary to Section 25(1)(a) and punishable under Section 25(1)(a) of the Corrupt Practices and other Related Offences Act 2000.

COUNT TEN

That you Edache Onoja (M) in December 2013 or thereabout at Abuja made false statement to the officers of the Independent Corrupt and Practices and other Related Offences Commission when you stated that the forged Audited Account of Embriden Energy Limited for 2011 which you submitted to the Procurement Committee of the Independent Corrupt Practices and Other Related Offences Commission was given to you by the Managing Director of the company Mr. Obiora Okpala and you thereby committed an offence contrary to Section 25(1)(a) and punishable under Section 25(1)(a) of the Corrupt Practices and other Related Offences Act 2000.

COUNT ELEVEN

That you Edache Onoja (M) in December 2013 or thereabout, at Abuja made false statement to the officers of the Independent Corrupt and Practices and other Related Offences Commission when you stated that the forged Audited Account of Embriden Energy Limited for 2012 which you submitted to the Procurement Committee of Commission was given to you by the Managing Director of the company Mr. Obiora Okpala and you thereby committed an offence contrary to Section 25(1)(a) and punishable under Section 25(1)(a) of the Corrupt Practices and other Related Offences Act 2000.

He pleaded not guilty to each of the Charge.

The case proceeded to trial on 23rd January 2017. The Prosecution called a total of four witnesses who testified as Pw1 to Pw4 and closed its case. The learned Defendant's Counsel indicated his intention to make a no case to answer submission. Consequent upon this, the Court gave the parties time frames within which to file and exchange their Written Addresses on the no case to answer submission.

Counsel for the parties on 27th June 2019 adopted their Addresses on the no case to answer submission. Ruling was then reserved for 24th September 2019.

For the reason that the arguments of Counsel for the parties on the no case to answer submission are contained in their respective Written Addresses and the issue of validity of the Prosecution's Address filed out of time without leave of Court was raised by the Court, and given that where the said Address is found to have been filed out of time without leave of Court it may be discountenanced by the Court, in considering the no case to answer and where otherwise, it will be countenanced by the Court, the Court is minded to consider the issue of the Address first.

As aforesaid, the parties filed and exchanged Addresses on the issue as directed by the Court. I have read and digested the said Addresses. While the learned Prosecution Counsel contended that after the Court did give the parties time frames within which to file and exchange their Address on 18th March 2019, although it failed to file and serve its Address within 7 days as directed by the Court, the Court did on 7th May 2019 after his explanation on way he filed out of time, granted his application for more time within which to file and serve the said address, the learned Defendant's Counsel in his submission contended that the learned Prosecution did not apply for leave of Court for extension of time whatmore one being granted to him within which to file and serve the Address. That the address filed in these circumstances by the Prosecution is invalid and should be discountenanced by the Court in considering the no case to answer submission.

I have given due consideration to the foregoing contention of Counsel for the parties. Records of Court do show that on 18th March 2019, the Court gave the Defendant 10 days within which to file and serve his Address on no case submission and the Prosecution 7 days to do likewise and adjourned to 7th May 2019 for adoption of Final Written Address.

On 7th May 2019, the learned Prosecution Counsel informed the Court he could not file and serve the Prosecution's Reply to the Defendant's Address on no case to answer for the reason that he misplaced the exercise book in which he recorded proceedings of the Court and that he was still trying to get a certified true copy of the record of proceedings from the Court. He then applied for an adjournment.

The learned Defendant's Counsel did not oppose the application for adjournment whereupon the Court granted same and adjourned the case to 27th June 2019 for adoption of final Written Addresses on the no case to answer. Records of Court show that the Prosecution Counsel thereafter on 25th June 2019 filed his Reply Address to the Defendant's Counsel's Address.

From the foregoing, it is obvious that when the learned prosecution's Counsel failed to file and serve his Written Address on the No Case to Answer Submission within 7 days given to him on 18th March 2019 that he did not on 9th May 2019 apply for and was granted leave of Court extending time to do so on 25th June 2019 so by the Court. His instant contention that he was granted leave extending time for him to do is not borne out by the records of Court. It is rejected.

As the Address was filed and served in violation of the Order of Court, the Address is incompetent. Orders of Court are meant to be obeyed and not trifled with. By reason of the foregoing, the Court shall not countenance the Prosecution's said address. Same being incompetent, it is struck out.

With respect to the no case to answer submission, I have carefully read and digested the Written Address of learned Counsel for the Defendant. The Administration of Criminal Justice Act 2015 (ACJA) has in Sections 302 to 303 made provisions guiding making of no case to answer submission. The sections provides thus: -

"302. The Court may, on its own motion or an application by a Defendant after hearing the evidence for the prosecution, where it considers that the evidence against the Defendant or any of several Defendants is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the Defendant without calling on him or them to enter his or their defence and the Defendant shall accordingly be discharged and the Court shall then call on the remaining Defendants if any, to enter his defence.

303. Where the Defendant or his legal practitioner makes a no case submission in accordance with the provision of this Act, the Court shall call on the Prosecution to reply.

303(2).

303(3).

In considering the application of the Defendant under Section 303, the Court shall in the exercise of its discretion have regard to the following: -

- (a). Whether an essential element of the offence has been proved.*
- (b). Whether there is evidence linking the Defendant with the commission of the offence with which he is charged.*
- (c). Whether the evidence so far led is such that no reasonable Court or Tribunal would convict on it; and*
- (d). Any other ground to which the Court may find that a prima facie case has not been made out against the Defendant for him to be called upon to answer”.*

Before the coming into effect of the ACJA 2015, the Courts judicially laid it down as guides that the conditions for no case to answer are predicated on the fact that no reasonable tribunal could safely convict a Defendant where at the end of the Prosecution’s case:-

- (1). The Prosecution failed to prove an essential element of the alleged offence;
- (2). The evidence adduced by the Prosecution has been so discredited as a result of cross examination; or
- (3). The evidence adduced by the Prosecution is so manifestly unreliable.

These conditions are not cumulative, once one of these conditions exists, the Court on its own volition or at the instance of the defence can validly make a no case submission. See: **IBEZIAKO V. C.O.P. 1963 1 ALL NLR P. 61.**

At the time submission of no case to answer is made, what the Court considers is whether the prosecution has made out a prima facie case to

which the Defendant would be called to answer. In other words, the question is whether the evidence adduced by the Prosecution is so unreliable that no reasonable tribunal could safely convict on it or alternatively, whether the evidence of the Prosecution witness in any way links the Defendant with the commission of the offence charged.

In this case, what is the Prosecution's evidence against the Defendant in relation to the Counts of charge. Summarily, the Pw1 (Oluwaseun Oshinweni) testified inter alia, that he is an Investigator in the Independent Practices and other Related Offences Commission assigned to investigate the complaint against the Defendant.

That when the ICPC advertised in 2013 for the construction of hostel blocks and Cafeteria for the training academy in Keffi, several companies submitted their Pre-Qualification documents. Amongst the companies was Embriden Energy Ltd which is a company represented by the Defendant.

After the company submitted its Pre-qualification documents the Procurement Committee selected four successful companies and of which was Embriden Energy Limited being represented by the Defendant.

The pre-qualification documents submitted by the four companies were later forwarded by the Chairman of ICPC to his Unit which is the Financial Investigation Unit to carry out a Verification and Financial intelligence analysis.

Pursuant to this, they carried out verification of the tax clearance certificate and audited Financial Statements submitted by the four successful companies to the Procurement Unit of ICPC.

In the course of the verification, the Federal Inland Revenue (FIRS) confirmed that the tax clearance certificate submitted by the company represented by the Defendant and one other company was forged and hence are fake.

As a result of this, they forwarded the report of their findings to the Chairman of ICPC and his team was directed to carry out a thorough investigation on the companies involved in the forgery scheme.

In this regard, they wrote a letter to FIRS to confirm the authenticity of the tax clearance certificate with number 05376681 submitted to the Procurement Unit of ICPC by the Defendant. They also wrote to the Institute of Chartered Accountants of Nigeria to confirm the authenticity of the practising license of the firm A. D. Asawa & Co. They invited the Defendant and he volunteered a Statement under caution. The Managing Director of the company the Defendant represented was also invited and he volunteered statement under caution. His name is Mr. Obiora Okpata. They wrote letter to the Institute of Chartered Accountants of Nigeria to verify A.D. A. Asawa & Co because it was seen to have prepared the audited Financial Statement submitted to ICPC and it was on the bases of the audited Financial Statement that he forged tax clearance also prepared the audited Statement for 2010 to 2012 which were years before the incorporation of the company.

Their investigation of the tax clearance certificate revealed that the tax clearance certificate with no 05376681 issued on 10th April 2013 was genuinely issued by FIRS to Embriden Energy Ltd while the figures on it were all nil. But the one submitted I.C.P.C bears the same tax clearance certificate number but figures were imputed on the turnover column, tax paid and assessable profits.

In response to their letter, the FIRS confirmed that the tax clearance certificate submitted to ICPC was fake, forged and invalid.

When interviewed, the Managing Director of Embriden Energy Ltd confirmed the tax clearance certificate submitted to ICPC does not belong to his company and was not a replica of the one given to its freelance agent – the Defendant. He however brought the original for sighting and availed his team same.

By this, there were two tax clearance certificate bearing same number, company name but different figures. While the figures in one were nil, figures were imputed in the other.

As for the company A. D. A. Asawa & Co, their finding was that the Institute of Chartered Accountants of Nigeria affirmed that the firm was not licensed by it and also its address could not be traced. Likewise for its officials.

The Managing Director of Embriden Energy Ltd claimed that he never gave the Defendant both the forged tax clearance certificate and Audited Financial Statement. He also, when contacted for site inspection, said never bided for any contract with ICPC.

They also found that although the Defendant denied knowing anything about the forged tax clearance certificate and the audited financial statement, the statements were submitted by him to the Commission and he has been appearing for the company in the tender process. A certified true copy of the tax clearance certificate bearing the name of Embriden Energy Ltd dated 10th April 2013 was admitted in evidence as Exhibit A.

The witness also tendered the following documents in evidence:-

- (1). Three certified true copies of Audited Accounts for the years 2010, 2011 and 2012 for Embriden energy Ltd prepared by A.D.A. Asawa & Co – Exhibits B TO B2.
- (2). Certified true copy of Tax Clearance Certificate of Embriden Energy Ltd with nil figures entered in the column for years 2010, 2011 and 2012 – Exhibit C.
- (3). Certified true copy of document captioned “VERIFICATION OF TAX CLEARANCE CERTIFICATES” dated 5th November 2013 issued by I.C.P.C to the Chairman F.I. R.S – Exhibit D.
- (4). Certified true copy of document captioned: RE: VERIFICATION OF TAX CLEARANCE CERTIFICATES” dated 12th November 2013 written by F.I.R.S to the Chairman of ICPC – Exhibit E.

Continuing, the witness testified that the Defendant made a Statement during investigation. Original copy each each of Statements dated 10/12/2013, 11/12/2013, 13/12/2013, 16/12/2013 and 17/12/2013 were admitted as Exhibits F to F4.

Under cross examination by the learned Defendant’s Counsel, the witness testified inter alia, that the payment for the bid was made by the Defendant and he cannot remember how much was bided for Embriden Energy Ltd as his team did not investigate the amount of contract but rather the documents that were submitted for pre-qualification.

The Defendant is not a director in the company but a freelance agent of the company.

At the time the bid was submitted, the Defendant was acting on behalf of the company as its freelance agent.

He knows Mr. Okpala Obiora as the Managing Director of the company.

Exhibits F to F4 are statements given by the Defendant in the course of investigation to the commission.

When the forgery was discovered, they invited the Defendant based on his number in the documents he submitted.

He can confirm the tax clearance certificate was altered. This is because they have seen the original copies. As for the audited financial statements, both the firm and the staff cannot be identified which fact was also confirmed by the Institute of Chartered Accountants of Nigeria.

When shown Exhibit A, he said he compared the handwriting filing of it with the handwriting on the forged tax clearance certificate. He compared the handwriting in the purported tax clearance and the statement the Defendant volunteered to the Commission. He said that they did not subject the signature and handwriting and forgery to any expert analysis. They also did not subject the Defendant and Mr. Obiora to the Oligraph (ie detecting device) test.

Concluding, he said it is not true that the only thread of evidence against the Defendant is that he submitted forged documents.

In the absence of question in re-examination, the witness was discharged.

The Prosecution's Pw2 to Pw4 also testified, were cross examined by the learned Defendant's Counsel and discharged. The thrust of their evidence was that the Defendant submitted bid documents on behalf of Embriden Energy Ltd to the ICPC award of contract for construction of hostel blocks in its Academy in Keffi. The Tax Clearance Certificate and audited Statement of Account of the company submitted along with the bid documents were forged. The Defendant could not take them to the building

site of the company as claimed in their bid documents. The bid Return Sheets were authorized by the Defendant on behalf of Embriden Energy Ltd. Likewise for the Tender Submission Sheet. The Defendant also signed the Attendance on behalf of the Embriden Energy Ltd on the day of Bid opening. Mr. Obiora Okpala did tell them that the tax clearance certificate and audited Statement of Account the Defendant submitted to the ICPC was not what he gave to him Mr. Obiora Okpala and the Defendant argued for and against each other before them in the course of their investigation.

From the foregoing evidence of the Prosecution's Pw1 to Pw4, can it be said that there is no evidence linking the Defendant with the commission of the offence with which he is charged so as to obviate the need for him to put up a defence to it. The evidence of Pw1 and Pw4 who were part of the team who conducted investigation into the matter clearly link the Defendant with submission of fake tax clearance certificate and audited Statements to the complainant. What is required at this stage is not proof beyond reasonable doubt (as required by Section 135 of the Evidence Act 2011) but rather prima facie evidence linking the Defendant with the commission of the alleged offence. Without the necessity of going into minute details (which the Court ought not to embark on in this ruling to avoid pronouncing on substantive issues) the Court is satisfied that the evidence of Pw1 and Pw4 to a large extent links the Defendant with the commission of the alleged offence. There is no gainsaying that the Defendant having admittedly submitted the bid documents to the Complainant and the tax documents contained in them are in Exhibits E and I declared to be fake by the Federal Inland Revenue Service, that the Defendant has some explanation to make regarding tax clearance certificates.

Further, a reading of the Defendant's statement during investigation admitted as Exhibits F to F4 show he played various roles in the submission of the bid documents which contained the tax clearance certificate declared as having been forged by the Federal Inland Revenue Service. By reason of his confessed roles alone in the Statements, it cannot be said that the Defendant is not linked with the commission of the alleged offence as charged. He is clearly linked.

By reason of this and consistent with the provision of Section 303(b) of the ACJA 2015, the Court in the exercise of its discretion holds the Defendant is linked with the commission of the alleged offence. This being the case,

the Defendant's instant No Case to answer submission cannot stand. It fails and is dismissed. The Defendant is directed to put up his defence to the charge.

Signed
Hon. Judge
27/1/2020

LEGAL REPRESENTATIONS:

- (1). Mr. Dennis Idoko for the Prosecution.
- (2). Mr. O. P. Odia for the Defendant.