

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON FRIDAY 22ND OCTOBER 2021
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 9 MAITAMA – ABUJA

CHARGE NO: FCT/HC/CR/124/19

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. MR. MOUNIR HALIRU GWARZO } DEFENDANTS
2. JAMILA AHMAD MOHAMMED }

RULING

The Defendants were arraigned before this Court on 05/03/2021, on a Charge of fourteen (14) Count for the offences of using their offices, as public officers, to knowingly hold interests in contracts that were awarded by these offices and using their public office to confer corrupt advantage on themselves contrary to and punishable under the respective provisions of **s. 12**

and **19 Corrupt Practices and Other Related Offences (ICPC) Act, 2000.**

The 1st Defendant was accused of the offences in **Counts (1) – (6)** of the Charge; whilst the 2nd Defendant was accused of the offences in **Counts (7) – (14).**

At the plenary trial, the prosecution fielded four (4) witnesses. They are namely:

- **PW1 - Kabir Ibrahim Zamfara**, staff of Jaiz Bank Plc;
- **PW2 - Kuku Olawale**, Staff of United Bank for Africa Plc;
- **PW3 - Taiwo Olorunyomi**, Investigator with the ICPC; and
- **PW4 - Olusola Oluseye Sodipo**, Second in Command in the General Investigation Dept. of ICPC at the material time.

Altogether, the four witnesses, between them, tendered a total of **sixteen (16)** sets of documents in evidence as exhibits, including the Petition lodged against the 1st Defendant with the ICPC and the Defendants' extra-judicial statements.

At the close of the case for the prosecution, the Defendants, through their respective learned counsel, indicated their intention to make a No Case Submission, as permitted by the provisions of s. **302** of the **Administration of Criminal Justice Act, 2015 (ACJA)**. To this end, parties agreed to file and exchange written submissions; which they did.

I had proceeded to consider the copious written submissions filed on behalf of the Defendants by their respective learned counsel. I had equally taken account of the submissions of the prosecution learned counsel in response.

The principles guiding the Court as to the approach to adopt in determining whether a defendant's no case submission is well made out are well too known and sacrosanct. Learned counsel for the respective Defendants; and for the prosecution have also adequately captured these principles in their respective written submissions. Suffice to restate however that these age long general principles that guide the Courts in determining whether or not a defendant should be discharged and a verdict of "*not guilty*" be entered in his favour at the close of the prosecution's case, *vide* the provision of s. **302** of the **ACJA**, have also been encapsulated in the provision of s. **303(3)** of the **ACJA**, which enjoins the Court, before coming to a decision, to take into account the following conditions, namely:

1. *Whether an essential element of the offence has been proved;*

2. *Whether there is evidence linking the defendant with the commission of the offence with which he is charged;*
3. *Whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and*
4. *Any other ground 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.*

These parameters were also comprehensively captured by the Supreme Court in well known authority of *Daboh & Anor. Vs. State* [1977] 5 SC 197 @ 209

In other words, the Court is so empowered, nay mandated, after undertaking a proper overview of the evidence led by the prosecution witnesses, to determine whether such evidence is cogent enough or apparently cast some reasonable doubt on the innocence of the defendant; thereby necessitating him to enter into his

defence to disprove the reasonable doubt of his innocence. See Ajidagba Vs. I. G. P [1958] 3 FSC 5 @ 6; Nwankwo Vs. Shitta Bey [1999] 10 NWLR (Pt. 621) 75; State Vs. Duke [2003] 5 NWLR (Pt. 813) 394. See also the provision of s. 135(3) of the **Evidence Act** (as amended).

It should be further reckoned, as was postulated by the Supreme Court in Queen Vs. Ogucha (1959) 4 FSC 64 [also reported in [1959] SCNLR 154], that at the stage where no case submission is made, what is to be considered by the Court is not whether the evidence produced by the prosecution against the defendant is sufficient to justify conviction; but whether the prosecution has made out a *prima facie* case requiring, at least, some explanation from the defendant as regards the evidence led in seeking to prove the charge. See also Duru Vs. Nwosu [1989] 4 NWLR (Pt. 113) 24 @ 31; Ajiboye Vs. State [1995] 8 NWLR (Pt.

414) 418; Fagoriola Vs. FRN [2014] All FWLR (Pt. 724) 74.

It is therefore imperative to underscore that at this stage of the proceedings, the Court is not to seek out whether the prosecution has proved the guilt of the Defendants beyond reasonable doubt as required by the provision of s. 135(1) of the **Evidence Act**, but merely, as the meaning of *prima facie* postulates, to consider whether the evidence adduced by the prosecution so far, if believed, might be sufficient to convict the defendants; and if this is so, it will be said that there is a ground for proceeding further with the case.

Being appropriately guided by these sacrosanct principles therefore, I had proceeded to undertake the task required of the Court at this stage of the proceedings which is to consider whether, from a consideration of the totality of the evidence led by the

prosecution before the Court, a *prima facie* case has been made out against the Defendants to justify the continuation of their trial or to warrant the Court calling on them to enter their defence. In doing this, I had examined the totality of the evidence adduced by the **four (4)** witnesses called by the prosecution as well as the exhibits on record, in the light of the essential legal ingredients required to prove the offences for which the respective Defendants were charged. I will deal with **Counts (1) – (6)** at first, of which the 1st Defendant is standing trial.

Count (1) states as follows:

That you, Mounir Haliru Gwarzo (M), on or about 28th December, 2016 in Abuja within the jurisdiction of this Honourable Court, while being the Director General of Securities and Exchange Commission (SEC) knowingly and directly held a private interest as a Director and Shareholder of Outbound Investment Limited, a company which was awarded a contract

to supply and install 12 units Air Conditioners and units Refrigerators at SEC Lagos Zonal Office for a contract sum of ₦3,499,200.00 (Three Million, Four Hundred and Ninety-Nine Thousand, Two Hundred Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

The provision of s. 12 of the ICPC Act under which this Count is framed states as follows:

“Any person, who, being employed in the public service, knowingly acquires or hold, directly or indirectly, otherwise than as a 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.”

Now, in the authority of FRN Vs. Shuluwa [2018] LPELR(CA), the Court of Appeal established the elements of the offence in **s. 12** of the **ICPC Act**, as follows:

- (i) That the accused person is employed in the public service;
- (ii) That the accused knowingly acquires or holds, directly or indirectly (otherwise than as a member of a registered joint stock company consisting of more than twenty persons) a private interest in a contract, agreement or investment;
- (iii) That the contract, agreement or investment emanates from or is connected with the department or office in which the accused

person is employed or is made on account of the public service.

In very simple language, all that the prosecution needs to establish in proof of the offence under this provision is that the accused defendant, as a public officer, knowingly holds a private interest whether directly or indirectly in a contract awarded by the public office where he is employed or in a contract awarded for public service.

As such, in determining whether or not the 1st Defendant has a case to answer with respect to Count (1) of the offence, it must be seen that the prosecution has established, on the basis of the evidence adduced so far, the presence of all the elements identified with respect to **s. 12 of the ICPC Act**, under which he is charged with the offence.

With respect to the first element, it is not an issue that the 1st Defendant was, at the material time, the

Director General of the Securities and Exchange Commission (SEC). The Court also takes judicial notice that the Securities and Exchange Commission is a public institution. I further make reference to the Petition written to the 1st Defendant, **Exhibit P3** and the 1st Defendant's extra judicial statement, **Exhibit P15**. Without any further ado, I hold that the prosecution clearly established, by *prima facie* evidence, the presence of the first element of the offence in Count (1) against the 1st Defendant.

I will proceed to determine the presence or otherwise of the second and third elements together, on the basis of the evidence adduced by the prosecution; and in this regard it must be determined whether or not the prosecution had established, *prima facie*, that the 1st Defendant knowingly acquired or held, directly or indirectly, a private interest in the contract mentioned in Count (1) of the Charge; and that the contract

emanated from or is connected with the public office in which the 1st Defendant is employed.

Now, in Count (1) of the Charge, it is alleged that the 1st Defendant, as the Director General of the Securities and Exchange Commission, knowingly held private interest, as a Director and Shareholder in the company called **Outbound Investment Limited**; and that the company was awarded a contract by the Securities and Exchange Commission, to supply and install 12 units Air Conditioners and 4 units Refrigerators at the SEC's Lagos Zonal Office for a sum of **₦3,499,200.00**.

Now, the letter of award of the contract in question was tendered in evidence by the **PW3** as **Exhibit P7**. The contract was addressed to the Managing Director of Out Bound Investment Limited. It was awarded by the Securities and Exchange Commission (SEC).

The **PW3** tendered in evidence as **Exhibit P8**, letter of acceptance of the contract by one Out Bound Crescent Investment Limited.

The **PW3** further tendered a contract agreement executed between the Securities and Exchange Commission (SEC); and one Out Bound Crescent Investment Limited for the same contract, as **Exhibit P9**.

I note a discrepancy in the name of the company in **Exhibit P7** to which the contract was awarded – Out Bound Investment Limited and the name of the company that accepted the contract, *vide* **Exhibit P8**; and the company with whom the SEC executed the agreement for same contract as contained in **Exhibit P9**, being Out Bound Crescent Investment Limited. The **PW3**, who tendered the three documents, did not however explain or resolve the discrepancy.

That aside, the **PW3** further tendered in evidence as **Exhibit P4A**, certified true copy of the Certificate of

Incorporation of Out Bound Investments Limited, the name of the company to which the contract in **Exhibit P7** was awarded by the SEC. In the incorporation documents attached to the said Certificate of Incorporation, the 1st Defendant, **Mounir Gwarzo** is named as one of the shareholders, holding 200,000 out of the 1,000,000 ordinary shares of the company.

In the Particulars of Directors of the said Out Bound Investments Limited, accompanying the Certificate of Incorporation, **Exhibit P4A**, the 1st Defendant, **Gwarzo Mounir**, is also on record as a Director of the company. These information were as at 02/03/2009, when the particulars was submitted to the Corporate Affairs Commission for registration.

I examined the extra judicial statement made by the 1st Defendant. He stated clearly therein that he resigned from Out Bound Investments Limited as a Director, sometime in 2012.

Under cross-examination by the 1st Defendant's learned counsel, the **PW3** admitted that in the course of investigation, apart from official correspondence his office had with the Corporate Affairs Commission with respect to the company – Out Bound Investments Limited, he did not interact with any staff or official of the company.

The prosecution did not also lead evidence to ascertain the status of the 1st Defendant as at material time the contract in question was awarded. The prosecution did not tender in evidence the letter written by the ICPC to the Registrar-General of the CAC to request for information on Out Bound Investment Limited, to which **Exhibit P6** is a response; which letter would have revealed the confines of the of information requested for by the ICPC. Merely tendering certified true copies of the incorporation documents of the company which dated back to 17 March, 2009, without leading evidence to establish the status of the 1st Defendant at

the material time, as at December, 2016, when the contract awarded by SEC in question was awarded to the company, is not sufficient evidence of the 1st Defendant's involvement in the company at the material time. In other words, the evidence that is crucial to establishing the connection between the 1st Defendant and Out Bound Investment Limited, is such that will clearly reveal the status of the 1st Defendant in the company (if any), as at the time the contract was awarded. No such evidence is produced by the prosecution. I so hold.

Again, the prosecution failed to give evidence as to whether or not further investigation was conducted with respect to the statement made by the 1st Defendant in his extra – judicial statement that he had resigned as a Director of the company as far back as 2012, long before the contract in question was awarded. Failure to do this leaves further gaping hole in the case of the prosecution. I so hold.

Now, one of the critical elements of the offence in Count (1) is that there must be evidence that the 1st Defendant knowingly, had private interest in the contract in question, whether directly or indirectly. The side (explanatory) note to s. 12 of the **ICPC Act** summarizes the provision as “**Fraudulent acquisition of property.**” This gives an insight into the intendment of the drafters of that provision, which is that in order to establish an offence under that provision, it must be shown that the accused defendant fraudulently acquired interest in the contract in question. In other words, the focus is not whether or not contract is awarded to a company in which the accused public officer-defendant has interest; but that the accused defendant has a vested interest in the contract.

As such, in order to prove the 1st Defendant’s vested interest in the contract with respect to which he is charged with Count (1), the following must be established by evidence:

1. that there was a contract;
2. that the contract was accepted;
3. that the said contract was indeed executed and paid for;
4. that the 1st Defendant benefitted, whether directly or by a proxy, or indirectly, from the proceeds of the contract.

Unless and until the foregoing elements are established, it cannot be said that the prosecution has established the second element of the offence as I had identified in the foregoing. I so hold.

So, what is the evidence on record? Even if it is assumed that **Exhibits P7, P8 and P9** relate to the same company and the same contract, I found no evidence whatsoever on record to establish that the said contract was indeed executed by Out Bound Investment Limited. I note that the prosecution, through the **PW2** tendered in evidence as **Exhibit P2**, the

Statement of Account of Out Bound Investments Limited with UBA Plc. The **PW3**, in his attempt to relate the said Statement of Account of Out Bound Investments Limited to the contract awarded to her by the SEC, confirmed that by the transaction of 10 April, 2017, the sum of **₦5,366,516.40** was paid to the company by the SEC.

However, the **PW3** failed to establish the connection between the said sum of **₦5,366,516.40** purported to be paid by SEC to the account of Out Bound Investments Limited on the said date and the contract sum of **₦3,499,200.00** in the contract award letter, **Exhibit P7** and the contract agreement, **Exhibit P9**. I do not reckon that it is the duty of the 1st Defendant to offer explanations as to the relation between the different sums. I so hold.

Furthermore, the **PW3** confirmed in his examination in chief that his investigations revealed that the 1st Defendant was not a signatory to the said bank

account of Out Bound Investments Limited; and no documents were also tendered to show who the signatory(ies) is/are.

The prosecution did not also lead any evidence whatsoever, of the form of vested interest the 1st Defendant had in the contract in question.

The conclusion I have come to, on the basis of the evidence placed before the Court by the prosecution witnesses is that the prosecution has failed to establish, by *prima facie* evidence, that the 1st Defendant knowingly had a private interest, either directly or indirectly in the contract awarded by the Securities and Exchange Commission (SEC) to Out Bound Investment Limited, by letter of award contained in **Exhibit P7**. In the circumstances, the conclusion here is that the prosecution failed to prove a vital element of the offence in Count (1) against the 1st Defendant.

On the basis of the foregoing analysis therefore, I hereby uphold the submission of the 1st Defendant's learned counsel that the 1st Defendant has no case to answer or has any further explanation to give with respect to Count (1) of the Charge. I hereby enter a verdict of "**Not Guilty**" for the 1st Defendant on Count (1) and he is accordingly discharged of the Count.

Count (2) of the Charge states as follows:

That you, Mounir Haliru Gwarzo (M), on or about 28th December, 2016 in Abuja within the jurisdiction of this Honourable Court, while being a Public Officer used your position as the Director General of Securities and Exchange Commission (SEC) to gratify yourself when Outbound Investment Limited, a company which you were a shareholder and director was awarded a contract to supply and install 12 units Air Conditioners and 4 units Refrigerators at SEC Lagos Zonal Office for a contract sum of ₦3,499,200.00 (Three Million, Four Hundred and

Ninety-Nine Thousand, Two Hundred Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

The provision of s. 19 of the **ICPC Act** under which the 1st Defendant is charged with the offence in this Count states as follows:

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

The offence in this Count relates to the same contract contained in **Exhibit P7**. In order for the prosecution to establish a *prima facie* case with respect to this charge

against the 1st Defendant, the following ingredients must be established:

1. That the 1st Defendant is a public officer
2. That he used his position as a public officer to gratify himself.

See FRN Vs. Usman [2018] LPELR-43894 (CA); Okoh Vs. FRN [2019] LPELR(CA).

The side (explanatory) note to s. **19** of the **ICPC Act** also captures the offence as “**Offence of using office or position for gratification,**” which further underscores that evidence of gratification must be established as an essential element of the offence under s. **19** of the **ICPC Act**.

It is already established that the 1st Defendant was a public officer at the time material to the commission of the alleged offence.

However, the prosecution must go a step further to establish that the 1st Defendant used his office as the Director General of the SEC at the material time to gratify himself through the contract awarded by SEC to Out Bound Investments Limited, contained in **Exhibit P7**, as the offence in Count (2) alleged

As I have found in the foregoing, from the evidence on record, the 1st Defendant was indeed a shareholder and Director of Out Bound Investments Limited as at 17 March, 2009, when the company was incorporated; but no evidence was provided whether he remained in those positions as at the date the offence was allegedly committed.

It is also established in evidence that indeed SEC, where the 1st Defendant held sway as the Director General at the material time, awarded the contract mentioned in Count (2) to Out Bound Investments

Limited; even though evidence of execution was not adduced.

The question is whether the prosecution succeeded in establishing that the 1st Defendant derived any gratification from the award of the said contract to Out Bound Investments Limited on the basis of the limited evidence on record?

Gratification is defined by Black's Law Dictionary, 8th Edition page 721, as "***A voluntarily given reward or recompense for a service or benefit.***" See also Ojo Vs. FRN [2008] 11 NWLR (Pt. 1099) 467.

I had again examined the length and breadth of the evidence adduced on record by the four (4) prosecution witnesses. Nowhere is it alleged, let alone established that the 1st Defendant received any gratification, recompense, benefit or financial gains, directly or indirectly, from the said contract contained in **Exhibit P7**, awarded by the SEC, under his watch, to

Out Bound Investments Limited. It is not enough to prove that SEC awarded contract to **Out Bound Investments Limited.** The prosecution must go further to prove how the 1st Defendant benefitted, in whatever way or form, from the award of the contract.

More importantly, the **PW3**, under cross-examination by the 1st Defendant's learned counsel, affirmed that he did not come across any documents that showed that the 1st Defendant personally benefitted from the contracts awarded to Out Bound Investments Limited by SEC.

Without any much ado, I must hold that there is no evidence on the record to prove the essential element of self-gratification as alleged against the 1st Defendant by Count (2) of the Charge. As such, the submission of no case to answer is sustained with respect of this Count and I hereby enter a verdict of **"Not Guilty"** for the 1st Defendant with respect to

Count (2) of the Charge. He is accordingly discharged of the Count.

Count (3) of the Charge states as follows:

That you, Mounir Haliru Gwarzo (M), on or about 29th March, 2017 in Abuja within the jurisdiction of this Honourable Court, while being the Director General of Securities and Exchange Commission (SEC) knowingly and directly held a private interest as a Director and Shareholder of Outbound Investment Limited, a company which was awarded a contract to supply 8000 litres of Diesel at the Commission's Head Office, Abuja for a contract sum of ₦2,464,400.00 (Two Million, Four Hundred and Sixty-Four Thousand, Four Hundred Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

The instant Count is predicated on the provision of s. **12** of the **ICPC Act** as Count (1). As such, the difference between the offence in this Count and that in Count (1) is as regards the contract purported to have been awarded to Out Bound Investments Limited by SEC. As such, the elements of the offence in Count (1) are the same as the instant Count.

The award letter with respect to the contract in question, dated March 29, 2017, was tendered in evidence as **Exhibit P7B** by the **PW3**. The contract was awarded to Out Bound Investment Limited.

The prosecution provided no further evidence that the contract was accepted by Out Bounds Investment Limited as the award letter requires.

I note again that the **PW3** made reference to the transaction of 21 February, 2017 in the statement of account of Out Bound Investments Limited with UBA Plc. On the said date the account was credited with the sum

of ~~₱~~**2,244,321.26** for supply of diesel. But then, the said amount had been paid into the account of Out Bound Investments Limited before the contract to which Count (3) of the Charge relate was awarded. The prosecution failed to establish the correlation or nexus between the said contract and the said sum paid into the company's account. As such, there is no evidence on record that the contract was ever executed by the company.

On the basis of the foregoing analysis, I must again hold that the prosecution did not establish, by *prima facie* evidence, an essential element of the offence as to how the 1st Defendant held a private interest in the contract contained in **Exhibit P7B**. On that score, the Court must and I hereby hold that the 1st Defendant has no case to answer with respect to Count (3) of the Charge. I therefore enter a verdict of “**Not Guilty**” for him accordingly and he is hereby discharged of the offence in Count (3) of the Charge.

Count (4) of the Charge states as follows:

That you, Mounir Haliru Gwarzo (M), on or about 28th December, 2016 in Abuja within the jurisdiction of this Honourable Court, while being a Public Officer used your position as the Director General of Securities and Exchange Commission (SEC) to gratify yourself when Outbound Investment Limited, a company in which you were a shareholder and director was awarded a contract to supply and install 12 units Air Conditioners and 4 units Refrigerators at SEC Lagos Zonal Office for a contract sum of ₦2,464,400.00 (Two Million, Four Hundred and Sixty-Four Thousand, Four Hundred Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

The instant charge is similar in every material particular to Count (2) of the Charge; except that whilst the

contract sum in respect of Count (2) of the Charge is **₦3,499,200.00**; the contract sum with respect to the instant Count is the sum of **₦2,464,400.00**. I had carefully examined the totality of the documentary evidence on record. No evidence is placed before the Court that the SEC awarded the contract mentioned in the Count (4) to Out Bound Investments Limited. It is apparent that where award of contract is not established, the offence provided in **s. 19** of the **ICPC Act** could not be said to have been committed.

Without wasting time, I hereby hold that no evidence whatsoever is adduced by the prosecution to support Count (4) of the Charge. As such, the 1st Defendant has no case to answer on the charge. I hereby enter a verdict of **“Not Guilty”** for the 1st Defendant with respect to Count (4) of the Charge and he is accordingly discharged of the Count.

Count (5) of the Charge reads as follows:

That you, Mounir Haliru Gwarzo (M), on or about 3rd February, 2017 in Abuja within the jurisdiction of this Honourable Court, while being the Director General of Securities and Exchange Commission (SEC) knowingly and directly held a private interest as a Director and Shareholder of Outbound Investment Limited, a company which was awarded a contract to supply 8000 litres of Diesel at the Commission's Head Office, Abuja for a contract sum of ₦2,490,400.00 (Two Million, Four Hundred and Ninety Thousand, Four Hundred Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

This Count is similar in content with Count (3) except that the contract involved was said to have been awarded on or about 3rd February, 2017 and the contract sum is said to be **₦2,490,000.00**.

The purported contract to which this charge relate is contained in **Exhibit P7A**, also tendered in evidence by the **PW3**.

It does appear to me that the investigators and the prosecution failed to appreciate the elementary principle of contract that all the elements must be present for there to be a valid contract. That being so, one of the important elements that must be established in order to sustain a charge under **s. 12** of the **ICPC Act**, as I had stated earlier on, is the presence of a valid contract. In the instant case, the prosecution merely tendered the contract award letter, **Exhibit P7A** and went to sleep. Further proof ought to have been shown that the company, Out Bound Investment Limited, accepted the contract as the letter of award stipulates. It is stated in the face of **Exhibit P7A**, *inter alia*, as follows:

“If the terms and conditions are acceptable, you are required to:

- 1. Endorse the attached copy of this letter and return same to the undersigned within two days of receipt.***
- 2. Submit acceptance letter. ...”***

The prosecution failed to lead evidence as to whether the contract was accepted or not; or whether the company submitted an acceptance letter or not, as required by the letter of award. The contract could therefore not be said to have crystallized without the evidence of acceptance by Out Bound Investment Limited. I so hold.

On this basis alone, I must hold that the prosecution has failed to establish the existence of a valid contract on which the allegation in Count (5) is based. As such, where the existence of the contract was not established as required by law, the issue of whatever vested

interest the 1st Defendant could have had in the contract would not have arisen in the circumstances.

I further adopt, in the alternative, the findings I had made in the foregoing with respect to Count (1) as to the failure of the prosecution to establish the interest of the 1st Defendant in Out Bound Investment Limited as at the material time when the said contract was awarded, in holding that the prosecution has failed to establish very critical ingredients of the offence in Count (5) of the Charge. Accordingly, I hereby enter a verdict of **“Not Guilty”** in favour of the 1st Defendant and he is accordingly discharged of Count (5) of the Charge.

Count (6) of the Charge states as follows:

That you, Mounir Haliru Gwarzo (M), on or about 28th December, 2016 in Abuja within the jurisdiction of this Honourable Court, while being a Public Officer used your position as the Director General of Securities and Exchange Commission (SEC) to gratify yourself when Outbound

Investment Limited, a company in which you were a shareholder and director was awarded a contract to supply and install 12 units Air Conditioners and 4 units Refrigerators at SEC Lagos Zonal Office for a contract sum of ₦2,490,400.00 (Two Million, Four Hundred and Ninety Thousand, Four Hundred Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

Just as I found with respect to Count (4), the prosecution led no evidence whatsoever with respect to the contract referred to in Count (6) of the Charge. There is therefore no case for the 1st Defendant to defend or answer with respect thereto. I accordingly enter a verdict of **“Not Guilty”** for the 1st Defendant with respect to Count (6) of the Charge and he is hereby discharged of that Count.

COUNTS (7) – (14) – 2ND DEFENDANT

The 2nd Defendant is charged solely with respect to Counts (7) to (14) of the Charge. Offences in Counts (7), (9), (11) and (13) were charged under s. 12 of the **ICPC Act**. I will deal with those counts at first.

Count (7) states as follows:

That you, Jamila Ahmad Muhammed (F), on or about 5th November, 2015 in Abuja within the jurisdiction of this Honourable Court, while being a Principal Manager, National Identity Management Commission (NIMC) knowingly and directly held a private interest as a Director and Shareholder of Outlook Communications Limited, a company which was awarded a contract to air a 60'' (Sixty Minutes) Awareness Campaign Radio Jingles on E-Dividend in the North-Eastern States (Taraba, Bauchi, Adamawa, Borno, Gombe and Yobe) of Nigeria for a contract sum of ₦798,360.00 (Seven Hundred and Ninety-Eight Thousand, Three Hundred and Sixty Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and

punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

Count (9) states as follows:

That you, Jamila Ahmad Muhammed (F), on or about 27th November, 2015 in Abuja within the jurisdiction of this Honourable Court, while being a Principal Manager, National Identity Management Commission (NIMC) knowingly and directly held a private interest as a Director and Shareholder of Outlook Communications Limited, a company which was awarded a contract to air a 60'' (Sixty Minutes) Awareness Campaign Radio Jingles on E-Dividend in the North-Central States (FCT, Kwara, Niger, Plateau, Kogi and Benue) of Nigeria for a contract sum of ₦1,388,160.00 (One Million, Three Hundred and Eighty-Eight Thousand, One Hundred and Sixty Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 12 of the

Corrupt Practices and Other Related Offences Act, 2000.

Count (11) states as follows:

That you, Jamila Ahmad Muhammed (F), on or about 23rd November, 2015 in Abuja within the jurisdiction of this Honourable Court, while being a Principal Manager, National Identity Management Commission (NIMC) knowingly and directly held a private interest as a Director and Shareholder of Outlook Communications Limited, a company which was awarded a contract to air a 60'' (Sixty Minutes) Awareness Campaign Radio Jingles on E-Dividend in Hausa and Pidgin languages for a contract sum of ₦1,080,000.00 (One Million, and Eighty Thousand Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

Count (13) states as follows:

That you, Jamila Ahmad Muhammed (F), on or about 26th November, 2015 in Abuja within the jurisdiction of this Honourable Court, while being a Principal Manager, National Identity Management Commission (NIMC) knowingly and directly held a private interest as a Director and Shareholder of Outlook Communications Limited, a company which was awarded a contract to air a 60'' (Sixty Minutes) Awareness Campaign Radio Jingles on E-Dividend in North-Western States (Kaduna, Kano, Katsina, Kebbi, Jigawa, Sokoto and Zamfara) of Nigeria for a contract sum of ₦1,105,560.00 (One Million and One Hundred and Five Thousand, Five Hundred and Sixty Naira only) by Securities and Exchange Commission (SEC) and you thereby committed an offence contrary to and punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

I had already set out in the foregoing (@ pages 9-11 and 18-19 hereof), the ingredients that must be present in order that an offence under the provision of **s. 12** of the **ICPC Act** could be said to have been established. The question therefore is whether the prosecution has sufficiently established these ingredients to necessitate the Court to call on the 2nd Defendant to offer explanations with respect to Counts (7), (9), (11) and (13) of the Charge.

To start with, I am satisfied, from the evidence on record, that the prosecution sufficiently established that the 2nd Defendant is a public officer, being in the employment of the **National Identity Management Commission (NIMC)**, a public institution. The 2nd Defendant stated this much in her extra – judicial statement, **Exhibit P14**. She claims to be a Principal Manager at NIMC, with Grade Level 14. **Exhibits P11, P11A** and **P11B** are also clear on that, despite learned counsel's objection to their admissibility.

In order to identify the contracts to which the offences for which the 2nd Defendant is charged relate, the **PW3** also tendered in evidence the contract award letters as **Exhibit P12A** (for Count (7)); **Exhibit P12C** (for Count (9)); **Exhibit P12** (for Count (11)); and **Exhibit P12B** (for Count (13)). The award letters were respectively issued by the SEC to the Managing Director of Outlook Communications Limited.

The **PW3** also tendered in evidence as **Exhibit P16** series, incorporation documents of Outlook Communications Limited, obtained from the Corporate Affairs Commission; which shows that the 2nd Defendant was a shareholder and Director in the company as at incorporation, on 19 July, 2013.

As I had noted with respect to the position of the 1st Defendant and Out Bound Investments Limited, the prosecution failed to state whether the position of the 2nd Defendant at Outlook Communications Limited as at

date of incorporation remained the same as at the date inquiries were made from the CAC. As I noted earlier on, the prosecution failed to tender the letter or letters with which the ICPC requested information from the CAC, in order to ascertain the extent of information required. These lapses create doubts in the case of the prosecution, of which the 2nd Defendant cannot be asked to offer explanation. I so hold.

The **PW1** also tendered in evidence as **Exhibit P1** series, account opening package of Outlook Communications Limited with **Jaiz Bank Plc**. The Mandate Form contained in **Exhibit P1C** clearly reveals that the 2nd Defendant is the sole signatory of the account of Outlook Communications Limited with the said **Jaiz Bank Plc**.

Now, let me return to the purported contracts in issue, **Exhibits P12, P12A – P12C** respectively. In order for the company, Outlook Communications Limited, to show

that she accepted each of the contracts, it is stated in each of the letters of award that the company shall submit an acceptance letter. However, in this case, the prosecution failed to tender any such acceptance letters to show that Outlook Communications Limited accepted any of the said contracts. This implies that the prosecution failed to establish that the contracts for which the 2nd Defendant stands trial were valid in law, an essential element of same having not been shown to have been present. I so hold.

Now, even if it is taken for granted that the company accepted the contracts, the prosecution is also under obligation to establish that the contracts were performed and paid for. Without these, it cannot be said that an essential element of the offence under the provision of **s. 12** of the **ICPC Act** has been committed. In other words, even if it is accepted that the 2nd Defendant is a public officer and that the contracts involved were awarded on account of public service;

and that the 2nd Defendant has vested interest in the company to which the contracts were purportedly awarded, the prosecution must establish that the contracts were executed and paid for in order to fully establish the 2nd Defendant's interest in the contracts, within the meaning of **s. 12** of the **ICPC Act**.

I reckon that being conscious of the requirement to prove that the contracts were executed and paid for, the prosecution stated in the proof of evidence that **Taiwo Olorunyomi**, who testified as **PW3**, shall give evidence of payment for the said contracts at trial.

Now, the **PW1** tendered the statement of account of Outlook Communications Limited with Jaiz Bank Plc as **Exhibit P1C**. The witness was led to make reference to the transaction of 2 February, 2016 as reflected in the said bank statement. The transaction revealed that on the said date, the account was credited with the sum of **~~N~~4,317,429.00**. The **PW3** also gave evidence on the

same point. He stated that the payment was made by the SEC to Outlook Communications Limited for the contracts awarded to her. But then the narration, as contained on the statement of account is not very clear as to who made the payment and for what. No evidence is offered to link the purported payment with the contracts contained in **Exhibit P12** series. While each of the contract was awarded for specific sums, the prosecution failed to show that each of the contracts were paid for through the bank account of the company.

It was not enough for the prosecution to show that SEC paid a certain amount of money to the company's account, a staff of SEC ought to have been called as a witness to explain the purpose for the payment of the sum of **₱4,317,429.00** as reflected in the account of the company; or to explain the correlation of the payment with the contracts in issue in the present case.

I do not suppose that it is the duty of the 2nd Defendant to offer such clarifications or explanations in her defence. The prosecution's evidence must reach the prima facie threshold before the Court would call on the defendant to offer explanations. But, as it turns out, such threshold is not reached in the circumstances here.

In the present case, the charges against the 2nd Defendant involved specific contracts. The contracts were said to have been awarded for specific sums of money. If it was not that important, it would not have been reflected in the charges. The prosecution has a bounden duty, in the circumstances, to prove that each of the contracts were executed and paid for; or that the company to which the contracts were awarded received payments for each of the contracts. The principle applied by the Court of Appeal in Dr. Olu Onagoruwa Vs. The State [1993] LPELR-43436(CA), seems to me to be applicable in the circumstances here even though the offence under consideration in that

case is different from the one in present case. In that case, **Tobi, JCA** (as he then was), held as follows:

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

If all the responsibility of the prosecution is simply to prove part of the money stolen in a single unbroken charge, as basis for conviction of an accused, I must say that the prosecution will have the best of two worlds if there are two worlds at all. In my humble view, the concept of criminal jurisprudence and criminality, in the context of apportionment of guilt, is stricter than the way learned counsel has put it. An offence committed is an exact human conduct and a'fortori, stealing a particular amount. Therefore, if

an accused is charged with stealing a particular amount or named amount, the prosecution must stand or fall by proving the particular amount or by failing to prove same, respectively. The legal position is as exact as that. A contrary position will not only be oppressive to the accused but will certainly run against the provision of Section 33(5) of the Constitution of the Federal Republic of Nigeria 1979 where the accused is presumed innocent until he is proved guilty. How can an accused be proved guilty if evidence is not led on the exact amount of money stolen in an indivisible charge such as the one the appellant faced? That will be tantamount to reversing justice and we, in this Court, cannot be a party to such reversion.”

The point to be made with respect to the instant case, from the application of this authority, is therefore that where the prosecution has charged the 2nd Defendant for having vested interested is specific contracts purportedly awarded for specific sums by SEC to

Outlook Communications Limited, a company in which it is shown that she had interest, the prosecution must prove that those specific contracts were executed and paid for. In the instant case, the prosecution merely proved that a certain payment was paid into the account of Outlook Communications Limited with Jaiz Bank Plc., but failed to connect or link the said payments to the contracts in issue. It is not the duty of the Court to supply the missing link on behalf of the prosecution. Neither is it the duty of the 2nd Defendant to assist the prosecution in shedding more light on evidence that must primarily come from the prosecution. I so hold.

In the circumstances, I must hold, that the prosecution failed to prove against the 2nd Defendant an essential element of the offences charged in Counts (7), (9), (11) and (13) of the Charge, in that it is not proved, firstly that the contracts mentioned in the charges were validly awarded to Outlook Communications Limited, a

company in which the 2nd Defendant had interest; or secondly that the 2nd Defendant had private interest, whether knowingly, directly or indirectly, in the said contracts that were purportedly awarded to the company. As a result, I must and I hereby enter a verdict of “**Not Guilty**” in favour of the 2nd Defendant with respect to Counts (7), (9), (11) and (13) of the Charge and she is hereby discharged of the offences in those counts.

The 2nd Defendant is charged with offences in Counts (8), (10), (12) and (14) under the provision of s. 19 of the **ICPC Act**. The offences relate to the same contracts already dealt with in Counts (7), (9), (11) and (13) of the Charge.

As I had stated earlier on, in order to establish an offence charged under s. 19 of the **ICPC Act**, the prosecution is required to prove two focal elements, namely:

1. That the accused defendant is a public officer
2. That the accused defendant used his/her position to gratify himself/herself.

See FRN Vs. Usman (*supra*); Okoh Vs. FRN (*supra*).

Having regard to the evidence I had already reviewed in the foregoing of which I need not repeat all over again, I reckon that all that the Court has to look at here, from the evidence on the record, is to see how the 2nd Defendant used her office or her position as public officer to gratify herself through the contracts awarded to a company in which it is established that she had interest. In other words, the critical evidence that the prosecution must establish is the connection between the 2nd Defendant's position, as a public officer, with the contracts awarded and how she derived gratification therefrom.

I have waded through the evidence of the **PW3** and **PW4** who investigated the allegations contained in the charge. It is established that the 2nd Defendant was never a staff of the SEC, the institution that awarded the contracts. No evidence was led to show that the 2nd Defendant wielded any power by virtue of her position as Principal Manager at NIMC, which power she used to influence the award of the said contracts to Outlook Communications Limited.

The prosecution having failed to show the link between the public office held by the 2nd Defendant and the award of the said contracts; or that it was on account of the public office held by the 2nd Defendant at NIMC that caused SEC to award contracts to Outlook Communications Limited, it cannot be said that element of gratification has been established.

As such, I must hold that the 2nd Defendant has no case to answer with respect to Counts (8), (10), (12) and

(14) of the Charge and I hereby enter a verdict of **“Not Guilty”** in her favour in respect of the Counts.

In the overall analysis my conclusion is that the four (4) prosecution witnesses have not adduced sufficient evidence to establish critical elements of the offences for which the Defendants were charged under the provisions of **Ss. 12 and 19** of the **ICPC Act**. Accordingly they are hereby discharged of all the Counts of the Charge.

OLUKAYODE A. ADENIYI

(Presiding Judge)

22/10/2021

Legal representation:

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Tairu Adebayo, Esq. (with **Aboje Ogbu, Esq.; Ossy Ehikioya, Esq. & Daphne Edughele (Miss)**) – *for the 1st Defendant*

Eyitayo Fatogun, Esq. (SAN designate) – (with S. I. Yusuf, Esq.; Olajide Olaleye-Kumuyi, Esq.; L. C. Chiemelu, Esq. & Chiamaka Nwaiwu (Miss)) – for the 2nd Defendant