

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CR/406/2019

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

ENGR ALIYU AHMED NAHUCE.....DEFENDANT

JUDGMENT

The Prosecution, on 9/12/19, commenced this case against the Defendant on a 3 Counts Charge. The Defendant pleaded not guilty to all the 3 Counts Charge. The Defendant was charged for fraudulent acquisition of property contrary to and punishable under Section 12 of the Corruption Practices And Other Related Offences Act, 2000, and the counts of the offences are herein stated below;

COUNT 1

ENGR ALIYU AHMED NAHUCE whilst being employed as a Public Servant as General Manager of Federal Capital Territory Authority (FCTA), Abuja Water Board sometimes in July, 2017 in Abuja, within the jurisdiction of this Honourable Court knowingly did acquire a private interest in Garisun

Nigeria Ltd (being a company you co-owned with your biological children and close relations) which was sub-contracted the total sum of ₦275,845,636.60 (Two Hundred and Seventy-Five Million, Eight Hundred and Forty-Five Thousand Six Hundred and Thirty-Six Naira, Sixty Kobo) contract awarded originally to GreenLamp and Sons Nig Ltd by the FCTA, Water Board for the water reticulation of Abaji Town in FCT, Abuja and there committed the offence of fraudulent acquisition of property contrary to and punishable under Section 12 of the Corruption Practices And Other Related Offences Act, 2000.

COUNT 2

ENGR ALIYU AHMED NAHUCE whilst being employed as a Public Servant as General Manager of Federal Capital Territory Authority (FCTA), Abuja Water Board sometimes in October, 2017 in Abuja, within the jurisdiction of this Honourable Court knowingly did acquire a private interest in Garisun Nigeria Ltd (being a company you co-owned with your biological children and close relations) which was awarded a contract by the FCTA, Water Board for the sum of ₦2,387,490.00 (Two Million, Three Hundred and Eight-Seven Thousand, Four Hundred and Ninety Naira) for the clearing of waste vegetation and deposit debris at the lower Usuma Dam FCT, Abuja and there committed the offence of fraudulent acquisition of property contrary to and punishable under Section 12 of the Corruption Practices And Other Related Offences Act, 2000.

COUNT 3

ENGR ALIYU AHMED NAHUCE whilst being employed as a Public Servant as General Manager of Federal Capital Territory Authority (FCTA), Abuja Water Board sometimes in October, 2017 in Abuja, within the jurisdiction of this Honourable Court knowingly did acquire a private interest in Garisun Nigeria Ltd (being a company you co-owned with your biological children and close relations) which was awarded a contract by the FCTA, Water Board for the sum of ₦2,400,000.00 (Two Million, Four Hundred Thousand Naira), for the repair of broken down vehicles of the FCTA Water Board and there and committed the offence of fraudulent acquisition of property contrary to and punishable under Section 12 of the Corruption Practices And Other Related Offences Act, 2000.

In proof of its case, the Prosecution called three (3) witness and tendered Exhibits, on the other hand, the Defendant testified in his defence, called no witness and also tendered Exhibits. The Prosecution in the course of trial tendered in proof Exhibits marked "A", "B", "C", "D", "E", "F"¹⁻⁵.

The PW1 – Aliyu Maredun, a staff of FCTA testified he work directly with FCT Water Board as Assistant Director commerce and also Chairman FCT Council of Amalgamated Union of Public Co-operation Civil Service, Technical and Recreational Services (AUPCTRE). As Chairman of the Union that unionized workers in FCT Water Board, he represents workers in Negotiation and Collective Bargain with different managements in Ministries, Departments and Agencies. That in relation to this case, his attention was drawn to the happenings in Water Board and as in practice

wrote the management listing the infractions noticed hoping that Management will negotiate with Union for correction but all efforts proved abortive. After repeated efforts, realized they needed the intervention of regulatory bodies and wrote to union's National Headquarters who in turn wrote to EFCC and EFCC invited him for questioning and after EFCC conviction of the genuiness of their complain took over the matter for investigation the outcome of which he is not privilege to know but was invited to testify as a witness before court to state what he knows about the case.

Under Cross-Examination by the Defendant Counsel, stated the incidents was reported to EFCC, but did not happen when he was Chairman of the branch. That he would not have reported the case to EFCC if negotiation had succeeded. He admitted he never worked in the Procurement Unit of FCT Water Board and that his Statement he made at EFCC was as a result of what he was told by those who called his attention.

There was no re-examination.

Engr. Akinwunmi Akande testify as PW2 and stated that sometimes in 2017 was called to the office of the Director now office of the General Manager to meet EFCC officials, who requested for the Valuation Report for 2015/2016 Fiscal Year which he responded. He was later invited to EFCC for questioning regarding some contracts, he made clarifications which are all contained in his written Statement to EFCC and that he stands by what he wrote at EFCC.

Under Cross-Examination, stated he is trained in Procurement. And when asked to tell court what National Shopping method of Procurement means, stated is for procuring minor goods, works and services within the threshold of ₦2.5 Million. Minimum of three contracts are shortlisted from whom they received quotations upon the approval of the Chief Executive. That the user department would raise the request, the request forwarded to the Director who would give instruction to process. That upon shortlisting the contractors and evaluating their quotations they forward the least responsive evaluated bid to the Chief Executive to award and that it is after all these processes is followed and concluded that there can be said that due process was followed. That as at 2017, Procurement Unit of Water Board was under FCTA Procurement Department. That Water Board as an entity and also office of the General Manager were both created in November, 2017. That all the National Shopping Contracts EFCC invited him for were all awarded before November, 2017, but other contracts above ₦2.5 Million were also inclusive of Procurement before he left the Unit. That any contract above ₦2.5 Million is awarded by FCTA and Water Board cannot award contracts above ₦2.5 Million.

There was no re-examination of the PW2.

DSP Okoli Ernest, a Detective and Operative of EFCC attached to Advance Fee Fraud testified as PW3 and stated that this case was transferred to Advance Fee Fraud Section assigned to his department and minuted to him for report. That upon the receipt of the Petition, contacted the author represented by Aliyu Maradun (the PW1) who adopted the Petition, when they scrutinized the Petition, they discovered that it was an allegation of

abuse of office and financial impropriety. That wrote a letter to CAC to ascertain the true directors of the companies mentioned in the Petition, they also wrote to some banks links to the Defendant to obtain his financial details. That investigation was also extended to FCT Water Board by inviting the Procurement Officer Akinwunmi Akande (the PW2) and Ahmed Habib Kiru who made voluntary Statements. That they also invited the Defendant and question him in the presence of his lawyer and he volunteered Statement.

Under Cross-Examination, by the Defendant Counsel, he told the court that his team investigated same time and there is joint investigation report conducted by Federal Ministry of Works along with EFCC but said the report was not stated to the court. He stated he cannot remember obtaining Statement from one Ahmed Zubairu and cannot remember inviting Muntari Garba as Managing Director of GreenLamp Nig Ltd. He also stated he did not see the policy files of the contract to ascertain how they were awarded.

There was no re-examination of the PW3.

At the close of evidence of the Prosecution, the matter was adjourned to 14/10/2020 for the Defendant to open his defence. On 14/10/2020, the Defendant – Engr Aliyu Ahmed Nahuce testified in his defence as DW1. He stated that the nominal complainant – Aliyu Maradun (the PW1) is known to him. That he is a staff of FCT Water Board in the department of commerce and head of department of Major Consumer Unit and also doubled as Chairman of the Union and has been in that position for almost

10 years. That he has used the umbrella of unionism to prevent anyone from removing him from that position and also used same to chase away the then Head of Water Board using the EFCC. That what made their part to cross is issue of revenue. That the unit he heads ought to generate 50% of revenue generation of Water Board and that there is projected revenue of ₦150 Million monthly from that unit, that he has never generated ₦30 Million. That upon his appointment as General Manager, he had mandate to move Water Board from Civil Service Company to enterprises to enable it to be sustainable in terms of resources. That in view of this, made some changes which affected the PW1 and thereafter PW1 organized the union against him and his office, they attacked his office severally, used media blackmail to wage war against him, and also Petition FCT Minister, Board of Water Board but upon verification it was found to be false. He continued his intimidation and was asking for negotiation and when he asked the type of negotiation, stated the negotiation PW1 wanted was for him to return PW1 back as Head of Department major consumer unit, and he should be given the union money if he wants peace which he declined. Due to his refusal, wrote various Petitions to Police, ICPC, Head of Services, DSS, SGF and all invited him one after the other and found the complaint to be baseless and he then proceeded to the EFCC. He stated the charges against him are contracts awarded by FCTA in 2017 before his appointment in 2018 and that all contracts concerned were executed by the contractor and monitored by the user department and the user department Head of Department is Agbontean Osarieman Sunday who made Statement to EFCC as regards

the work done. In summarizing Procurement procedure, stated when user department raises a proposal, its sent to Procurement Department. That any Procurement above ₦2.5 Million is sent to FCTA Procurement Unit. That Procurement Unit of FCT Water Board is ₦2.5 Million but due to lack of funds, same procurement within the range is still forwarded to FCTA who then monitors and makes payments upon completion. That his role as General Manager to sign contract Agreements of ₦2.5 Million and never play any other role outside that.

Under Cross-examination, he stated it was FCTA that approval the contract for the water reticulation in Abaji, that the contract on the charge were awarded before his appointment and he did not review the contracts upon his appointment.

There was no re-examination of the DW1.

The Defendant, in the course of trial, tendered in evidence Exhibits marked "G", "H1 – 3", "I".

At the close of evidence both the Prosecution and defence counsel filed and adopted their Final Written Addresses.

In the Prosecution's Final Written Address filed on 23/10/2020, Victor Ukagwu formulated one (1) issue for determination which is;

"Whether the Prosecution has proved beyond reasonable doubt the offence of fraudulent acquisition of property based on the evidence before the court"

The Defendant is charged with the offence of fraudulent acquisition of property contrary to and punishable under Section 12 of the Corrupt Practices and Other Related Offence Act which reads;

“Any person who being employed in the public service knowingly acquires or holds, directly or indirectly, otherwise than as member of a registered joint stock company consisting of more than twenty (20) persons, a private interest in any contract, Agreement or investment emanating from or connected with the department or office in which he is employed or which is made on account of the public service, is guilty of an offence and shall on conviction be liable to imprisonment for seven (7) years”.

Flowing from the said Section 12 of the Corrupt Practices and Other Related Offence Act under which the Defendant is charged, the ingredients of the offence are as follows;

- (1) That the accused person must be employed in the public service.
- (2) That he knowingly acquires or holds private interest in any contract, Agreement or investment; and
- (3) That the interest was of any contract, Agreement or investment in connection with the office or department which he is employed or on account of public service. See the case of *Nwawolo Vs FRN (2015) LPELR- 24423 (CA)*.

The question here is; whether the Prosecution, from the evidence before the court has established the basic ingredient of the offence upon which he is being charged. It is settled law that in criminal cases, such as in the instant, the burden of proof lies on the Prosecution to prove its case beyond reasonable doubt. See *Ogbodu Vs State* (2017) LPELR – 43402 (CA), *Ikwighre Vs State* (2018) LPELR – 44862 (CA). See also Section 135 (1) of the Evidence Act, 2011.

As evident on the charge sheet, the basic ingredient upon which the Defendant is charge is hinged on the second ingredient to wit; acquiring private interest in contracts. For purpose of clarity and consideration of this case at hand, I shall consider it by the count 1, 2 and 3 collectively.

I have earlier stated the ingredience of the offence in this Judgment and what is required of the Prosecution in respect of proof.

It is not in doubt that the Defendant is a public officer by its employment with the FCT Water Board, but what is in issue is for the Prosecution to prove the 2nd and 3rd ingredients as stated.

- (2) That he knowingly acquires or holds private interest in any contract, Agreement or investment.
- (3) That the interest was of any contract, Agreement or investment in connection with the office or department which he is employed on account of public service.

In the evidence of Prosecution witness, PW1 a star witness stated in-chief thus;

“...In relation to this case before this court, my attention was drawn by our members regarding happenings in the board as the practice entails, we wrote to the management, listing the infractions noticed, hoping and willing that the management will negotiation with the unions for correction. But all efforts to win the Management Consent towards correcting the alleged infraction proved abortive.”

Under Cross-examination, admitted that the Statement made at EFCC was a Statement of what he was told by those who called his attention.

The PW2, in his evidence. In-Chief confirmed making a written submission to the EFCC Officer but no such Statement is before the court.

Under cross-examination, the PW2 confirmed that all due process was followed in the execution of the contract. Also confirmed that all the contract were awarded before 2017. And also confirmed limits of the Water Board to award contract to ₦2.5 Million.

The PW3, the investigating officer, affirmed in evidence, investigating the case, wherein a joint investigation was carried with the officers of Federal Ministry of Works and others in respect of Count 1, and a report Exhibit “G” was received. He confirmed receiving Statement from Ahmed Zubairu Muntari Garba and Agbontaen Osariemen Sunday which Statement were received as Exhibit “H¹⁻³”, through DW1, but were not called as witnesses

in this case. He also under cross-examination, confirmed not seeing the policy file to know how the contract was awarded or sub-contracted.

The Defendant in his evidence in-chief, maintained that the contracts subject of the allegation on all three (3) counts were contracts awarded before the creation of FCT Water Board and the office of the General Manager. In proof tendered his Letter of Appointment as exhibit "I" and stated the procedure of award of such contract, which never participated.

In the written submission of Defendant Counsel, contends that the Prosecution has failed woefully to establish in proof of the alleged offence against the Defendant. Firstly, that the evidence of PW1 before the court is one of hearsay, relied on Section 38 of Evidence Act, and urged the court to do hold.

Secondly, that the evidence of the PW1, is built on malice and hate and cannot stand.

On the second witness – PW2, contends that the PW2 by his evidence confirmed that due process was followed in the award of the contract and that the contracts were awarded before the Defendant, his office and FCT Water Board were created.

On the Exhibit "B" – "D" tendered through PW3, submits that no evidence was led to support it, merely amounts to dumping of documents before the court and this situation is frowned at by the court. Referred to case of Tallen & Ors Vs Jang & Ors (2011) LPELR – 9231 CA. Further contends that in respect of count 1, the PW3, by Exhibit "G" confirmed that there

was no sub-contract and work was properly done. Further, that relevant witnesses whose Statements were obtained Exhibit "H¹⁻³", were not called by the Prosecution, to confirm or deny whether the contract in count 1 was sub-contracted or not. Referred the court to Sections 7, 121, 12 (b) of the Evidence Act and Section 131 of the evidence and judicial authorities cited, in urging the court to hold that the Prosecution has failed to discharge the burden of proof against the Defendant and prayed the court to discharge and acquit the Defendant of all three (3) Counts.

The Prosecution, on the other hand in his Final Written Address, contends that the Prosecution through the PW1 – PW3 and Exhibits proved its case against the Defendant in urging the court to hold against the Defendant and convict. Referred to case of *Nwawolo Vs FRN (2015) LPELR-24423 (CA)*, *Smart Vs State (2016) LPERL – 40728 (SC)*.

I have carefully considered the evidence, Exhibits submission of Learned Counsel and the judicial authorities, and come to the following findings as follows:-

Firstly, the operating factors in all the three count charge against the Defendant, is acquiring private interest in any contract. It is settled law that it is the Prosecution that has the burden duty to prove the guilt of a Defendant. See *Akpan Vs State (2020) 6 NWLR (PT. 1720) 297 CA* Per Shuaibu (JSA) @ 331 – 322 Para H – A. Section 135 of Evidence Act; 2011. *Jubrin Vs FRN (2020) 4 NWLR (PT.1714) 315, SC Kekere – Ekun @ 336 Para E.*

The evidence of the PW1, by his Statement on Oath before the court confirmed that, what he told the court and EFCC are Statement from some other person. By implication, it is hearsay evidence caught up by the Provision of Section 38 of the Evidence Act, 2011 and not subjected to any of it is exception under Section 39 – 50 of the Act. Further by the evidence of PW1, shows evidence built on malice against the Defendant by the PW1, the Defendant in his evidence stated that the PW1 was removed from his position as heard of the major consumer that consequent upon his removal continued to foment problems, insisting on his return to his post and continuous receipt of unions monies, but because all this failed he continued to torment the Defendant with picketing by the union and Petitions to various bodies, eventually leading to EFCC. It must be noted that the prosecution did not cross-examine the Defendant on this point. It is deemed admitted as true and correct. This court will deem it as such.

Secondly, the PW2, in his evidence testified and confirmed that the contract went through due process and were all awarded before 2017, prior to creation of FCT Water Board and office of General Manager, which the Defendant occupies. Again, there is no evidence anywhere to show how the Defendant benefited privately from the said contract.

Thirdly, the PW3 the Investigation Officer testified and tendered three (3) Exhibits and no evidence led in support of the Exhibits. Further, confirmed to court that the result of the Joint Investigation revealed that there was no sub-contract in respect of Count 1 and work was properly done.

It is worthy of note that the PW3, who is the Investigating Officer failed to confirm persons he obtained Statements from, but on being shown the Statements of three persons invited by his Team, Muntari Garba, Ahmed Zubairu and Agbontaen Osarimen Sunday, admitted that he obtained Statement but failed to call them as witness. It is law, that Prosecution, is not under any duty to call all witnesses in proof of its case, but it would be appropriate to call all necessary witness in proof of his case. Query: why would the Investigating Officer not call a witness – Muntari Garba and Ahmed Zubairu who are vital witness to tell whether the contract in Count 1 was sub-contracted to them. It is the court's view that this failure of the Prosecution to call them raises the strong presumption that the evidence if given will be unfavourable to Prosecution's case. See Section 167 (d) of the Evidence Act, 2011.

From all of these findings, I come to the irresistible conclusion that the Prosecution has failed to establish its case against the Defendant having failed to establish by credible evidence the ingredience of the offence sufficient to hold that the Defendant can be found guilty of the offence charged. Having so found, I hereby discharge and acquit the Defendant of all the three (3) Count charge.

This is the Judgment of the court.

HON. JUSTICE O.C. AGBAZA

Judge

14/1/2021

VICTOR UKAGWU FOR PROSECUTION.

EMEKA UCHEGBULAM FOR THE DEFENDANT