

SHUGABAUMARU GANA

V.

FEDERAL REPUBLIC OF NIGERIA

SUPREME COURT OF NIGERIA

SC.297/2013

IBRAHIM TANKO MUHAMMAD, J.S.C. {Presided)

OLUKAYODE ARIWOOLA, J.S.C.

KUMAI BAYANG AKA'AHS, J.S.C. (Read the Leading Judgment)

AMINA ADAMU AUGIE, J.S.C.

PAUL ADAMU GALINJE, J.S.C.

FRIDAY, 13TH APRIL 2018

CRIME - Offences - Furnishing false statement or return in respect of money or property entrusted to a public officer - Offence of- Punishment therefor.

CRIMINAL LAW AND PROCEDURE - Offences - Punishment for offences -Furnishing false statement or return in respect of any money or property by a public officer - Punishment therefor - Section 19, Corrupt Practices and other Related Offences Act, 2003.

CRIMINAL LAW AND PROCEDURE - Proof of crime - On whom lies - Whether there is onus on accused person to prove his innocence.

EVIDENCE - *Exclusion of oral evidence by documentary evidence*
- *Exception thereto.*

EVIDENCE - *Proof of crime - On whom lies - Whether there is*
onus on accused person to prove his innocence.

EVIDENCE - *Proof- Receipt - Production of receipt - Effect of.*

EVIDENCE - *Proof - Uncontradicted evidence - How treated.*

Issue:

Whether or not the prosecution proved its case against the appellant beyond reasonable doubt.

Facts:

The appellant was the Chairman of Monguno Local Government Area of Borno State. He was charged as a 1st accused with Alkali Imam, a Chief Accountant in the Borno State Ministry of Commerce & Industry, for using his office to confer corrupt advantage upon himself by withdrawing the sum of N 1,500,000.00 from the account of the Local Government on the 16th day of February 2005 under the pretext of paying same to the Borno State Board of Internal Revenue as Withholding Tax (WHT) which money he neither paid nor returned to the Local Government coffers.

According to the prosecution, in order to cover up, the appellant, in conspiracy with Alkali Imam (2nd accused) procured receipt No.B0537977 dated 16th February, 2005 for N1,500,000.00 (Exhibit SU3) as evidence of payment of Withholding Tax by Monguno Local Government to the Borno State Board of Internal Revenue, whereas the duplicate copy of the same receipt (Exhibit

SU4) showed that it was Leventis Motors that paid N 125.00 as Withholding tax to the Board of Internal Revenue and it was dated the 6th day of June 2005.

As a result of mounting pressure after the fraud was discovered, the appellant paid the said sum of N1,500,000.00 to the Bank Account of the Borno State Board of Internal Revenue at Zenith Bank on the 28th day of April 2006.

Despite the fact that the 2nd accused implicated the appellant in the non-remittance of the N 1,500,000.00 Withholding Tax, the appellant did not cross-examine the 2nd accused on his assertion that the sum was actually paid on the 28th day of April 2006 and not on the 16th day of February 2005, when exhibit SU3 was issued to him.

In its judgment delivered on the 29th day of September 2009, the trial court found that exhibit SU3 was not genuine evidence of the payment of the sum of N1,500,000.00 into the coffers of the Borno State Board of Internal Revenue as at the 16th day of February 2005 when same was issued. The court therefore found the two accused persons guilty and convicted and sentenced them accordingly.

Aggrieved, the appellant appealed to the Court of Appeal. The Court of Appeal upheld the judgment of the trial court and dismissed the appeal.

Still aggrieved, the appellant appealed to the Supreme Court.

Held (*Unanimously dismissing the appeal*):

1. *On Punishment where public officer furnishes false statement or return in respect of money or property received by or entrusted to him -*

By virtue of section 19 of the Corrupt Practices and other Related Offences Act, 2003, any person, being an officer charged with the 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 an offence, and on conviction is liable to seven (7) years imprisonment. (P. 308, paras. E-F).

2. *On Whether accused person has onus to prove his innocence –*

There is no duty placed on an accused to prove his innocence under any circumstance. [Adeyemi v. State (2013) 3 NWLR (Pt. 1340) 78 referred to.] (P. 302, paras. A-B)

3. *On Effect of production of receipt -*

When a person produces a receipt it is evidence of payment. [Etajata v. Ologho (2007) 16 NWLR (Pt. 1061) 554 referred to.] (P. 306, para. B)

4. *On Exception to exclusion of oral evidence by documentary evidence -*

By virtue of section 128(1) (a) of the Evidence Act, 2011, when a judgment of a court or any other judicial or official proceeding, contract or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be

given of such judgment or proceeding or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the Act; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence. Provided that any of the following matters may be proved, that is fraud, intimidation, illegality, want of due execution, the fact that it is wrongly dated, existence or want or failure, of consideration, mistake in fact or law; want of capacity in any contracting party, or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract, or any other matter which if proved would produce any effect upon the validity of any document, or of any part of it, or which would entitle any person to any judgment, decree, or order relating to it. (*P. 306, paras. D-G*)

Per AKA'AHS, J.S.C. at Page 308, paras. B-C:

"The lower court held that there was no contradiction in the findings of the learned trial Judge that while Exhibit SU3 was issued by a competent officer of the Borno State Board of Internal Revenue i.e. the Chief Inspector of Taxes (2nd accused) the same exhibit SU3 was not genuine evidence of the payment of the sum of N1,500,000.00 to the said Board. This finding cannot be faulted because of the evidence of PW5 and the admission by the 2nd accused that exhibit SU3 was not backed up by the payment of N1,500,000.00 into the account of the Borno

State Board of Internal Revenue at the time he issued the said exhibit SU3 to the appellant."

5. *On treatment of uncontradicted evidence –*

Where evidence is given by a party and is not contradicted by the other party who has the opportunity to do so, and such evidence proffered is not inherently incredible and does not offend any rational conclusion or state of physical things the court should accord credibility to it. [Okoebor v. Police Council (2003) 12 NWLR (Pt. 834) 444; Omoregbe v. Lawani (1980) 3 - 4 SC 108; Mainagge v. Gwamma (2004) 14 NWLR (Pt. 893) 323 referred to.] (P. 306, paras. B-C)

Nigerian Cases Referred to in the Judgment:

Adeyemi v. State (2013) 3 NWLR (Pt. 1340) 78

Etajata v. Ologbo (2007) 16 NWLR (Pt. 1061) 554

Okoebor v. Police Council (2003) 12 NWLR (Pt. 834) 444

Omoregbe v. Lawani (1980) 3 - 4 SC 108

Mainagge v. Gwamma (2004) 14 NWLR (Pt. 893) 323

Nigerian Statutes referred to in the judgment

Evidence Act, 2011, Ss. 128(1), 135(5)

Corrupt Practices and other related offences Act, 2000 Ss. 16. 19,26(1)(b)(c)

Corrupt Practices and other related offences Act, 2003, S. 19

Appeal:

This was an appeal against the decision of the Court of Appeal which dismissed the appeal of the appellant from the

judgment of the High Court which convicted and sentenced him for offences under the Corrupt Practices and other Related Offences Act, 2003. The Supreme Court, in a unanimous decision, dismissed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Ibrahim Tanko Muhammad,

J.S.C. (Presided); Olukayode Ariwoola. J.S.C; Kumai Bayang

Aka'ahs, J.S.C. (Read the Leading Judgment); Amina Adamu Augie, J.S.C; Paul Adamu Galinje, J.S.C.

Appeal No.: SC.297/2013

Date of Judgment: Friday, 13th April 2018

Names of Counsel: Yusuf Ali, SAN (*with him*, Alex Akoja,

A.O.

Usman, A.B. Eleburuiké and A.F. Kehinde) *-for the Appellant*

George Lawal - *for the Respondent*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Jos

Names of Justices that sat on the appeal: Oyebisi Folayemi Omoleye, J.C.A. (Presided); Jummui Hannatu Sankey, J.C.A. (Read the Leading Judgment) Massoud Abdulrahman Oredola. J.C.A.

Appeal No.: CA/J/64C/2011

Date of Judgment: Monday, 17th December 2012

Names of Counsel: P.A. Bello - for the Appellant

Malam W. Peter Arings, Principal Legal Officer - for the Respondent

High Court:

Name of the High Court: High Court of Bornu State, Maiduguri

Name of the Judge: Ngada, J.

Charge No.: M/27C/07

Date of Judgment: Tuesday, 29th September 2009

Counsel:

Yusuf Ali, SAN (with him, Alex Akoja, A.O. Usman, A.B. Eleburuike and A.F. Kehinde) - for the Appellant

George Lawal - for the Respondent

AKA'AHS, J.S.C.(Delivering the Leading Judgment): The appellant who was the Chairman of Monguno Local Government Area of Borno State was charged along with Alkali Imam, a Chief Accountant in the Borno State Ministry of Finance for using his office to confer corrupt advantage upon himself by withdrawing the sum of N 1,500,000.00 from the account of the local government under the pretext of paying same to the Borno State Board of Internal Revenue as Withholding Tax (WHT) which money he neither paid nor returned to the local government coffers and thereby committed an offence which is punishable under section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

The amended 5 count charge read as follows:-

Count One

That you Shugaba Umar Gana (m) being a public officer on or about the 16th February, 2005 at Monguno in Borno State did use your office as Chairman Monguno Local Government Council to confer corrupt advantage upon yourself by withdrawing from the Local Government Account vide voucher No. 32 dated 16/2/2005 of the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) under the pretext of paying same to the Borno State Board of Internal Revenue as Withholding Tax (WHT) which money you neither paid nor returned to the Local Government coffers and you thereby committed an offence contrary to and punishable under section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

Count Two

That you Shugaba Umar Gana (m) and Alkali Imam (m) being public officers on or about the 16th February, 2005 at Maiduguri in Borno State did engage in criminal conspiracy to use your office to confer corrupt advantage upon Shugaba Umar Gana by agreeing to issue with a receipt the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) payable by the Monguno Local Government Council Borno State to the Borno State Board of Internal Revenue as Withholding Tax (WHT) which money you neither paid to the said Board of Internal Revenue nor returned to the coffers of the Local Government Council and you thereby committed an offence contrary to section 26(1)(c) and punishable under section 19 of

Corrupt Practices and other Related Offences Act, 2000.

Count Three

That you Alkali Imam (m) on 16th February, 2005 being a public officer charged with custody of receipts at Borno State Board of Internal Revenue did knowingly furnish a statement, by issuing to Shugaba Umar Gana (m) a receipt No. BO 537977 dated 16th February, 2005 for the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) only as receipt for the payment of Withholding Tax (WHT) to Borno State Board of Internal Revenue by the Chairman Monguno Local Government when no such payment was made and you thereby committed an offence contrary and punishable under section 16 of the Corrupt Practices and Other Related Offence Act, 2000.

Count Four

That you Shugaba Umar Gana (m) being a public officer to wit: the Chairman Monguno Local Government Council of Borne. State on 16th February, 2005 at Monguno, being a public officer charged with the management of funds for running of Monguno Local Government Council of Borno State, knowingly furnished return by retiring with a receipt No. Bo 557977 dated 16th February, 2005 for the sum of N 1,500,000.00 (One Million, Five Hundred Thousand Naira) the sum purportedly paid as withholding tax (WHT) to Borno State Director Board of Internal Revenue when no such payment was made and you thereby committed an offence

contrary to and punishable under section 16 of the Corrupt Practices and Other Related offences Act, 2000.

Count Five

That you Alkali Imam (m) on 16th February, 2005 being a public officer at Maiduguri in Borno State in furtherance of the commission of the offence to confer corrupt advantage upon Shugaba Umar Gana issued a receipt no. 537977 dated 16th February 2005 for the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) the sum purportedly paid as withholding Tax (WHT) to Borno State Board of Internal Revenue by the Chairman Monguno Local Government Council when no such payment was made and you thereby committed an offence contrary to section 26(1)(b) and punishable under section 19 of the Corrupt Practices and Other Related Offences Act, 2000

In order to prove the charge the prosecution called six witnesses who testified and tendered several exhibits. The 1st accused testified as DW1 but called no other witness while the 2nd accused testified as DW2 and called one witness who testified as DW3.

Learned counsel appearing for the parties addressed the court, in a reserved judgment delivered on 29 September, 2009, the learned trial Judge found the two accused persons guilty and convicted the 1st accused on counts 1, 2 and 4 while the 2nd accused was convicted on counts 2, 3, 4 and 5. The 1st convict was sentenced to 5 years each on counts 1 and 2 and 7 years on count 4 while the 2nd convict got 5 years on count 2 and 7 years each on

counts 3 and 4. The sentences imposed on the convicts were to run concurrently.

The 1st convict was aggrieved by the conviction and appealed against it to the Court of Appeal in Jos. The appeal was dismissed on 17 December, 2012; C hence the further appeal to this court. The notice of appeal dated 10 January, 2013 contained five grounds of appeal from which Yusuf Ali SAN distilled three issues for determination after abandoning grounds I and 2 of the notice of appeal. The issues he distilled are:-

1. Whether the court below was right in misconceiving and misplacing the real issues in this matter and in shifting the onus of proof on the appellant, contrary to the position of the law.
2. Whether the court below was not wrong in agreeing with the trial court that there was compelling, cogent and positive circumstantial evidence which irresistibly pointed to the guilt of the appellant.
3. Whether the court below was right in relying on the contradictory and inconsistent findings it made to affirm the conviction of the p appellant, moreover, when the prosecution did not prove its case beyond reasonable doubt as enjoined by law.

The respondent's brief was settled by Paul Ahmed Bassi, Chief Legal Officer, Independent Corrupt Practices Commission (ICPC) and he raised two issues for determination namely:-

1. Whether or not the lower court wrongly shifted the burden of j-proof to the appellant (gleaned from ground 3)
2. Whether or not the prosecution proved its case against the appellant beyond reasonable doubt (gleaned from grounds 4 and 5 of the notice of appeal).

The main issue in this appeal is whether the prosecution proved its case against the appellant beyond reasonable doubt. In the first count the appellant is alleged to have used his office as Chairman of Monguno Local Government Council to confer corrupt advantage upon himself by withdrawing N1,500,000.00 (One Million, Five Hundred Thousand Naira) from the account of the Monguno Local Government Council under the pretext of paying the money to the Borno State Board of Internal Revenue as Withholding Tax but did not pay the money neither did he return it to the Local Government coffers and he thereby committed an offence contrary to section 19 of the Corrupt Practices and Other Related Offences Act, 2000 while the second count alleged that he conspired with Alkali Imam to confer corrupt advantage on himself by agreeing to issue a receipt for the sum of N1,500,000.00 payable by the Monguno Local Government Council Borno State to the Borno State Board of Internal Revenue as Withholding Tax which was not paid to the said Board nor returned to the coffers of the Local Government.

Learned senior counsel for the appellant argued that there is nowhere in the three count charge where it was alleged that the appellant collected the same sum of N1,500,000.00 or any other sum from the 2nd accused which money he paid back at the premises of Zenith Bank Plc on the 28th day of April, 2006 and there is nowhere it was alleged by the prosecution that the sum of N 1,500,000.00 paid by the appellant to the 2nd accused was the same money the appellant collected from him the same day and paid to him at the premises of Zenith Bank Plc. He said that none of the six witnesses testified against the appellant to the effect that the appellant collected the sum of N 1,500,000.00 from the 2nd accused which he later paid back at the premises of the said bank.

It is learned counsel's contention that the defence put forward by the appellant was that he directed the secretary and the treasurer of the Local Government to pay the said sum of N1,500,000.00 to the Board, but they could not effect the payment as he instructed because the members of the Board had-left the Local Government. The treasurer carried the money to Maiduguri and handed it over to the appellant. The appellant then contacted the 2nd accused to know his whereabouts. Upon discovering that the 2nd accused was in the office, the appellant went and met him and was there he paid the money to the 2nd accused who then issued exhibit SU3 to him after collecting the money on behalf of the Board. Learned counsel then submitted that to establish his defence, all that the appellant needed was to identify exhibit SU3 and elicit evidence from those who were there in the office when the money was paid to the 2nd accused and the evidence of DW2 and DW3 was relevant for this purpose. He said the appellant was consistent throughout that the money he collected on loan was totally different from the one he paid to the 2nd accused as withholding tax and that it was this same money he paid to the 2nd accused person at the premises of Zenith Bank Plc. Since the evidence was not contradicted learned counsel argued, the Justices of the Court of Appeal tell into error to place the burden of proof on the appellant.

Learned counsel then went on to submit that the evidence of the 2nd accused in open court cannot be used against the appellant and the court owes a duty to treat the case and the defences of each of the accused persons separately and the court cannot use the evidence of the 2nd accused person for the purpose of destroying the case of the appellant and what the lower court did was to place the burden of proving his innocence on the appellant. He went on to argue that even though this court is loathe to interfere with concurrent findings of the trial court and the court

below, where such concurrent findings are perverse or amount to a misstatement of the relevant law and rules, or the trial court did not take good advantage of its having seen and heard the witnesses or the court placed no value on relevant facts and law or vice-versa, this court will duly interfere.

Learned counsel for the respondent contended that what the prosecution set out to establish before the trial court was that the sum of N1.5m was not paid into the accounts of the Borno State Board of Internal Revenue. The prosecution also established that exhibit SU3 was a false document as no payment was made as at the date it was issued and the issuance of exhibit SU3 was designed to cover up the failure of the appellant to pay the sum of N1.5m due to the Borno State Board of Internal Revenue despite collecting same from the coffers of the Monguno Local Government Area thereby conferring corrupt advantage upon A the appellant.

Learned counsel agreed with the submission of appellant's counsel that the burden of proof of the alleged offences against an accused person rests squarely with the prosecution and this burden never shifts. There is no duty placed on an accused to prove his innocence under any circumstance see: *Adeyemi v. State* (2012) All FWLR (Pt. 606) 492 per Bage JCA (2013) 3 NWLR (Ft. B 1340) 78 (as he then was) at 505. He said that what the prosecution needed to do (which it did) was to establish the ingredients of the offence alleged against the appellant. It is only when the trial court had considered and found that the prosecution had proved the offences charged through cogent and credible evidence beyond reasonable doubt or at least *prima facie* that the burden will shift unto the appellant as an accused person to prove the existence of reasonable C doubt as provided in section 135(5) Evidence Act, 2011. There can therefore, be no duty or burden on an accused

person to prove the existence of any reasonable doubt when the prosecution had not proved the offence beyond reasonable doubt.

I agree with the submission made by learned counsel for the respondent that the two lower courts never imposed a duty on the appellant to prove his innocence but rather the appellant on his own election chose to put forward a defence of a positive nature. The question to ask is:-

Did the prosecution establish the ingredients of the offence alleged against the appellant? According to PW1, when the EFCC forwarded the petition written by Monguno Youth Consultative Forum accusing the appellant of misappropriating N300m, his team was assigned to investigate the allegation. In the course of the investigation they discovered a payment voucher of N 1.5m, which was raised in g favour of the Director of the Borno State Board of Internal Revenue. The voucher was retrieved and a further investigation revealed that the receipt on which the 1st accused (appellant) retired the amount from the Board of Internal Revenue and payment voucher raised in favour of the Director of the Board were bearing the same date and this made his team of investigators to become suspicious. They found that the money amounting to N1.5m was paid to the chairman and it represented 5% withholding tax. The voucher is exhibit SU2 while the receipt of payment is exhibit SU3. Since the receipt and payment voucher bore the same date, the team wrote a letter to the Chairman, Board of Internal Revenue to verify the receipt. It was then discovered that the duplicate copy of the original receipt was not bearing the name of Monguno Local Government, but rather Leventis Motors and the amount, which was allegedly paid was N125.00. Sequel to that finding the Board wrote to the 2nd accused to refund the sum of N 1.5m. The investigation that was further carried out showed that the amount was paid into the account of the Board of Internal

Revenue by the 1st accused in April, 2006. The 1st accused had procured the receipt from the 2nd accused. The duplicate receipt is exhibit SU4. The team wrote again to the chairman of the Board of Internal Revenue pointing out that the original receipt and the duplicate (Exhibits SU3 and SU4) are bearing different names of payee. The 2nd accused was then invited to the ICPC office in Abuja where he made his statement, which was tendered in evidence as exhibit SU5.

In the oral evidence he gave in court as DW2, the 2nd accused said:

Wakil Haruna who testified as PW5 stated that on 16/2/2005 he was in the office when the 2nd accused who was his superior officer went to him and asked him to give him one booklet of receipts for collection and explained to him that he had one collection from Monguno and he wanted the receipt. He gave the booklet to 2nd accused who later returned the booklet with one sheet of the receipt missing. He (PW5) asked him about the missing receipt and he said he would explain later but he didn't. A month later he asked him again about the missing receipt and it was then the 2nd accused told him to write anything on the duplicate and he wrote N 125.00 in favour of Leventis Motors. He identified exhibit SU4 which is the duplicate copy of exhibit SU3. When the management discovered that the original receipt was missing, he was queried. After he replied to the query it was then the original receipt re-surfaced and through the number on it, he realized it was the original receipt of the duplicate, which was missing and it carried N1.5 million naira.

PW3 and PW4 were the cashier and treasurer respectively of Monguno Local Government Council at the time the appellant was chairman of the Local Government. In his evidence PW4 stated that on 16/2/2005 he received instructions from the

Chairman and Secretary of Monguno Local Government to withdraw the sum of N1.5 million to be paid to the Board of Internal Revenue as withholding tax. PW3 on the instructions of PW4 withdrew the amount from Union Bank Baga and gave it to the treasurer who in turn handed over the money to the appellant. After collecting the money the appellant then purportedly paid same to the Board of Internal Revenue and was issued with exhibit SU3. The voucher for the money was Exhibit SU2 which PW4 retired after he had collected exhibit SU3 from the appellant.

PW2, Yunus Baba Maiwuye was the Branch Manager of Zenith Bank Plc. Maiduguri when a deposit of N1.5million Naira was made on 28/4/2006 in favour of Borno State Board of Internal Revenue as withholding tax. The deposit slip of the amount carrying the name of the appellant as the depositor was admitted as exhibit SU7.

The appellant made an extra-judicial statement in which he explained that voucher No. 32 dated 16/2/2005 with the amount of N1.5 million payable was withdrawn by the cashier and given to him which he paid to the said Board of Internal Revenue thereby reducing the debt the Local Government was owing to N400,000.00 withholding tax since the total debt was N1.9 million.

In his oral evidence in court he confirmed paying the N1.5 million to the 2nd accused who issued him with exhibit SU3 which he took to the Treasurer. He said that at the time the 2nd accused gave him exhibit SU3, he had no reason to suspect him. He said he did not discuss with the 2nd accused not to pay the money into the coffers of the State Government and he had no reason to believe that the money was not paid into the coffers of the Local Government. He did not know that the receipt given to him was not genuine. He denied paying any money into Zenith Bank in respect of this case and the writing in exhibit SU7 was not his

handwriting.

On being cross-examined, the appellant said he made the payment to him (2nd accused) in the office of the Board of Internal Revenue. He went further to say:

"I borrowed it to transport my stakeholder from Monguno to Maiduguri. I did not pay the money to him to pay to Zenith Bank i.e. the money borrowed the sum of N1.5 million Naira when the ICPC came upon me. The treasurer, the secretary and myself we were there at the Zenith when our gratuity was being paid. When I collected the money I phone the Treasurer and I gave him the sum of fine million and N50,000 in the presence of the cashier i.e the money borrowed. The money I paid to him is not the same money and is not the same denomination. The 2nd accused was invited by the ICPC. He asked me to give him the money he lent to me. I told him I will pay him the money".

The explanation given by the appellant is incoherent. From the evidence given by the prosecution and the defence, it is clear that the N1,500,000.00 withholding tax for which PW3 and PW4 raised payment voucher of 16/2/2005 tendered as exhibit SU2 and withdrew the money which they handed over to the C appellant was not paid to the Board of internal Revenue immediately as claimed by the appellant. Despite the non remittance the 2nd accused still went ahead to issue exhibit SU3 on the same 11/2/2005 to the appellant. It was not until 28/4/2006 that the said N1,500,000.00 was lodged into the account of the Board of Internal Revenue with Zenith Bank Pic as reflected in exhibits SU6 and SU7. This followed on the sustained pressure mounted by the

ICPC on the Chairman, Board of Internal Revenue, Borno State in its letter of 7 April. 2005 (admitted in evidence as exhibit SU12) and the latter's letter to the 2nd accused of 21st April, 2006 (admitted as exhibit SU13).

Exhibit SU12 reads:-

Independent Corrupt Practices and Other Related Offences
Commission Plot

802. Zone A 9, Constitution Avenue Central Area Abuja - Nigeria.

Our Ref: ICPC/INV/GBP/DC/470

7th April.2006

The Chairman

Board of internal Revenue

Borno State

Maiduguri.

Investigation Activities

Invitation For Interview And Request For Documents

The Commission is investigating a case of violation of the Corrupt Practices and Other Related Offences Act 2000 against some public officers of Monguno Local Government Area of Borno State.

2. Pursuant to section 28 of the Act, 2000, you are requested to inform and release Mr. Alkali Imam to appear before the undersigned on Wednesday 19th April, 2006 at 10.00 hours with the duplicate copy of the receipt No. B0537977 dated 16/2/2005 of N1,500,000.00 collected from Monguno Local Government as part payment of 5% WHT (copy attached) should be brought for inspection and scrutiny.

I wall appreciate a quick consideration and response to this request. Accept the assurances of the Chairman's highest regards please.

Signed:

DCP Hashimu S. A.

HOD (Investigation)

For: Hon Chairman

ICPC, Abuja."

On receipt of exhibit SUM, the Chairman Board of Internal Revenue wrote exhibit SU13 to Alkali Imam, 2nd accused on 21st April, 2006 and it reads:-

RF: No: BIR/CON/432/41 21st April, 2006

Alkali Imam

Chief Accountant

Ministry of Commence & Industry

Musa Usman Secretariat

Maiduguri, Borno State.

Investigation on 5% Withholding Tax Amounting to the tune of N1,500,000.00 Collected from Monguno Local Government Council

Sequel to a letter emanating from ICPC Abuja with Ref: No. ICPC/INV/GBP/ DC/470 dated 7th April, 2006, on the above subject matter, which prompted Management to screen available records on remittance of withholding tax and it was discovered that the above quoted amount on receipt No. 537977 of 16th February, 2005 had never been credited into government account.

2. Furthermore it is a fact that the duplicate copy of the same receipt No. 537977 was issued out with the amount of N125 on 14th April, 2007 to Leventis Motors. Unfortunately however

neither of the two amounts quoted in the same receipts was reflected in the remittance list.

Consequent upon this obvious anomaly, I am directed to inform you that Management in its meeting held on 18th April, 2006 resolved that you should refund the sum of N1,500,000.00 within one week upon your receipt of this letter p unfailingly.

Any failure on your part to comply will compel management to report you to appropriate quarters to enforce compliance accordingly.

Signed:

A.Abubakar

DA

For: Chairman/ Chief Executive

Board of Int. Revenue

Acknowledgement

I, Alkali Imam hereby acknowledge receipt of this letter today 20th April, 2006 Signed:

Alkali Imam Kolo

CHIEF ACCT."

When the 2nd accused appeared before the ICPC, he wrote a statement which was admitted in evidence as exhibit SU5. In the said statement he said he issued the receipt to the Chairman of Monguno Local Government based on trust believing that he would pay the money within one to two months but unfortunately he did not. It was not until he (appellant) was invited by the ICPC over the money that he took it to him and he paid it into the account of the Board A of Internal Revenue on 28 April, 2006,

Despite the fact that the 2nd accused implicated the appellant in the non-remittance of the N1.5 million withholding tax which he collected from PW3 and PW4, the appellant did not cross-examine the 2nd accused on his assertion that it was paid on

28 April, 2006 and not on 16 February, 2005 when exhibit SU3 was issued to him. Generally when a person produces a receipt it is evidence of B payment see: *Etajata v. Ologbo* (2007) 16 NWLR (Pt. 1061) 554. (t is however settled law that where evidence is given by a party and is not contradicted by the other parts who has the opportunity to do so, and such evidence proffered is not inherently incredible and does not offend any rational conclusion or state of physical things the court should accord credibility to such evidence. See: *Okoehor v. police Council* (2003) 12 NWLR (Pt. 834) 444; *Omoghe v. Lawani* (1980) 3 - 4 SC 108 at 117 and *Mainagge v Gwamrna* (2004) 7 SC (Pt. 11) 76 at 92; (2004) 14 NWLR (Pt. 893) 323.

The presumption as to the regularity of any official act i.e. the issuance of exhibit SU3 by the 2nd accused to the appellant as evidence that he remitted the N1,500,000.00 withholding tax to the Board of Internal Revenue of Borno State is therefore rebuttable as section 128(1) of the Evidence Act 2011 (as amended) provides the general exception of exclusion of oral evidence by documentary evidence on grounds of fraud. The section states:-

"128(1) When a judgment of a court or any other judicial or official proceeding, contract or any grant or other disposition of property-has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceeding or of h the terms of such contract, gram or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under this Act; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence.

Provided that any of the following matters may be proved-

- (a) fraud, intimidation, illegality, want of the execution, the fact that it is wrongly dated, existence or want or failure, of consideration, mistake in fact or law; want of capacity in any contracting party, or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract, or any other matter which if proved would produce any effect upon the validity of any document, or of any part of it, or which would entitle any person to any judgment, decree, or order relating to it".

When PW1 testified, he tendered several exhibits including exhibit SU5 where the 2nd accused explained how he issued exhibit SU3 to the appellant before the N1.5million withholding tax was remitted trusting that the money-would be remitted within one or two months but this did not happen until after one year when the bubble had burst.

The learned trial Judge having analyzed the evidence regarding the issuance of exhibit SU3 and whether the N1.5 million was remitted at the time exhibit SU3 was issued said at pages 126-127 of the records:-

"When exhibits SU3 and SU4 are compared, they both bear the same serial number B0.537977. SU3 was issued on 16/2/2005 whereas SU4 was issued on 6/6/2005, the dates and the amount on the two receipts are different. I however believe that exhibit SU4 is duplicate of exhibit SU3 not only by the statement of PW5 but even the serial numbers on

the two exhibits. This creates doubts in the mind of the court as to whether the sum of N1,500,000.00 was paid on 16/2/2005 or not. Exhibits SU6 and SU7 stated that the said amount was paid on 28/4/2006 into the account of the Board at Zenith Bank and was confirmed by PW2. The 1st accused denied making the said payment in his statement before the court... He maintained that he made the payment on 16/2/2005 and was issued exhibit SU3. The money was paid in cash. He admitted under cross-examination that he borrowed money from the 2nd accused on the date he made the payment to the Board. That the money borrowed was N1,050,000.00 and that it was not the same money meant for withholding tax. This money was paid in the presence of the treasurer and cashier because the 2nd accused had been asking him to pay the money he lent him the said sum has no connection with holding tax. Neither the cashier nor the treasurer told the court in their evidence the Chairman borrowed money from 2nd accused and that same was brought to him on 28/4/2006. 2nd accused in his evidence admitted that exhibit SU4 is duplicate of exhibit SU3 and the signature on same is his. This corroborates with his confessional statement in exhibit SU5 that he gave the receipt to the 1st accused purely on trust that he would pay the money as promised. It means he only issued receipt not backed with money. This amount was not paid until when he was invited by the ICPC that he had to ask the 1st accused for same".

He went on to conclude at pages 128 - 130 thus:-

"In view of the foregoing, I hold that the sum of N1,500,000.00 was not paid by Chairman of the Monguno Local Government Council to the Board of Internal Revenue on 16/2/2005. Since the sum involved was not paid on 16/2/2005, it is evident that this was the money the 2nd accused lent to the 1st accused. See exhibit SU13 a letter from the Chairman of the Board of Internal Revenue to the 2nd accused to the effect that the amount quoted on receipt No. 537977 dated 16/2/2005 was never credited into Government Account. The 2nd accused was asked to refund the said sum. Exhibit SU3 was written on 21st April 2006 as a result of exhibit SU12 which emanated from the ICPC office doted 7/4/2006. 1st accused in exhibit SU11 stated that he paid the 1st accused (sic 2^d accused) the sum of N1,050,000.00 at the Zenith Bank in the presence of the Local Government Treasurer and Cashier of the Local government, if there is any iota of truth in this statement, he ought to have called the treasurer or cashier to give evidence to that effect, this he did not do because their evidence would not be favourable to him".

The lower court held that there was no contradiction in the findings of the learned trial Judge that while exhibit SU3 was issued by a competent officer of the Borno State Board of Internal Revenue i.e. the Chief Inspector of taxes (2nd accused) the same exhibit SU3 was not genuine evidence of the payment of the sum of N1,500,000.00 to the said Board.

This finding cannot be faulted because of the evidence of PW5 and the admission by the 2nd accused that exhibit SU3 was not backed up by the payment of N1,500,000.00 into the account of the Borno State Board of Internal Revenue at the time he issued the said exhibit SU3 to the appellant.

Have the elements of the offences charged against the appellant been proved? The 1M count is that the appellant used his office as Chairman, Monguno Local Government Council to confer corrupt advantage upon himself by withdrawing D from the Local Government account through voucher No. 32 dated 16/2/2005 the sum of N1,500,000.00 under the pretext of paying same to the Borno State Board of Internal Revenue as withholding tax which money was neither paid nor returned to the Local Government coffers and thereby committed an offence which is contrary to and punishable under section 19 of the Corrupt Practices and other Related Offences Act, 2003. Section 19 of the Corrupt Practices and other p; Related Offences Act stipulates:-

"19. Any person who being an officer charged with the 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 an offence, and on conviction be liable to seven (7) years imprisonment.

As Chairman of Monguno Local Government the appellant was charged with the management of the revenue of the Local Government. In his evidence, the appellant admitted that as Chairman of Monguno Local Government he is the Chief Executive and in that capacity gives directives for all payments in

the ^ Local Government even though the Treasurer is the actual person that pays out the money. He was therefore the custodian of all revenues accruing to the Local Government including its management. When the 2nd accused issued exhibit SU3 to him he was fully aware that the N1,500,000.00 withholding tax had not been remitted to the Board of Internal Revenue but converted it to his own use. Instead of preparing a cheque to accompany the payment voucher raised in favour of the Director Board of Internal Revenue, PW3 and pW4 withdrew the cash and handed same over to the appellant. The money was therefore entrusted to his care, which he failed to remit to the Board of Internal Revenue. The prosecution therefore proved the elements of the offence under section 19 of the Corrupt Practices and Other Related Offences Act, 2000 despite the fact that the money was later paid into the account of the Board of Internal Revenue with Zenith Bank.

The learned trial Judge reasoned in his judgment that since the money was not paid (o the Board on 16/2/2005, it is evident that this was the money the 2nd accused lent to the appellant since the amount quoted on receipt No. 537977 dated 16/2/2005 was never credited into the account of the Board of Internal Revenue nor returned to the Treasurer of Monguno Local Government to enable the cashier to retire same; rather the appellant in furtherance of the deception gave exhibit SU3 to the Treasurer of the Local Government.

The conspiracy between the appellant and the 2nd accused is evident in the issuance of exhibit SU13 when he knew that the N1,500,000.00 was not paid into the account of the board. By lending the cash to the appellant and at the same time issuing exhibit SU3 to the appellant, it is clear that they conspired to deceive the whole world about the payment of the withholding tax, but for the petition written to the Chairman EFCC by the Monguno

Consultative Youth Forum against the appellant which triggered off the investigation that led to the discovery that the withholding tax was not remitted to the Board of Internal revenue, Borno State.

Once the elements of the offence in count I have been proved by the prosecution, they apply to count 4. The prosecution successfully proved the offence against the appellant and the lower court was right to confirm the conviction and sentence.

Learned senior counsel for the appellant was wrong in submitting that the burden of proving his innocence was shifted to the appellant. There was no doubt in the mind of the learned trial Judge regarding when the N1,500,000.00 was paid into the account of the board. The payment was made on 28/4/2006 and not on 16/2/2005. The issuance of exhibit SU3 to the appellant on 16/2/2005 was a deception since it was not reflected in exhibit SU4 (the duplicate copy of exhibit SU3).

The prosecution proved its case against the appellant beyond all reasonable-doubt. The appeal therefore lacks merit and it is accordingly dismissed. The judgment of the Court of Appeal, Jos in appeal No CA/J/64C/2011 delivered on 17 December, 2012 which affirmed the judgment of the Borno State High Court on 29 September, 2009 is further affirmed by this court.

Appeal is accordingly dismissed.

I. T. MUHAMMAD, J.S.C.: I have had the advantage of reading the judgment just delivered by my learned brother Aka'ahs. JSC. I agree with my Lord's conclusion that the appeal be dismissed. I, too, dismiss the appeal.

ARIWOOLA, J.S.C.: I had the privilege of reading in draft the lead judgment of my learned brother Aka'ahs, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal is

devoid of any merit and should be dismissed. I have nothing more to add. I too will dismiss the appeal as I have nothing more to add. Appeal dismissed.

AUGIE, J.S.C.: I read in draft the lead judgment delivered by my learned A brother, Aka'ahs, JSC, and I agree with him that the appeal lacks merit and should be dismissed.

GALINJE, J.S.C.: I have had the privilege of reading in draft, the judgment just delivered by my Learned brother Aka'ahs, JSC and I agree with the reasoning B contained therein and the conclusion arrived thereat. The facts of this case are well articulated in the lead judgment. They clearly speak for themselves. Evidence before the trial court shows clearly that the N1.5m collected by the appellant from Monguno Local Government Council as withholding Tax was never paid to the Borno State Board of Internal Revenue. To cover up the offence of conferring corrupt advantage on the appellant, the appellant in conspiracy C with one Alkali Imam procured receipt No.B0537977 dated 16th February, 2005 for N1,500,000.00 as evidence of payment of the withholding tax to the Borno State Board of Internal Revenue, whereas the duplicate copy of the same receipt showed that it was Leventis Motors that paid N125.00. By this discovery, it is very clear that the appellant intended to and did convert the money he collected for onward payment to the Borno State Board of Internal Revenue as withholding D tax to his personal use. Section 19 of the Corrupt Practices and other Related Offences Act provides as follows:-

"Any person who being an officer charged with the 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 p
his care, or any balance of money or property in his
possession or under his control, is guilty of an
offence, and on conviction be liable to seven (7)
years imprisonment".

As Chairman of Monguno Local Government, the appellant
was charged with the management of the revenue of the Local
Government. The fact that the ICPC forced him to return the
money, he furnished false return in respect of the F N1,500,000.00
through exhibits SU3 and SU4.

For these few words and the more elaborate reasoning in
the lead judgment, I find this appeal lacking in merit. Accordingly
same shall be and it is hereby dismissed.

The judgment of the lower court is accordingly affirmed by me as
well.

Appeal dismissed