IN THE FEDERAL HIGH COURT

IN THE IKEJA JUDICIAL DIVISION

HOLDEN AT IKEJA

SUIT NO ----------

BETWEEN

THE STATE----------PROSECUTION

AND

MR VINCENT MADUEKE ----------DEFENDANT

WRITTEN ADDRESS

1.0 BRIEF SUMMARY OF FACTS

My lord, before this court is a case on Official corruption. It is the case of the Prosecution that the defendant has committed the offence of official corruption corruption, by having for corrupt consideration, helped one Chief Maigoro in backdating some receipts for payment of subscription for the last four years, which he did not pay in fact, so as to avoid a revocation by the minister. The defendant however avers that his conduct does not amount to corruption as claimed by the Prosecution.

2.0 ISSUES FOR DETERMINATION

In establishing the averments of the defendant, the sole issue for determination is;

Whether or not the act of the defendant amounts to official corruption under the Criminal Code.

3.0 LEGAL ARGUMENT

Bribery and corruption are two related but different criminal offences. They both entail unlawful or improper behaviour that seeks to gain an advantage through an illegitimate means. They entail giving or receiving an unmerited reward (property or cash) to entice and influence one's behaviour. They however differ in material

respects, most significantly, on the point that 'Bribery' relates strictly to the party giving, while 'Corruption' relates to the one on the receiving end. Therefore, the defendant shall focus on the offence of corruption, being the relevant offence before this Court.

Sec 98 of the Criminal Code Act (CCA), gave an overview of when a public officer can be guilty for the offence of official corruption. It stated thus; ***any public officer who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person; or bribes*** is guilty of the offence of corruption.

In the case of **OKE V FRN (2017) 4NWLR (Pt 1556)473.** The court defined corruption pursuant to **sec 15 of the corrupt practices and other related offences act 2000** it states thus; *any person who being an officer charged with receipt, custody, use or management of any part of the public revenue or property, knowingly furnishes any false statement or return in respect of any money or property received by him or entrusted to his care or of any balance of money or property in his possession or under his control is guilty of the offence of corruption.*

In the case of **NWANKWOALA V FRN (2018)** LPELR-43891.The supreme court gave two elements that must be proved beyond reasonable doubt by the Prosecution to sustain a conviction on a charge for the offence of corruption.

3.1 ELEMENTS OF BRIBERY AND CORRUPTION

I. That the accused asked for the benefit of any kind for himself or for any other person in respect of something to be done afterwards or something already done

II. That he corruptly asked for the benefit in the course of the discharge of his official duties.

3.1.1 That he asked for the benefit of any kind for himself or for any other person in respect of something to be done afterwards or something already done

This simply entails that he asked for the favour in respect of what is demanded of him. The

prosecution must prove beyond reasonable doubt that the defendant asked for a favour directly before he could carry out that which he is asked. That it was the sole benefit of the defendant for his demand to be done before he could do that which he is required. That which is asked of the defendant must be unlawful or illegitimate. It must be the act of the offeror that propelled him to do what he seeks.

3.1.2 That he corruptly asked for the benefit in the course of discharge of his official duties

The plaintiff in order to succeed his claim on bribery and corruption must prove that the defendant asked for the benefit during his course of discharge to his official duties.There must have been a corrupt intent on the part of the accused when receiving the benefit.

3.2 Your lordship, a good reading of the facts before this honourable court shows that there is no offence committed by the defendant. On the first element, it could be vividly seen that the defendant did not in any way or form ask for any benefit before he could carry out his duty. As a matter of fact, he even reproved Chhief maigoro, on grounds that that which he sought was unethical and very unnecessary. There was no further discussion or statement made by the defendanton the matter. This is a cogent evidence of finality and it also clearly goes to establish the state of mind of the defendant. This will be considered anon.

Again your Lordship, from the facts, there cannot be distilled, by any stretch of logical inference, the slightest iota of indication either directly or indirectly, on the part of the defendant, that he corruptly sought any benefit in the course of discharge of his official duties. As a matter of fact, the Defendant NEVER mentioned the difficulty he had in off setting the son’s half scholarship fee. He only mentioned it, upon Chief Maigoro asking him. Now My Lord, I ask. If he had a corrupt intent, wouldn't he have brought up himself? Why would he wait for Maigoro to bring it up? Did he even know that Maigoro would bring it up? If Maigoro had left immediately after his proposal was turned down, would there have been any question of the Defendant's son? These are relevant questions that deserve to be answered in order to determine the guilt of the defendant.

Yet, assuming but not conceding that he actually asked for the benefit, whether directly or indirectly, the question is, did he ask with a corrupt intention? Or does it mean a public officer cannot ask an old friend for a favour, simply becaise he is a public officer? Or that any public officer who asks for any kind of benefit from any person is corrupt for all intents and purposes? Even on this shaky assumption, there is yet no inference that can be drawn from the facts as given, that shows any corrupt intention on the part of the defendant. The only way that may have been successfully acheived was if there was any fact that shows that the

defendant was the one who finally backdated the receipt. That would lead to a strong presumption in favour of the Prosecution's case, that at the time the defendant so asked for the benefit, he had the intention of backdating the receipts. Unfortunately, this fact was neither expressed nor implied in any way and the last muniment of evidence of fact that could be used against the defendant, was missed.

As a matter of fact My Lord, it was Maigoro who suo motu offered the scholarship sum to the Defendant. It can be reasonably inferred that he did so with a corrupt intent, which is obvious to this Court. And that may constitute the offence of BRIBERY if proved. But unfortunately, Maigoro is the not the person charged before this Court. So, the relevant question is not whether something was OFFERED corruptly, but whether that thing was at the same time RECEIVED corruptly. After considering the questions asked above, I humbly submit that the answer to this question is strongly in the negative. This may be a classic case of BRIBERY without corruption.

My Lord, you may now wonder the essence of the benefit promised to the defendant. It is submitted that it was a benevolent act on the part of Chief Maigoro, though it is admitted that he may have had a corrupt intent when offering same. However, this cannot be interpreted to mean that the Defendant in like manner, accepted same with any corrupt intention as there is no inference to that effect. After making it clear to Maigoro that he wouldn't so such a thing, who wouldn't accept a benevolent gift from an old friend, where it had been made obvious that nothing will be offered in return for the gift?

4.1 Your lordship, in the instant case before this honourable court. It is necessary to say that the actions of the defendant does not in anyway constitute an offence, for there is absence of Mens rea. No doubts, a promise of benefit was received which constitutes the 'actus reus', but that fact ipso facto is not enough to convict the Defendant. He must have received same with the corrupt intent to do and unlawful act. From the above, this guilty intent is lacking and this means there is no offence. Thus like we say, Actus non facit reum, nisi men sit rea.

It must also be noted that under Sec 98 of the Criminal Code as cited above, Sec (2) and (3) are most relevant. Sec (2) provides inter alia for a presumption that whenever any promise or benefit is received, it is presumed to be received corruptly until the contrary is proved. But upon a close look, it is clear that this presumption has already rebutted, when the answers to the questions posed are provided. That goes to show lack of corrupt intention, which is invariably a successful rebuttal. Besides, this case did not go to trial and so, the Defence did not an have appropriate medium to rebut by material evidence, the above presumption.

98(3) on the other hand provides that in any proceedings for an offence under the section, it is immaterial that the accused did not subsequently do the act in question, nor that he did not have the intention in the first place. Once again, it is submitted that this does not apply in this case. The first arm of it only applies when though the defendant did not subsequently do the act, he had the intention to do it at the time the benefit passed. But the defendant here never had any corrupt intention at any material time. That renders the first arm inapplicable. The second arm applies in a slightly different circumstance. This involves a situation where the defendant **though he had the intention to do the act, acted as if he did not have such intention**. This is the only correct interpretation of that can be given to this arm, for it will make a nonsense of the principles of Mens Rea, and Sec 24 of the same Code, to say that a person who did an act, without any intention to do so is criminally responsible for it. When this arm is given this correct interpretation as submitted, it becomes inapplicable to this case once more, for the defendant as already established above, had any such intention in the first place.

My Lord, one other point is worth considering. From the facts, it was stated that Chief Maigoro received a file FROM THE INSTITUTE (Not from the Defendant) containing receipt for subscription made in the last four years. Your Lordship, the facts did not disclose whether the said receipt came from the defendant, neither was there any indication that the defendant was the one issued the receipt. The Institute is a big organisation and has lots of workers. Couldn't it be that upon refusal of his request, Maigoro quickly approached another person in the institute and offered him some money, who then granted his request without hesitation. Couldn't it have been that other person and not Mr. Vincent, who forwarded the receipts? This is purely A REASONABLE DOUBT and it must be resolved in favour of the accused.

Finally My Lord, it must be pointed out by way of observation that this charge cannot stand in Law. The Criminal Code under which the defendant is charged does not apply in the circumstances. This is because Constitutionally, Criminal legislations are in the residual list and State Houses of Assembly reserve the right to make laws on that. Thus, whenever the National Assembly makes a law on such matter just like the Criminal Code under which the defendant is charged, it is deemed only to apply in the FCT Abuja. The only known exception to this rule as stated in **Emelogu V. State is** also irrelevant here. Thus, the proper law under which the defendant should have been charged is the Criminal Code Law of Lagos State, since the facts occurred in that state. Failure to do so by the Prosecution has affected the competence of the charge, and that goes to the Jurisdiction of the court to try this matter. The natural consequence if this case went to trial would be to strike out the charge and a

Defendant cannot be guilty under a charge which was struck out. That not withstanding, this remains a mere observation and should not be construed as an objection since the other party was not put on notice and I urge this court to treat the matter as if it was commenced properly and consider just the substantive issues raised and canvassed above.

5.0 CONCLUSION

We pray this honourable court to dismiss this case as it lacks merit. It is built on presumptions, without any inference to support them. it should be burnt to ashes at the stakes of justice and flung into the oceans of judicial oblivion.

Counsel also prays this court to award the full 100 marks to the defendant as required.

May it please this court

C J Eze Okafor Esq

Counsel for the defendant

Veritas Chambers

For Service On

The Prosecution

Justitia Chambers

IN THE STATE HIGH COURT OF LAGOS STATE

IN THE AWKA IKEJA DIVISION

HOLDEN AT IKEJA

SUIT NO ----------

MR VINCENT MADUEKE ----------PLAINTIFF

AND

NIGERIA POLICE FORCE (AWA DIVISION) ----------DEFENDANT

WRITTEN ADDRESS

1.0 BRIEF SUMMARY OF THE CASE

On the 2nd day of june 2020. He was arrested and after investigation by the police officers was sent to awa prison in ikeja. There was no criminal charge brought against him and the police officers have blatantly refused to charge him to court.

2.1 ISSUE FOR DETERMINATION

In establishing the claim of the Plaintiff, the sole issue for determination is;

Whether the act of the police officers has infringed the fundamental Right of the defendant to personal liberty.

3.0 LEGAL ARGUMENT

A fundamental right is a right guaranteed in the Nigerian constitution and it is a right which every person is entitled, when he is not subjected to disabilities enumerated in the constitution to enjoy by virtue of being a human being PER ADIO JSC in **ODOGU V ATTORNEY GENERAL OF THE FEDERATION (1996)6NWLR**

SEC 35(1) OF 1999 constitution of Nigeria as amended guarantees the right to personal liberty of all Nigerians and Sec **35(5)**of 1999 constitution of Nigeria as amended provides that an accused person who has been arrested of the allegation of having committed an offence must be charged to court within 24 hours where a court of competent jurisdiction located within a radius of 40 kilometres radius from the police station. The accused must be charged to court within 48 hours or such longer period as the court might consider reasonable.

The court of appeal in the case of **AKEEM V FRC(2016)LPELR-41120(CA) per TSAMMANI J.C.A** stated thus '*to my mind, the proviso to sec35(1) and sec35(4)have effectively guaranteed that through the personal liberty of a person may be taken away in certain circumstances such person should not be unreasonably incarcerated especially where his guilt has not been ascertained/proven. It would be seen therefore that the fundamental right to personal liberty is very sacrosanct and should not be unreasonably violated. In other words, the fundamental right to personal liberty is one that should be construed in favour of the citizen or persons accused.*

Furthermore, **sec 162 of the Administration of Criminal Justice Act(ACJA)2015** was promulgated in other to actualize the further give effect to the fundamental right to personal liberty. The above section stipulates that; A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court be released on bail except in any of the following circumstances;

a) Where there is a reasonable ground to believe that the defendant will, when released on bail will commit another offence
b) Attempts to evade his trial
c) Attempts to influence, interfere with, intimidate witnesses and or interefere in the investigation of the case
d) Attempt to conceal or destroy evidence
e) Prejudice the proper investigation of the offence or

f) Undermine or jeopardize the objective of the purpose or the functioning of the criminal justice administration, including the bail system.

4.0 It follows from the above reproduced statues and case laws that the personal liberty of the defendant has been infringed and that the police officers have no excuse to continue to hold him in detention while refusing to charge him to court. They might try to defend their action by posing the global health pandemic but that is a frivolous excuse. Your lordship, I will like to avert your attention to some cases which have been held and concluded during this pandemic like the famous **ORJI UZOR KALU's case**, **STATE OF LAGOS V OLALEKAN** and many others.

The defendant may put on a defence cloak following the circular which was sent out by the **CJN** dated 23rd march 2020 addressed to all heads of court both federal and state judiciaries suspending all court sittings effective from 24th march. I would like to avert the mind of this honourable court that the above stated rule was not bereft of exceptions. They were allowed to operate on urgent, essential, time bound and cases of fundamental human right with special emphasis on the liberty of persons. And this last one is essentially the case of the plaintiff.

The defendants case falls within the purview of fundamental rights but yet they turned a blind eye to that fact. The suspension was meant to last for two weeks. Your lordship, you will believe with me that it has exceeded two weeks and some courts have started virtual sitting on every matter no longer restricting themselves to the outlined exceptional cases. This line of thought is further strengthened by the fact that the Defendant is being detained in Awa Prisons in Lagos, whereas Lagos is one of the foremost states in the country to implement the innovative concept of virtual trials. Why then did the police not charge him?

It is no longer news that most state government are granting pardon to inmates so to practice the guidelines given by the NCDC to curtail the spread of the corona virus. Your lordship, you will likewise agree with me again that the defendant if left in cusody without intention of bail or pressing any charge is exposed to a greater of contracting the same Coronavirus the Police is using as an excuse, even when he has not been pronounced guilty. There is a saying that goes 'it is only the living that can face trial and not the dead'.

5.0 CONCLUSION

We hereby pray this honourable court the following prayers;

a) A declaration that the continual detention of the defendant is unconstitutional,

unlawful, null and void

b) An order releasing the defendant from detention pending the commencement of his trial

c) An order compelling the prosecution to put the defendant on immediate trial

d) An award of specific damages incurred by the defendant

May it please this court

C J Eze Okafor Esq

Counsel for the defendant

Veritas chamber

For Service On

The plaintiff

Justitia chamber

LIST OF PARTCIPANTS

OKEKE MIRACLE – 400L

OJIAKO LINDA –-400L

EZE OKAFOR JANE – 300L

OKONKWO AMARACHUKWU—300L

EZEKANNE F. PASCAL -200L

NWAEZE PRECIOUS--200L

SIMON HEZEKIAH CHIMUNDI- 100L

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