

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CR/182/2016
DATE: 29TH JUNE, 2018**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

A.V.M. ALKALI MOHAMMED MAMU - DEFENDANT

Defendant in court.

Sylvanus Tahir for the prosecution appearing with Fatima Ado Gwaram and Mukhtar Ali Ahmed Esq.

J.J. Usman appearing with Adedayo Adedeji, I.C. Okonji Esq., S.M. Abdullahi and N.O. Idifon for the Defendant.

Prosecution's Counsel – The case is for judgment and we are ready to take same.

J U D G M E N T

The Defendant AVM Alkali Mohammed Mamu is charged with a three (3) count charge which was subsequently amended to four (4) counts; the said amended four (4) count charge is dated 13/10/2017 and is herein reproduced as follows:

COUNT 1:

That you AVM Alkali Mohammed Mamu whiles serving as the Group Managing Director (GMD) NAF Holding Company and Air Officer Commanding Training Command and charged with responsibility to supervise/oversee the execution of NAF Procurement through the Office of the National Security Adviser for certain Military Supplies by Societe D' Equipments Internationaux Nigeria Limited on or about 26th August, 2014 at Abuja within the jurisdiction of this Honourable Court did corruptly accept a gift in the sum of N5,900,000.00 (Five Million Nine Hundred Thousand Naira) only from Societe D' Equipments Internationaux Nigeria Limited, a contractor with the Nigerian Air Force to make up for the purchase price of a Range Rover Evoque valued at N15,200,000.00 (Fifteen Million, Two Hundred Thousand Naira) only from Coscharis Motors Limited in performance of your official act and you thereby committed an offence contrary to Section 17(a) of the Corrupt Practice and Other Related Offences Act, 2000 and punishable under Section 17(c) of the same Act.

COUNT 2:

That you, AVM Alkali Mohammed Mamu whilst serving as the Group Managing Director (GMD) NAF Holding Company and Air Officer Commanding Training Command and charged with responsibility to supervise/oversee the execution of NAF Procurement through the Office of the National Security Adviser for certain Military Supplies by Societe D' Equipments Internationaux Nigeria Limited on or about 11th September, 2014 at Abuja within the jurisdiction of this Honourable Court did corruptly accept a gift in the sum of \$300,000.00 (Three Hundred Thousand United States Dollars) only from Societe D' Equipments Internationaux Nigeria Limited, a contractor with the Nigerian Air Force in performance of your official act and you thereby committed an offence contrary to Section 17(a) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(c) of the same Act.

COUNT 3:

That you, AVM Alkali Mohammed Mamu whilst serving as the Group Managing Director (GMD) NAF Holding Company and Air Officer Commanding Training Command and charged with responsibility to supervise/oversee the execution of NAF Procurement

through the Office of the National Security Adviser for certain Military Supplies by Societe D' Equipments Internationaux Nigeria Limited on or about 24th February, 2015 at Abuja within the jurisdiction of this Honourable Court did corruptly accept a gift of a vehicle to wit: Jaguar XF Saloon Car valued at N12,500,000.00 (Twelve Million Five Hundred Thousand Naira) only from Society D' Equipments Internationaux Nigeria Limited, a contractor with the Nigerian Air Force in performance of your official act and you thereby committed an offence contrary to Section 17(a) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(c) of the same Act.

COUNT 4:

That you, AVM Alkali Mohammed Mamu whilst serving as the Group Managing Director (GMD) NAF Holding Company and Air Officer Commanding Training Command and charged with responsibility to supervise/oversee the execution of NAF Procurement through the Office of the National Security Adviser for certain Military Supplies by Societe D' Equipments Internationaux Nigeria Limited on or about 24th February, 2015 at Abuja within the jurisdiction of this Honourable

Court did corruptly accept a gift a vehicle to wit: Ford Expedition SUV valued at N15,000,000.00 (Fifteen Million Naira) only from Societe D' Equipments Internationaux Nigeria Limited, a contractor with the Nigeria Air Force in performance of your official act and you thereby committed an offence contrary to Section 17(a) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(c) of the same Act.

In prove of the said charge against the Defendant, the prosecution called the following witnesses.

Air Commodore S.O.A. Makinde the Director of Information Technology National Defence College testified as PW1.

In his evidence-in-chief, the PW1 stated that he was the Secretary of Nigeria Air Force (NAF) Procurement Committee from January 2014 – September 2015. One of his duties is to prepare award letters for contract awarded for capital projects, direct labour project and other projects; that he was directed to issue some award letters dated 13/1/15 and 10/5/15 to Societe D' Equipment Internationaux (Nig) Limited here-in-after to be referred as S.E.I.; the project in the said award letter were paid for by the Office of the National Security Adviser (NASA). The

copy of the letter dated 13/1/15 and list of managerial attached to it was admitted in evidence as Exhibit A¹ and A² respectively; while the copy of letter dated 18/5/15, a document attached to it were admitted in evidence as Exhibit B¹ and B² respectively.

The PW1 further stated that the role he played was just to issue a letter of award of contract as directed by Chief of Air Staff.

Under cross-examination by the Defence Counsel, the PW1 stated that the Defendant was not a member of the NAF Procurement Committee; that the items on Exhibit A² did not originate from the NAF Procurement Committee; that he has serious misgivings as to the procurement in Exhibit A¹ and A² for the Air Force.

At this stage, a copy of the PW1's statement to the EFCC dated 15/2/16 was admitted in evidence as Exhibit C. The PW1 further led evidence to the effect that the Chief of Air Staff directed him to issue the award letters; left to him he would have not issued the letters because there was no prizing on them.

In the letters of award of contract there is a clause for the contractor to accept the contract, but there was no acceptance of the contract in question.

The witness also stated that he never gave facility for gratification to the Defendant.

No re-examination, PW1 was discharged.

Musa Mishimi the Branch Manager of Coscharis Motors testified as PW2. In his evidence-in-chief, he stated that in August 2014, one Himma Abubakar who is a long standing customer of the Coscharis Motors requested the PW2 to transfer the credit balance of his account in the sum of N5,300,000.00 to a vehicle that was to be picked by the Defendant; the vehicle is Range Rover Evoque valued at N15,200,000.00; the said credit was transferred and the Defendant paid up the balance to pick up the vehicle.

The PW2 further stated that in February 2015 they received a further instruction from Himma Abubakar to prepare and deliver two vehicles to the Defendant and to debit his account. The vehicles are Jaguar XF at the cost of N12,500,000.00 and Ford Expedition Limited at the cost of N15,000,000.00. The instruction of Himma Abubakar was

carried out and the vehicles delivered to the Defendant. The Vehicle Release and Delivery Check List dated 24/2/15 and its copy in respect of Jaguar XF are admitted in evidence as Exhibit D1 and D2 respectively. The Vehicle Release and Delivery Check list dated 26/08/14 and its copy in respect of Range Rover Evoque are admitted as Exhibits E1 and E2 respectively.

The Vehicle and Delivery Check list dated 25/2/15 and its copy in respect of Ford Expedition Limited are admitted as Exhibits F¹ and F² respectively.

Under cross-examination by the Defence Counsel, the PW2 stated that he made 2 statements at the EFCC; the said statement dated 5/2/16 was admitted in evidence as Exhibit G.

The PW2 further stated that he did not know the reason why Himma Abubakar paid for the vehicles.

No re-examination, PW2 was discharged.

Martins Enato, a Manager in charge of I.T. Operations Zenith Bank testified as PW3. In his evidence-in-chief, he stated that sometime in January 2016, the bank received letter from EFCC requesting for the bank to furnish it with account details of Khalil Fertilizer Company Limited and

the mandate, a CTC of the Customer Statement as well as Certificate Identification; the said request was granted. The set of documents are admitted in evidence as follows:

1. Letter dated 19/2/16 – Exhibit H.
2. Appendix 1 (Account Opening Package) – Exhibit I.
3. Appendix 1 (Statement of Account) – Exhibit J.
4. Certificate of Identification dated 22/2/16 – Exhibit K.

Under cross-examination by the Defence counsel, the PW3 stated that Exhibit J is the Statement of Account of Khalil Fertilizer Limited.

The PW3 also confirmed that the Defendant is neither a signatory nor a Director of the company that maintain account with Zenith Bank Plc.

No re-examination, PW3 was discharged.

Junaid Sa'id, a Detective with the EFCC testified as PW4. In his evidence-in-chief, he stated that he is a member of the Special Task Force Team set up by the commission.

That sometime in 2015, a committee was set up by the Federal Government to carry out Audit of the Defence Equipment Procurement. In carrying out its function, the committee observed several suspicious payments made

by the Office of National Security Adviser to individuals and several companies which include SEI Nigeria Limited.

Upon further investigation, it was discovered that the company's alter ego one Himma Abubakar made payment to several senior officers of the NAF and other companies.

It was also discovered that the sum of \$300,000.00 was paid into the account of Kalil Fertilizer Company Limited by SEI Nigeria Limited and that Himma Abubakar also purchase cars to several senior military officers including the Defendant who was given Ford Expedition and Jaguar XF and that same Himma Abubakar made a part payment of N5.9 Million for a vehicle Range Rover which was delivered to the wife of the Defendant.

The PW4 led evidence to the effect that after gathering all information, Himma Abubakar the contractor was contacted and was asked why these payments were made but he was unable to give any explanation. He was then invited to the commission and he has since refused to honour the invitation. Thereafter the Defendant was invited to the EFCC where he made statements and volunteered to return the cars he received from Himma Abubakar and also returned the

part payment of N59 Million and the Naira equivalent of the \$300,000.00 which amounted to N48.6 Million. The CTC of the confirmation of deliveries dated 5/2/15 and letter from the CAC to EFCC dated 2/2/16 are admitted in evidence as Exhibit L and M respectively.

Also the 5 statements of the Defendant to the EFCC dated 2/2/16, 4/2/16, 5/2/16, 10/2/16 and 12/2/16 were admitted in evidence as Exhibits N¹, N², N³, N⁴ and N⁵ respectively.

Under cross-examination of PW4 by the Defence Counsel, the witness stated that he is not aware of any Interim Report submitted by the Committee for Procurement by Ministry of Defence.

The copy of the EFCC Internal Memorandum dated 5/2/16 was admitted in evidence as Exhibit O. Internal Memorandum dated 12/2/16 and copy of cheques as Exhibits P¹ and P² respectively.

The PW4 further stated that the case of the Defendant was jointly investigated by his team and STF1.

A summary of PW4 statement dated 5/4/16 was admitted in evidence as Exhibit Q. The witness also stated that no officer of the EFCC went to interview Abubakar Himma.

Finally, the PW4 stated that the Defendant did not tell the EFCC that the work he was doing had grave national security implications.

No re-examination, PW4 discharged and that is the case for the prosecution.

In defence of this matter, when the amended 4 count charge was read to the Defendant, he pleaded not guilty to the charge and thereafter testified as DW1 after the close of the prosecution's case.

In his evidence-in-chief, the DW1 stated that he was never a member of Procurement and Planning Committee of the Nigeria Air Force.

The DW1 further stated that he never received a draft of N5 Million gift of the sum of \$300,000.00, Expedition SUV car and Jaguar XF Saloon car from S.E.I. Nigeria Limited.

That sometime in January 2014, he (DW1) received a call from the Chief of Air Staff Air Mashall Amusu (Rtd) who told him during the telephone call that Mr. Himma Abubakar of Societe D' Equipments Internationaux (Nig) Limited was sent to him by the then NSA Col. Sambo Dasuki (Rtd) to attend to urgent deliveries of emergency needs of the NAF. The materials to be supplied include 2

overheads of upgraded consort helicopters. Again SEI was to train Nigerian Air Force Pilots and Engineers in order to operate these expected items.

The witness further stated that on receiving the command from the Chief of Air Staff, the DW1's job was to facilitate timely delivery of services to be rendered by SEI Nig. Ltd as ordered by the Chief of Air Staff.

That Himma Abubakar under the agreement he had with Office of N.S.A. was to provide all logistics for the training of the pilots and engineers; that he will produce estacode for the air crew to depart for training and he requested for the DW1's assistance to process visas for the air crew and tickets.

The witness further stated that he was stationed in Ukraine for 3 months between July to September 2014; that all the pilots and engineers were trained in Ukraine. The DW1 personally went to Ukraine Embassy and process visas for the pilots and engineers travelling to Ukraine. He also wrote to Himma Abubakar on the 5/3/14 requesting his permission to purchase tickets with his own money for pilot and engineers. A copy of the said letter dated 5/3/14 as admitted in evidence as Exhibit S.

On 10/3/14 Himma Abubakar replied the Defendant's letter and requested that the Defendant should pay for the tickets and that he (Himma Abubakar) will re-imburse the Defendant; the said letter dated 10/3/14 was admitted in evidence as Exhibit T.

After receiving Exhibit T, the Defendant bought the ticket through a travelling agency by name ESTMANUEL. The letter for the purchase of tickets was admitted in evidence as Exhibit U.

It is the evidence of DW1 that on 2/2/16 he was invited by the EFCC and he reported to STF1 headed by Mr. Ibrahim Sharu; who told him that the Defendant was invited in connection to payments of \$300,000.00 to Khalil Fertilizer (Nig) Limited by SEI (Nig) Limited and that his mandate is to recover the money to Federal Government of Nigeria. The DW1 told him that although the money was paid to Khalli Fertilizer Nigeria Limited's account but it was used to settle bills incurred on behalf of SEI Nig. Ltd. The Defendant referred to Exhibits S and T before the court which were exchange of correspondences between the Defendant and Himma Abubakar.

Despite all these explanations, the Defendant stated that he was threaten with arrest and detention and so also the

arrest and detention of his 2 daughters, Fatima Mamu and Kadiza Mamu who are Directors of Khalli Fertilizer. That in view of the threat and as a responsible father he conceded to refund the money under interrogation with the hope that he will be reimbursed by Himma Abubakar.

That STF1 obtained a statement from the Defendant and directed him to go and see STF2 headed by Ibrahim Musa Mairiga.

At STF2 the interrogation was question and answer with threat of arresting the Defendant's daughters. The issues under interrogation were payment of \$300,000.00 purchase of Ford Expedition, Jaguar car and Range Rover.

That during the interrogation, the Defendant told STF2 that all the issues were bills that Himma Abubakar settled either by cash or credit he sort on the expenses incurred on behalf of SEI. Nig. Ltd. That the officials of the EFCC refused to listen to him and insisted that the Defendant will be detain and his daughters will be arrested if he refused to concede to bring back to EFCC the vehicles. The Defendant reluctantly agreed in order to protect his daughters and protect information related to the transaction between himself and Himma Abubakar,

because unauthorized disclosure will be injurious to the nation of Nigeria.

The Defendant further stated that he was ordered to return the 2 cars which he did and was tele-guided as to what to write in order to retain the Range Rover he bought for his wife. He complied and the EFCC official allowed him to go with the Range Rover car.

The DW1 further restated that he incurred and paid a lot of bills for Himma Abubakar on the ground that the said Himma will refund same to him. That when he was posted to Kaduna as Air Officer commanding Training Command, he told Himma the need for them to reconcile their account and the reconciliation documentary form; the said reconciliation letter dated 27/3/15 was admitted as Exhibit W.

It is the evidence of DW1 that the statement obtained by STF1 is not amongst the statements tendered in evidence by the prosecution; if that statement was tendered the issue of receiving \$300,000.00 as gratification will not arise.

The DW1 further led evidence involving the National Security of the Nation. In the cause of his evidence, copies of e-mail of some transfers and certificate made

pursuant to Section 84(2) and (4) Evidence Act were admitted in evidence as Exhibit X¹, X², X³, X⁴, X⁵ and X⁶ respectively.

That all expenses were borne by the Defendant to be reimburse by Himma Abubakar. The DW1 also stated that he was not paid estacode for over 90 days he was in Ukraine. That was why he accepted credit payment from Himma Abubakar from Coscharis Motors to defray the money he owed the Defendant.

It is the evidence that during the time the DW1 was making his statement to the EFCC and interrogation, he requested that he needed his lawyers to be with him but the EFCC refused and said he do not require a lawyer because they said they are not after human beings but recovery of money.

DW1 urged the court to discharge and acquit him on the charge against him and order the EFCC to release to him all items including money collected from him by the EFCC.

Under cross-examination by the prosecution's counsel, the DW1 stated that he was never appointed to supervise the procurement of military wares but he was giving an

oral order to assist Himma Abubakar in the delivery of military wares to NAF. That his dealing was with Himma Abubakar and not with SEI Nigeria Limited.

The witness stated that when he first reported to EFCC he reported to STF1 where he made a statement and also appeared before STF2. That his interaction with STF1 leader was like an oral interview where Mr. Sharu told him that they were interested in funds under investigation and that they were not after him but after recovery. If the Defendant agree to make refunds there will be no need for further interaction.

The statement of the Defendant to the STF1 dated 2/2/16 was admitted in evidence as Exhibit Z7. The Defendant insisted that he was tele-guided in making his statement before the EFCC.

No re-examination, DW1 was discharged and that is the case for the defence.

Thereafter parties were ordered to file their respective addresses which were duly adopted by respective learned counsel on 30/4/2018.

The Defence Counsel filed 34-page Final Written Address dated 16/2/18 wherein counsel formulated two issues for determination:

1. Whether the prosecution has proved beyond reasonable doubt that the Defendant in performance of official act did corruptly receive the gifts itemised in the amended 4 count charge?
2. Whether from the facts and circumstances of this case an offence contrary to Section 17(A) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(c) of the same Act can be said to have been established by the prosecution?

On these issues, it is the submission that the case of the prosecution is that the Defendant while serving with the Nigerian Air Force (NAF) corruptly accepted gift as described in the charges that gave rise to this case. Reliance has been placed by the prosecution on his statements Exhibit N1, N2, N3, N4 and N5 as being evidence that he corruptly accepted gifts by way of cash contributions for 3 motor vehicles and cash in the sum of \$300,000.00 USD. The prosecution has placed substantial premium on the Defendant's statements in some instance

suggesting that they are confessional in nature. To what amount to confession in law learned senior counsel referred the court to the case of *NWACHUKWU v THE STATE* (2007) 17 NWLR Pt 1062 Pg 32.

It is submitted that whatever evidence the prosecution intends to rely upon must establish the following ingredients of the offence beyond reasonable doubt thus:

- (a) That the Defendant corruptly accepted from Societe D' Equipment Internationaux Nigeria Limited, a contractor with the Nigerian Air Force in the performance of his official act the sums of money mentioned in each count or their value in vehicles.
- (b) That it was an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing?

It is submitted that for a statement to be accepted as "confessional" it must be made voluntarily and satisfy the tests laid down in *R v SKES*. It follows therefore that a trial-within-trial is not the only procedure or means by which the trial court can make a determination. That a statement(s) alleged to be "confessional" was not made voluntarily. Consequently, where evidence surfaces in the

course of trial showing that the statements were obtained by oppressive means, without going through a trial-within-trial, such a statement will not be considered admissible for that purpose. See BELLO v COP (2018) 2 NWLR Pt 1603 Pg 207 at 319 – 320.

The Defence argued that there is nothing outside Exhibit N1 – N5 to demonstrate that it is true; the only evidence outside the purported confessional statements that would have swayed the court is the evidence of Himma Abubakar or that of an accredited representative of the company “Societe D’ Equipment Internationaux which is alleged to have “corruptly” offered the gifts identified in the 4 amended counts to the Defendant. Therefore the failure of prosecution for not calling the said Himma Abubakar or any one from his company is fatal to the case of the prosecution. See ALAKE v STATE (1992) NWLR Pt 265 Pg 269.

It is the submission that the facts contained in the statements Exhibit N1 – N5 cannot be correct when placed side by side with the thorough and indeed exhaustive evidence of the Defendant. The confession alleged cannot be true because the statements do not establish or prove the ingredients of Section 17(a) of the

Corrupt Practices and Other Related Offences Act 2000. The prosecution has not proved that the alleged gifts in Counts 1, 2, 3 and 4 are all gifts given by a giver to the Defendant who accepted them corruptly.

It is submitted that the evidence of DW1 deflected the case of the prosecution that the transactions between the Defendant and Himma Abubakar are “corrupt gifts”. Far from this, the unchallenged and uncontradicted evidence of the Defendant backed by documentary evidence is proof that the prosecution EFCC did not set out to investigate the matter out to make recoveries of money for Federal Republic of Nigeria.

It is the contention that the prosecution has not discharged the burden of proof on it that the monies and vehicles as charged were indeed corrupt gifts given to the Defendant by Societe D' Equipment Internationaux Nigeria Limited (the alleged giver). It is submitted that for the prosecution to prove that the Defendant received the alleged gifts corruptly it must be proved that the intention (*meus pea*) i.e. the intention and or objective with which the Defendant received them were corrupt. See *NWOKEARU v STATE* (2013) 16 NWLR, Pt 1380, P. 207 at 235 Para D – F.

In the instant case, the prosecution failed to prove that the alleged gifts in Count 1, 2, 3 and 4 respectively were all gratification or corrupt gifts.

It is the submission that the prosecution failed or omitted to prove whether any contract existed between the Air Force and Societe D' Equipment Internationaux with which the Defendant was charged with its execution. The failure of the prosecution to establish this critical ingredient of the 4-count renders the charge unproved. Court is referred to the testimony of PW1 under cross-examination to the effect that the purported contract was invalid because there was no pricing, it was not contained in NAF Budget and there was no acceptance of the contract. See BPS CONSTR. & ENGR CO. LTD v FCDA (2017) 10 NWLR Pt 1578 Pg 1 at 25 Paras C – F; Pg 48 – 49 Para H, Paras A – B.

Most crucial is that the prosecution did not prove that the Defendant was charged with the responsibility to supervise/oversee the execution of NAF procurement through the Office of the NSA for certain military supplies by Societe D' Equipments Internationaux Nigeria Limited as alleged in the charge; neither did the prosecution

prove that Societe D' Equipments Internationaux Nigeria Limited is a contractor with NAF as alleged in the charge.

It is the contention of the Defence that the prosecution suppressed the statement of the Defendant.

The DW1 testified that he gave full explanation to STF1 who duly recorded him and took some annexures from him. That to his surprise at the trial some statements where he gave his explanations were not produced and those produced had their annexures removed or tampered with. To confirm this, the prosecution unwittingly produced one of the statement (Exhibit Z⁷) taken from the Defendant during investigation, which ought to have been served on Defendant in the proof of evidence.

It is submitted that by holding on to the Defendant's statement Exhibit Z⁷ and only tendering it during cross-examination, the prosecution had confirmed the Defendant's version that some of his statements and documents were suppressed. See MOHAMMED v STATE (1991) LPELR 1901 (SC). Court is urged to hold that the prosecution have failed to prove its case against the Defendant beyond reasonable doubt. Court should discharge and acquit the Defendant.

The prosecution counsel filed a 35-page final written address which was duly adopted dated 12/3/18 wherein counsel distilled a lone issue for determination, thus:

“Whether the prosecution has proved the essential ingredients/elements of the offences alleged against the Defendant beyond reasonable doubt to warrant him being found guilty and consequently convicted”

On this sole issue, it is the submission that in criminal case the burden of proof is on the prosecution and the standard of proof is beyond reasonable doubt. See Section 135 – 138(1) Evidence Act and the case of *AFOLALU v STATE* (2010) 10 NWLR (Pt 1220) 584.

It is submitted that the 4 counts charge against the Defendant are similar bothering on corruptly accepting various gifts from Societe D' Equipments Internationaux Nigeria Limited (SEI).

It is the further submitted that the prosecution led evidence through PW1 to show that SEI Nig. Ltd did supply some military equipment to the NAF as in Exhibit L. Also the PW2 led evidence that the Range Rover, subject of Count 1 was partly paid for by Himma Abubakar. Court is referred to the extra judicial statement of the Defendant

dated 2/2/16. To prove the allegation on Count 2, the prosecution led evidence through PW3 and PW4 and tendered Exhibit H, I, J, M and N1. Court is referred to the said evidence and exhibits.

With respect to Counts 3 and 4, the prosecution led evidence through PW2 and PW5 and tendered Exhibits D1, D2, F1, F2 and N1.

It is submitted that going by the provision of Section 17(a) and (c) of the Corrupt Practices and Other Related Offences Act, 2000, upon which the Defendant was charged, the essential ingredients/elements of the offence which the prosecution must prove are the following:

- (i) That the Defendant corruptly accepted gifts from Societe D' Equipments Internationaux Nigeria Limited.
- (ii) That the gifts were accepted in the performance of his official act.
- (iii) That the gifts were accepted as an inducement or reward for doing, forbearing to do, or for making done or forborne to do, any act or thing.

On the first ingredient, it is submitted that the Defendant out of a desire for pecuniary gain or other advantages accepted the gifts of the Range Rover Evoque, Ford Explorer Expedition SUV, the Jaguar XF Saloon and \$300,000.00 USD as alleged. The gifts accepted by the Defendant were borne out of corruption and bribery in performance of the Defendant's official act as a supervisor/overseer and facilitator in the execution of the contract of military supplies rendered by the contractor to NAF.

On the 2nd ingredient, it is submitted that the gifts were accepted in the performance of the Defendant's official act. The assignment given to the Defendant by the Chief of Air Staff put the Defendant as an officer in a vantage position to facilitate, supervise/oversee the execution of the contract in his official capacity.

On the 3rd and last ingredient, it is submitted that the gifts were corruptly accepted as a reward for the role played by the Defendant in facilitating the execution of the contract by SEI Nigeria Limited.

It is submitted that the prosecution has discharged the burden of proving beyond reasonable doubt the charge as laid against the Defendant. Court is urged to find the

Defendant guilty as charged and convict and sentence him accordingly.

It is the submission that once this Honourable Court upon admitting the confessional statements of the Defendant satisfied itself that it is positive, direct and voluntary, the court has a duty to consider the admitted confessional statement. See *NWACHUKWU v STATE* (2007) 17 NWLR (Pt 1062) SC 31 at 65 – 16 Paras H – A); 70 Paras F – G; *ADEBAYO v A.G. OGUN STATE* (2000) 7 NWLR (Pt 1085) 201 at 221 Paras F – G. Court is urged to convict the Defendant based on his confessional statements. See *UBIERHO v STATE* (2005) 5 NWLR (Pt 919) 644 at 655; *ALO v STATE* (2015) 9 NWLR (Pt 1464) 238 at 270 – 271 Paras F – A.

It is submitted that the facts stated in the Defendant's statements are true; that the assertion by the Defendant that he bought and paid for the 3 vehicles relying on Exhibits Y⁶, Y⁷, Y⁸ and Y⁹, Y¹⁰, Y¹¹, Y¹², Y¹³ and Y¹⁴ and claimed that he could not state these facts during the investigation because the issues never came should be rejected by this court as an after-thought and therefore unreliable. Court is urged to accord full probative weight and value to the evidence of the prosecution witnesses

and also the confessional statement of the Defendant and find him guilty.

It is the submission that the retraction of confessional statement do not render it inadmissible or insufficient to ground a conviction. See *TESWONOR v STATE* (2008) 1 NWLR (Pt 1069) 630 at 654 Paras F – G. That the Defendant ought to have objected to the admissibility of the confessional statement at the time of tendering same. See *ALO v STATE* (Supra).

On the issue of not calling Himma Abubakar as a witness for the prosecution, it is submitted that failure to call Himma Abubakar is not fatal to the prosecution's case which has been proved beyond reasonable doubt.

In response to the Defendant's submission that the prosecution failed/omitted to prove existence of contract between SEI Nigeria Limited and NAF, it is submitted that the submission of Defendant's senior counsel with respect to the above lacks substance and merit. There is evidence before the court which established that NAF took benefit of the supplies by SEI Nig. Ltd and there is no dispute between NAF and SEI Nigeria Limited on the validity of the contract.

On the issue of prosecution suppressed the Defendant's statements, it is submitted that the case file that was transmitted to the Legal Department which was vetted and which resulted into the filing of this instant charge was by STF2 headed by CSP Ibrahim Musa and members of his team. The prosecution team were not handed over any duplicate case file by STF1, which equally investigated the Defendant.

That there was no deliberate plan by the prosecution to suppress the statement of the Defendant.

It is submitted that the prosecution has proved its case against the Defendant beyond reasonable doubt as required by law. Court is urged to find the Defendant guilty as charged and convict him accordingly.

The Defendant's counsel filed a 16-page reply on points of law dated 16/4/18 wherein counsel in response to paragraph 2.2 to 2.4 of the prosecution's final address, submitted that there is no report of findings of the alleged committee on the Audit of Defence Equipment Procurement (CADEP) tendered and admitted in the trial before this court to substantiate and confirm the assertion made or support the purported evidence in the cited

paragraphs. Court is urged to hold and discountenance the submission accordingly.

Furthermore, there was no evidence on record to show that the \$300,000.00 USD allegedly received by Khali Fertilizer company was for purchase of cars. Court is urged to discountenance the argument as unsupported by any admissible evidence in court.

In response to the prosecution's submission in paragraph 4.7 at Page 10, it is submitted that there is no admissible evidence before the court to support the prosecution's argument that the Defendant was orally directed by the then Chief of Air Staff to liaise with Himma Abubakar, to see to the timely delivery of the military supplies.

It is submitted that the vehicles given to the Defendant as alleged gifts were in fact, vehicles bought by the Defendant himself with the repayment of debts incurred on behalf of Himma Abubakar which he paid back by way of transferring credits from his personal account with Coscharis Motors to that of the Defendant. Court is referred to Exhibits S, T, W, Y⁶ – Y¹⁴. There is no evidence before the court to prove that the contractor bought the vehicles for the Defendant as alleged in the charge.

In response to paragraph 2.15 at Page 7, paragraph 4.11, 4.16 and 4.20 at Page 13 of the prosecution counsel's address, it is submitted that the Defendant's unchallenged evidence as to how the purported confessional statements were obtained from him by the EFCC operatives puts a huge dent on the weight of the evidence to be attached to those statements; hence Exhibits N¹ – N⁵ and Z⁷ relied upon by the prosecution as confessional statements cannot qualify as such except it has passed through the laid down test, for determining whether a statement qualifies as a confessional statement.

It is further submitted that "trial-within-trial is not the only way to determine the voluntariness or otherwise of a confessional statement. See BELLO v COP (2018) 2 NWLR Pt 1603, Pg 307 at 319 – 320.

Furthermore, contrary to Section 36(6) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 14(2) and 17(1) and (2) ACJA, 2015 the Defendant was not given access to the service of a lawyer despite several requests by him and even when he had a lawyer from the NAF. This missteps and contraventions of the provisions of the ACJA described

above have been judicially considered in the unreported decision of the Court of Appeal in CA/L/727A/2017 AKAEZE CHARLES v FRN delivered on the 19th Day of March 2018 where the Court of Appeal discountenanced statements recorded in such circumstance as that of the Defendant in the instant case.

In response to paragraph 4.27 and 4.28 of the prosecution's final written address, it is submitted that contrary to the prosecution's submission to "facilitate" cannot mean put differently to mean "supervise/oversee". The words are not synonymous. To facilitate is to assist.

The case of ADEBAYO v A.G. OGUN STATE (Supra) cited by the prosecution in paragraph 4.33 in support of paragraph 4.32 in urging the court to convict the Defendant based on Exhibit N1 – N5 and Z7 (being purported confessional statements) is not applicable to this case in that, those cited exhibits masquerading as confessional statement have not been proven to be true in line with the Supreme Court decision in Bello V cop (Supra).

In response to paragraphs 5.17 to 5.25 of the prosecutions address, it is submitted that a call for "trial-within-trial is not

the only way of challenging the admissibility, voluntariness and veracity of a purported confessional statement. See *QUEEN v EGUABOR* (1962) (No. 2) 2 SCNLR 289; (1962) 1 All NLR 285 at 29.

In response to paragraph 8.1 to 8.10 particularly paragraph 8.5 to 8.7, it is submitted that confirmation of deliveries made under the contract in Exhibit A1 and A2 do not transform the contracts into valid contracts in the light of overwhelming admitted unchallenged evidence before the court that those contracts are not valid.

It is the submission that the contention by the prosecution that the confessional statements by the Defendant should be relied upon without being tested and corroborated to gain a conviction should be discountenanced. The Supreme Court has in a plethora of cases affirmed the legal position that a retracted confession must be corroborated by independent evidence. See the case of *OGUDO v THE STATE* (2011) 18 NWLR Pt 1278 Pg 1 at 26.

It is submitted that the only reliable corroborative evidence would have been that of the alleged giver of the gratification Alhaji Himma Abubakar, who despite ample opportunities refused to call him to testify in favour of their case. Court is urged to dismiss the charge in its

entirety, discharge and acquit the Defendant as the prosecution has not proved any of the ingredients of the offence against the Defendant as charged.

On the part of the court after a careful consideration of the testimonies of the prosecution witnesses and the defence witness, the processes filed and submission of learned counsel on both sides, I am in one with the prosecution counsel that the sole issue that calls for determination is whether the prosecution has proved the essential ingredients/elements of the offence alleged against the Defendant beyond reasonable doubt to warrant his being found guilty and consequently convicted?

It is trite law that the burden placed on the shoulders of the prosecution is to prove the guilt of the Defendant beyond reasonable doubt. See Section 135 and 138 Evidence Act, Case of BAKARE v STATE (1987) 1 NWLR (Pt 52) 578.

It is not in doubt that the offences upon which the Defence is brought against the Defendant were all brought pursuant to the provisions of Section 17(a) and (c) of the Corrupt Practices and Other Related Offences Act 2000.

For want of doubt the said Section of the Act is reproduced as follows:

“17(1) Any person who corruptly-

(2) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or considerations as an inducement or reward for doing, forbearing to do, or for having done, or foreborne to do, any act or thing;

(b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business.

(c) Knowingly gives to any agent, or being an agent knowingly uses with intent to deceived his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge is intended to mislead his principal or any other

person, is guilty of an offence and shall on conviction be liable to five (5) years imprisonment”

Now to ground these offences, the prosecution must establish that:

- (a) The Defendant corruptly accepted from SEI Nigeria Limited a contractor with the NAF in the performance of his official act;
- (b) The sums of money mentioned in each count or their value in vehicles.
- (c) As an inducement or reward for doing, forbearing to do, or for having done or forborne to do, any act or thing.

The PW1 Air Commodore Sunday O. Makinde, who at the time he testified was the Secretary NAF Procurement Planning Committee. The witness after stating the duties of his office tendered 2 award letters of contract between the NAF and SEI Nig. Ltd which were admitted as Exhibits A1, A2 and B1, B2 respectively. The statement of PW1 was also admitted in evidence as Exhibit C.

In last two (2) lines at Page 5 of Exhibit C the PW1 stated thus:

“The contracts were not awarded by the NAF normal NAF contract award procedures enumerated earlier in this statement were not followed, no pricings were indicated as it was obvious they were blanked off before photocopying. Furthermore, I have not seen the items in NAF budget”

Under cross-examination of PW1 by the Defence Counsel, the PW1 stated that he did not know whether Exhibits A2 emanated from the NAF or not. The items therein did not originate from the NAF Procurement Committee. The PW1 further stated thus:

“I have serious misgivings as to the procurements in Exhibit A1 and A2 for the Air Force”

The PW1 further stated that in the letters of award of contract there is a clause for the contractor to accept he contract. There was no letter of acceptance by the contractor. That he stand by his statement in Exhibit C.

It is also pertinent to reproduce the last paragraph in Page 8 of Exhibit C the statement of PW1 to the EFCC as follows:

“The copies were not distributed to respective NAF appointments because it was obviously not well

executed and not an Air Force Contract. It is pertinent to note that I insisted to include the clauses in paragraph 2 which asked for acceptance of offer from the contractors. (Knowing fully well). However, there was no acceptance letter uptill date from the contractor to the best of my knowledge which should obviously nullify the contracts”

In the light of the above, it is clear as crystal that the PW1 distanced the NAF from any such contract with SEI Nigeria Limited.

Now, the question to ask here is whether the contracts under which the charge took root are invalid and incapable of sustaining the counts therein.

In BPS CONSTR & ENGR. CO. LTD v FCDA (Supra) the Apex court held inter alia: ***“that an offer is the expression by a party of readiness to contract on the terms specified by him, which, if accepted by the offeree give rise to a binding contract. The offer matures to a contract where the offeree signifies a clear and unequivocal intention to accept the offer. According to PETER ODILI JSC at Page 48 – 49, Paras H, Paras A – B inter alia held “This court has stated times without number that in order to decide whether parties have reached agreement, it is usual to***

inquire whether there has been definite offer by one party and unqualified acceptance of that offer by another...

It therefore follows as a matter of course to the happening of a contingency that contract only become enforceable provided the event has occurred or the contingency has happened. In other words, where the contract is made subject to the fulfilment of certain specific terms and conditions, the contract is not formed or becomes binding unless and until those terms and conditions are complied with or fulfilled”

In the light of the above I hold the considered view that the failure of the offeree to comply with the Acceptance Clause in the letter of award of contract Exhibit A1 and B1 respectively renders the contract inchoate and a nullity.

It is the contention of the prosecution's counsel that the court can, on the basis of the confessional statements of the Defendant alone convict the Defendant as charged.

Now, it is pertinent to consider whether the extra judicial statement made by the Defendant Exhibit N1 – N5 and Z7 amount to a confessional statement.

A confessional statement, whether retracted or not must be subject to tests laid down in R v SYKES followed in

Nigeria in KANU v R. In SHODIYA v STATE (2013) LPELR 20717 the Apex court held thus:

“that conviction made solely on the basis of an appellants confessional statement survives an appeal where the statement is not only voluntarily obtained but the statement is direct, positive and unequivocal as to the entire ingredients of the offence for which the appellant is convicted as well.. where, however, the extra judicial statement of the appellant is not that comprehensive or total in relation, to the offence the appellant is convicted, the existence of such evidence outside the statement becomes a necessity to justify the persistence of the conviction on appeal”

From the foregoing statement for an extra judicial statement to amount to a confession, it must be made voluntary and satisfy the tests, laid down in R v SYKES, It follows therefore that a trial-within-trial is not the only procedure or means by which the trial court can made a determination that a statement(s) alleged to be “confessional” was not made voluntarily.

Consequently, were evidence surfaced in the cause of a trial showing that the statement(s) were obtained by

oppressive means, without going through a trial within trial, such statement will not be considered admissible for that purpose. See BELLO v COP (2018) 2 NWLR Pt 1603 Pg 207 at 319 – 320 where the Supreme Court held inter alia thus:

“The law is that resiling from a confessional statement made earlier, or denied by an accused person of having made such a statement does not ipso facto render it inadmissible in evidence. The caveat, however, is that where admitted in evidence, the court should not act on it without first testing the veracity or truth thereof”

The above now leads to how the statements of the Defendant (Exhibits N1– N5) was obtained. It was the evidence of the Defendant who testified as DW1 that sometime in January 2016, the EFCC stormed and sealed a building known as Capital Hub located in Mabushi, Abuja; Defendant's daughters shop believing same to belong to the Defendant. The EFCC without any justification also froze the account of the Khalli Fertilizer Limited, a company where the Defendant's daughter is a Director.

The DW1 testified that he was invited by the EFCC. He reported to STF1 headed by Ibrahim Sharu who informed him that his invitation was in connection with the payment of \$300,000.00 made to Khalli Fertilizer Limited (KFN) by SEI. The witness then informed Sharu that although the money was paid to KFN Accounts, it was used to settle bills incurred by Himma Abubakar. Defendant referred the EFCC to Exhibits S and T. Despite all these explanations, the Defendant was threatened with arrest and detention and also the arrest and detention of his two daughters. In view of the threat and as a responsible father, he conceded to return the money under interrogation as compelled with the hope that he would be reimbursed by Himma Abubakar. The DW1 further stated that he was taken to the EFCC Chairman who told him that they are only after the recovery of funds and not after individuals. He directed Ibrahim Sharu to obtain the Defendant's statement and let him go as he had accepted to refund the money under interrogation.

The DW1 went on to state that shortly before he completed writing the statements he was further directed to see STF2, headed by Mr. Ibrahim Musa Mairiga. At STF2, the interrogation was question and answer s. The threat

of arresting his daughters was resurrected. The issues for interrogation this time were the payment of \$300,000.00 and the return of a Ford Expedition, Jaguar and a Range Rover Evoque. During the renewed interrogation DW1 told STF2 that all the issues were bills that SEI Nig. Ltd settled either by cash or credit and they bordered on the expenses incurred on behalf of SEI, related to the prosecution of the war against Boko Haram. The STF 2 team refused to listen and insisted that he would be detained and his daughters would be arrested if he refused to concede and bring back the vehicles to EFCC.

It is the evidence of the Defendant that the truth is that Himma Abubakar not having money at that time to execute the purported contracts owing to a lack of regular payment from the Office of NSA. The Defendant incurred and paid a lot of Himma's bills which he (Himma) paid back in piece meal. The witness also stated that he insisted to Himma the need for them to reconcile their accounts. The reconciliation was done on 27/3/15 which was duly captured in Exhibit W.

The Defendant testified that he gave full explanations to STF1 who duly recorded him and took some annexures from him; that to his surprise at the trial some statements

where he gave his explanations were not produced and those produced had their annexures removed or tampered with.

It is curious that the prosecution did not in any way contradict or challenge the said piece of evidence.

In MOHAMMED v STATE (Supra) the Apex Court held as follows:

“Suppression of evidence in any trial civil or criminal is a violation of the principle of fair hearing entrenched in our Constitution. It is a serious allegation which must not be made lightly. Suppression of evidence is a denial of justice. Once it is established that evidence in a trial has been suppressed, such a trial should be set aside”

The question that comes to mind is why would the prosecution failed to front-load the said statement of the Defendant made to STF1 in their proof of evidence? This to my mind goes to show that the prosecution had confirmed the Defendant’s version that some of his statements and documents were suppressed..

In the Supreme Court case of OGUDO v THE STATE (2011) 18 NWLR Pt 1278 Pg 1 at 52 – 53 the Apex court held thus:

“The appellant made a statement at Birnin Gwari Police Station Buruku that statement was never tendered in court. The prosecution is expected to tender all the statements made by the accused person to the police at the time of his arrest or subsequently. In this case the appellant made a statement at Birnin Gwari Police Station (the Fist Station he was taken to after he was arrested. The prosecution did not tender the statement at trial to deprive the appellant standing trial for an offence. The use of his statement made to the police to my mind renders the trial unfair”

It is the contention of the Defence that the Defendant was not given access to the services of a lawyer despite several requests by him.

At this point it is necessary to look at the provision of Section 36(6) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and particularly Section 14(2) and 17 (1) and (2) of ACJA 2015.

For want of doubt Sections 14(2) and 17 (1) and (2) of ACJA 2015 is reproduced thus:

14(2) “A person who has the custody of an arrested suspect shall give the suspect reasonable facilities for obtaining legal advice, access to communication for taking steps to furnish bail, and otherwise making arrangements for his defence or release”

17(1) “Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement”.

(2) “such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a civil society organization or a justice of the peace or any other person of his choice.

Provided that the legal practitioner or any other person mentioned in this sub-section shall not interfere while the suspect is making his statement, except for the

purpose of discharging his role as a legal practitioner”

In the instant case, it is the evidence of the Defendant that he was not given access to the services of a lawyer despite several requests by him and even when he had a lawyer from the NAF who also doubled as Liaison Officer of the NAF to EFCC that escorted him to EFCC, the Defendant's request to have the said lawyer present at his interrogation and when his statement was obtained was rejected by the EFCC operatives.

In the unreported decision of the Court of Appeal in CA/L/727A/2017 AKAEZE CHARLES v FRN delivered on the 19/3/2018, the court held that it has been established by a long line of decided case that the courts would interpret the word “**may**” as mandatory wherever it is used to impose a duty upon a public functionary to be carried out in a particular form or way for the benefit of a private citizen.

The court went on to state that Section 17(2) of ACJA impose a duty on public functionaries (police officers and other officers of any law enforcement agency established by an Act of the National Assembly and this includes the EFCC to record electronically or retrievable video

compact disc or such other audio visual means, the confessional statements of a suspect and to take statements of suspects in the presence of the persons set out in Section 17(2) of ACJA.

The Court of Appeal further held that the provisions are for the benefit of private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statements.

That the provisions also have another side of it, viz: to protect law enforcement agents from false accusation of coercion in taking statements from suspects. The use of the word “**may**” in those provisions are in those circumstances mandatory and not permissive.

Also in the case of FABIAN MATHEW v STATE, unreported decision of the Court of Appeal in Appeal No. CA/L/1126/2011 delivered on 11/12/15 and JOSEPH ZHIYA v THE PEOPLE OF LAGOS STATE (2016) LPELR – 40562 (CA) the Court of Appeal held that failure to comply with Section 9(3) of the ACJL which is *pari material* with Section 15(4) and 17(2) of ACJA 2015, which requires video recording of the making of a confessional

statement or, in its absence, the presence of the suspect's legal practitioner, during the writing of such statement, rendered such statements impotent and inadmissible.

In the instant case as stated earlier, the Defendant led evidence to the fact that he was refused the access of a legal practitioner when he was being interrogated and when he made his statements (Exhibit N¹ – N⁵).

Under cross-examination of PW 4, the witness stated that there was no specific video recording of the statement of the Defendant to the commission.

In the light of the above, I am of the considered view that the non-compliance with the provision of Sections 15(4) and 17(1) & (2) of ACJA 2015 is fatal to the case of the prosecution as the said Defendant's statements are rendered impotent and inadmissible, I so hold.

Now on the non-calling of Himma Abubakar/Societe D' Equipments Internationaux Nigeria Limited by the prosecution as a witness. On this, the prosecution submitted at paragraph 7.3 of his address that the law is settled that the prosecution has no obligation to call a number of witness(es) or a particular witness, since the

prosecution is at liberty to call any witness to prove its case.

In the case of ALAKE v STATE (1992) NWLR Pt 265 at 269 the Supreme Court held thus: “it is generally correct to say that the prosecution has a discretion as to who to call as a witness, it is equally clear that where a vital and or material witness is not called, such a failure would be fatal to the case of the prosecution as in this case”.

From the evidence before this court, there is nothing outside Exhibits N¹ – N⁵ to demonstrate that it is true; the only evidence outside the purported DW1’s statements that would have swayed the court or even the Defendant is the evidence of Himma Abubakar or that of an accredited representative of the company Societe D’ Equipments Internationaux Nigeria Limited which is alleged to have “corruptly” offered the gifts identified in the 4 count amended charge to the Defendant.

Under cross-examination of PW4, he stated thus:

“We didn’t take the statement of Abubakar Himma. As at the last time we know he was in Niger Republic. No officer to my knowledge went to Niger to interview Abubakar Himma”

From the foregoing piece of evidence, the prosecution was aware of the whereabouts of Abubakar Himma but in their wisdom elected not to elicit a statement or call him as a witness in this case.

I am of the considered view that the failure of the prosecution to call Himma Abubakar, a critical witness in this case put a huge dent in the prosecution's reliance on Exhibits N¹ – N⁵. For instant under examination-in-chief, the PW4 led evidence and stated thus:

“After gathering of these information Himma Abubakar the contractor was contacted on phone and was asked why these payments were made... but he was unable to give any explanation”

The Defendant in his testimonies explained that the payment made by Himma Abubakar was to defray the expense he (Defendant incurred on behalf of Himma Abubakar as can be seen in Exhibit W.

It is worthy of note that DW1's evidence in this respect was never challenged nor controverted in any material way. The Defendant in his testimony stated that he was stationed in Ukraine from July to September 2014. All the pilots and engineers were trained in Ukraine. The

foreigners are Ukrainians and they all came in as experts. The DW1 further stated that he incurred expenditure for Societe D' Equipments Internationaux Nigeria Limited with Himma Abubakar's consent. The Defendant referred to a letter he wrote to Himma Abubakar on the 5th of March 2014 requesting his permission to go ahead and purchase travel tickets with his own money for the crew travelling for training in view of the fact that he had not yet been paid by the Office of the NSA. The letter was admitted in evidence and marked Exhibit S. The reply by Himma giving consent to incur such expenditure in Exhibit S was admitted in evidence as Exhibit T. The Defendant also tendered proof of the purchase of air tickets through a travel agency which was admitted as Exhibit U.

Now to ground these offence as contained in the charge sheet, the prosecution must establish that the sums and vehicles in the charge was received "corruptly" as a "Reward" given to pervert the "procedure" or "corrupt the conduct".

The prosecution had to firmly establish that the purpose for which the money was given was to persuade or influence the Defendant into doing something dishonestly or as an incentive to spur the furtherance of his duty.

In the light of all stated above, I am of the considered view that the prosecution have woefully failed to establish the offence of gratification against the Defendant. They have not shown that the Defendant did not in fact incurred these expenses presented to Himma Abubakar and have not shown that the reason why payments and the vehicles seized should be returned to the Office of the NSA. The prosecution have not also shown that Himma Abubakar confirmed that the payment of these monies and purchase of the vehicles were for gratification received in performance of a duty or function.

In conclusion, I hold the firm view that the prosecution failed to establish a case of corrupt gratification under Section 17 of the Independent Corrupt Practices and Other Related Offences Act 2000 on which the 4 count charge was framed.

Accordingly the Defendant AVM Alkali Mohammed Mamu is hereby discharged and acquitted on all the 4 count charge.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/06/2018

Prosecution's Counsel – We thank the court for the judgment.

Defendant's Counsel – We thank the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/06/2018