IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE APPELLATE DIVISION HOLDEN AT ABUJA

CASE NO: CR/
APPEAL NO: CRA/07/2011
DATE: 11TH APRIL, 2014.
BETWEEN:

AMAKA UDEH.....ACCUSED/APPELLANT

AND

COMMISSIONER OF POLICE.....COMPLAINANT/RESPONDENT

BEFORE THEIR LORDSHIPS:

1. HON. JUSTICE M.E. ANENIH..... PRESIDING JUDGE
2. HON. JUSTICE S.B. BELGORE..... JUDGE

JUDGMENT

The appellant by name Amaka Udeh was convicted in the court of O.O. Oyewumi, then a Chief Magistrate but now a Judge of the National Industrial Court. This followed his trial on a five counts charge. He was convicted on only three of those charges and sentenced to various terms of imprisonment with options of fines.

At trial of the appellant, prosecution called six witnesses and tendered twenty seven Exhibits.

On the other hand, the appellant testified for himself and called additional two witnesses in his defence.

Following the convictions of the accused/appellant on three of the counts, the learned Chief Magistrate sentenced him in the following way;

COUNT 1

(1) Six months imprisonment or ten thousand naira fine.
(2) Payment of the sum of N1,393,000.00 as compensation to one Unekwu Okedikeji being money collected from the contract at JDA for cleaning services rendered to it by Kleencat Limited.

COUNT 111

(1) One year imprisonment or N20,000.00 fine.

COUNT IV

(1) Six months imprisonment or N5,000.00 fine.
(2) Payment of N200,000 as to PW1; being money collected as logistics for JDA.

The terms of imprisonment were to run concurrently while the fines were cumulative.

What are the offences alleged against the accused person? They are:

(1) Criminal misappropriation contrary to S. 309 of the Penal Code.
(2) Using as genuine, a forged document contrary to S. 366 of the Penal Code.
(3) Cheating contrary to S. 322 of the Penal Code.

Dissatisfied with his conviction and sentences imposed, the accused/appellant has appealed to this court. The initial notice of

appeal filed contained six grounds of appeal. It was later amended to contain eight grounds of appeal.

The appellants counsel, Mr. Okey Onyianta, formulated six issues for determination for those eight grounds of appeal.

On the other hand, the respondent, that is the Commissioner Of Police filed brief of argument. In it, the learned counsel to the respondent, Chijioke Okeze Esq., submitted six issues for determination. The issues are the same as submitted by the appellant's counsel. They are:

(1) Whether the lower court was right in admitting rejected documents and acted or relied on same to convict the accused?
(2) Whether the lower court erred in law in taking cognizance of an offence of using as genuine a forged document which is an offence contrary to S. 366 of the Penal Code.
(3) Whether the lower court was right in holding that the accused could not prove that she used the sum of N200,000.00 to rent a shop for her employers.
(4) Whether the lower court was right in holding that the accused dishonestly misappropriated the sum of N2,500,000.00.
(5) Whether the lower court was right in ordering the accused to pay compensation to PW1 and PW3.
(6) Whether the decision of the lower court is unreasonable and unsupportable having regard to the evidence adduced.

My starting point in the examination of this appeal is naturally from issue 1. And I so start.

ISSUE 1

This issue as couched by the appellant's counsel is whether the learned trial Chief Magistrate was correct to admit in evidence documents already rejected in evidence by the lower court as well as to use the same rejected documents in reaching the decision convicting the appellant on count III of the charge for the offence of using as genuine a forged document contrary to S.366 of the Penal Code.

Learned counsel to the appellant submitted on this issue that the lower court erred in law when it admitted in evidence documents already rejected in evidence by the same lower court. Learned counsel obviously referring to a Board Resolution of Kleencat Limited which was admitted in evidence as Exhibit C13 through PW6. PW6 we must not forget is one James Ogwu Onoja. In support of his submission learned counsel cited inter alia, cases of **ITA VS EKPEYONG(2001)1 NWLR (PT 695) 617, NGIGE VS OBI (2006) 14 NWLR (PT 999) 168, OKUDUWA & ORS VS STATE (1988) 3 SCNJ 110, AIGBOBOBADU VS AIFUWA (2006) ALL FWLR 303** etc.

Learned counsel to the appellant finally urged this court to resolve this issue in favour of the accused/appellant. See pages 6-16 of the appellant's brief.

In reply and on this issue, learned counsel to the respondent, that is the Commissioner Of Police, Mr. Chijioke Okeze, argued that the lower court was right in admitting exhibit C13 as an evidence in this case. He submitted that the lower court merely rejected the document in the first instance when it was sought to be tendered through PW1 and that it was never marked as so. Learned counsel said there was no consequential order that the same document be marked as rejected.

He referred the court to the last paragraph of page 14 of the compiled record of appeal.

We have considered these submissions. We have also adverted to the relevant pages of the record of proceedings of this case on appeal. At the proceedings of 3rd June, 2009, the prosecution sought to be put in evidence, documents relating to account opening of Kleencat limited especially the Board Resolution in evidence. The objection was predicated on the ground that the Resolution did not contain the name of the officer who issued the Resolution or the document and therefore not in compliance with S.111 of the Evidence Act. The lower court upheld the objection and rejected the document in evidence.

On the 4th June, 2009, that is the second day of rejection of that document, the prosecution applied for one Mr. Mantur B. Miri to be subpoenaed to produce and tender some documents in evidence. The document expected to be produced and tendered is the account opening documentation including Board Resolutions which had earlier been tendered as Exhibit (and was then in the custody) in High Court No 18 of this Court presided over by His Lordship F. Ojo. And the subpoenaed witness is the Registrar of that court. The learned Chief Magistrate granted the application by signing the subpoenaed on that day.

Then on the 19th June, 2015, the subpoenaed witness was in court with many documents including the Board Resolution. He tendered all of them that is, statement of account, cheque books, Receipts and Board Resolution as they relates to Kleencat Limited. The accused's counsel objected to the tendering of the documents in evidence on the ground that they included the Board Resolution for opening of account which

had earlier been rejected on the 3-6-09. The lower court, rejected the arguments for the objection and admitted the documents in evidence. They were in a bundle and marked as Exhibits C13.

We have asked ourselves one basic question with respect to this issue number one. It is this. Is it the same document that was rejected at the proceeding of 3-6-09 that was subsequently re-admitted in evidence at the proceedings of 19-6-09? Our answer is in the negative. From the records, the documents that were admitted in evidence (which included Board Resolution) were the documents earlier in the possession of another court presided by His Lordship Ojo of this court. That explains why the Registrar of the court was subpoenaed to tender those documents in court. So, they are not the same documents as earlier tendered and rejected.

Furthermore, let us for a moment concede that it is the same document, (without actually so conceding), was the documents so marked as 'rejected' and kept in the custody of the lower court? The answer again is No. In that proceeding of 3-6-09, the learned Chief Magistrate order reads as follows:

" *the objection of the counsel is upheld, the document sought to be tendered is rejected*".

So, learned Chief Magistrate never marked the document as rejected. It merely rejected it and never kept it in the custody of the court. A document marked as "*tendered but rejected*" was never part of the record of appeal submitted to us. So it is safe to conclude that upon rejection by the lower court, it was returned to the prosecution. It is instructive to note that a document marked as "*tendered but rejected*" would at all material times remain in the custody of the court. It can

never be re-tendered in the same court for admission as evidence in the same court.

We have adverted to the case of **ITA VS EKPEYONG** (supra) heavily relied upon by the appellant's counsel. With due respect to him, it seems to us that learned counsel did not appreciate in full the decision of the Court of Appeal in that case. In that case, R.D. Mohammed JCA said;

> *" I respectfully agree that once a document was tendered in court and it was rejected and MARKED REJECTED, it cannot subsequently be tendered in evidence as exhibit in the case……."*
>
> (Capitals are mine)

In the same **Ita's** case (supra), Opene JCA had this to say;

> *"once a document is rejected and MARKED SO, it remains rejected and the only course open to the counsel is to appeal against the decision of the court"*
>
> *(*Capital mine)

In the instant case under reference, this exhibit C13 was never even presented before the court before. The one presented and rejected was never marked so as to remain in the custody of the court. So, viewed from all angle, the submission of the learned counsel to the appellant is lacking in all merit. The better submission is the one made

by the learned counsel to the respondent. Learned counsel wrote at pages 2 and 3, paragraphs 3.6 and 3.7 of his address as follows;

3.6 *" Furthermore, it is submitted that when a document is rejected and marked rejected on the order of a trial court, the court retains the custody thereof from that moment henceforth. However, where it is just a rejection order that was made, the document remains in the custody or possessions of the party that sought to tender same. This is to enable the party have a second opportunity of tendering the document all over again."*

3.7 *" It is instructive to note that when the appellant (through her counsel) raised an objection to the tendering of the document at a later stage by the prosecution through PW6, the point that the document was earlier rejected was not one or part of her grounds of objection. Certainly, this was because the appellant knew that the court never made an order that the document be marked rejected otherwise it would have been part of her grounds of objection……"* .

In conclusion, this issue is resolved in favour of the Respondent. Exhibit C13, was properly received in evidence and the lower court was right in relying on it in its decision.

ISSUE II

Whether the learned trial Chief Magistrate was correct to proceed to take cognizance of the offence stated in count III of the charge, using as genuine a forged document contrary to S.366 of the Penal Code in the light of the provisions of Section 140 (1) (c) of the Criminal Procedure Code as well as in clear breach of the provisions of S.35 of the Constitution of the Federal Republic of Nigeria, 1999.

Learned counsel to the appellant submitted on this issue that S.140 (1) (c) of the Criminal Procedure Code ousted the jurisdiction of the lower court to entertain, determine, try, make any enquiry and/or take cognizance of the offences described in S.363 of the Penal Code or S.369 of the Penal Code when the mandatory provision of that S.140(1) (c) has not been complied with. He argued that the lower court cannot take cognizance of count III without the sanction or complaint emanating from the court of Justice F.A. Ojo. Learned counsel pointed out that No sanction from the High Court presided over by Justice Ojo was made to the lower court and therefore no jurisdictional competence since S.140 (1) (c) requires such sanction with respect to the offence mentioned in count III of the charge citing the cases of **OJUKWU VS KAINE & ORS (2000) 15 NWLR (PT 691)** and **IBRAHIM VS**

INEC (1999) 8 NWLR (PT.614); learned counsel for the prosecution/Respondent, the provision of S.140 Criminal Procedure Code does not apply. This according to him is because count III of the charge was not predicated on the tendering of the document (Exhibit C13) at court 18 but was based on tendering them in three Banks. He argued that the issue of forgery of the Board Resolution became an issue at the police station during investigation and therefore not at the court of Justice F.A.Ojo. Learned counsel further submitted that the accused could not discharge the burden of proving that this count III falls under the exception listed in S.140 (1) (c) of the Criminal Procedure Code. That being the case, according to the prosecuting counsel, this issue is a non –issue and should be resolved in favour of the prosecution/respondent. He relied on the cases of **ABUBAKAR DAN VS STATE (2005) 1 NCC 24; and ASANYAN VS STATE (1991)3 NWLR (PT 180) 442.**

In considering this issue we perused the record of proceedings of the lower court in order to fully appreciate the reasoning of the learned Chief Magistrate. We have also taken a deep reflection on the divergent submission of both counsel on each side of the aisle.

For a start, we feel compelled to set-out count III of the charge and the provisions of S.140 (1) (c) of Criminal Procedure Code and even the provisions of S. 363 of Penal Code.

Section 140(1) (c) provides;

" (1) No Count shall take cognizance-

(a) *Of any offence described in section 363 of the Penal Code, when such offence has been committed by a party to any proceeding in*

any court in respect of a document produced or given in evidence in such proceeding except with the previous sanction or on the complaint of such count"

It is clear from the wordings of S.140 (1) (c) of the Criminal Procedure Code, that the offence codified under S.363 or punishable under S.366 or S. 369 of the Penal Code must or should have been committed before a court of law in it during its proceeding before that provisions can apply. In other words, no sanction of a court would be required where the offence under S.363 that is using of a forged document as genuine is committed anywhere else. So, the question is, where is the alleged offence of S.363 against the accused person committed? The answer should be found in count III of the charge. Count III reads:

" that you Amaka Udeh on or about the 5th day of April 2005 at Wuse within the Wuse Magisterial district dishonestly used as genuine a certain to wit: board resolution which you then knew or had reason to believe to be a forged document, and thereby committed an offence punishable under Section 366 of the Penal Code."

We had earlier said the charge should provide the answer of where the alleged offence took place. But regrettably, the charge sheet vide count III did not mention the place of commission of the offence. Too bad. However, we shifted through the pages of the printed record and found the answer. It is on record and infact in evidence that the accused person opened an account in FinBank and ZenithBank in favour of Kleencat Limited without the knowledge of PW3 who is 60% shareholder of the company. The accused was also in the habit of depositing and withdrawing money solely into and from the account. It is to be noted firmly that the accused signed the Board Resolution

both as the Chairman and Secretary of the Board. The accused/appellant himself admitted that she opened the account without the knowledge of the owner of the company. It is evidenced before the lower court that the accused signed documents that is C13 to open accounts with NUB Bank (now FINBANK) signing as the Chairman of the Board and also as Secretary of the Board. He deployed two different signatures in both columns for Chairman and Secretary of the Board. These are the facts laid bare in evidence before the lower court. So, it is clear beyond doubt, that the offence was allegedly committed in Banks and not in the High Court. In fact, the offence was committed before the proceeding in the High Court began. What is the offence alleged? It is the offence in S.366 of the Penal Code which reads:

" whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be forged document, shall be punished in the same manner as if he had forged such document"

It is therefore clear to us that the count III in the charge was based on the presentation of forged Board Resolution to the two named Banks and not based on the admittance of same in the civil suit proceeding in the High Court.

We have no difficulty in holding that albeit the forged document was an Exhibit before the High Court presided over by Justice F.A.Ojo, it was not presented in that court fraudulently or dishonestly to pervert the course of Justice. Rather, it was presented as an evidence to prove the claim of the plaintiff against the appellant who was the 2nd defendant. It would, probably have been otherwise if the appellant had presented the said Exhibit C13 herself to deceive the court. On the

contrary, exhibit C13 was hereby used fraudulently and dishonestly to open an account with two banks long before the case before His Lordship, F.A. Ojo .J. commenced. It seems we are making a repetition here. Yes, we are. But it is absolutely necessary to show or drum it properly that the lower court did nothing wrong in taking cognizance of the offence laid in count III of the charge. We agree totally with the submission of the learned prosecuting/respondent counsel that this issue be resolved in their favour and we therefore do. The cases of **OJUKWU VS KAINE & ORS** (supra) cited by the learned counsel to the appellant is irrelevant and not applicable to this case.

We now move to issue III.

ISSUE III

Whether the learned trial Chief Magistrate was correct when she held that the defence could not produce any document to the effect that the sum of Two Hundred Thousand Naira (N200,000) was actually used for payment of a shop at Banex plaza by the appellant.

This issue is related to count IV of the charge. That is, cheating contrary to S.322 of the Penal Code. On this alleged offence, the accused/applicant was convicted by the lower court and sentenced to six (6) months imprisonment with an option of N5,000 fine.

On this issue, learned counsel to the appellant referred to the evidence of the appellant at the proceedings of 24th October, 2009. He also referred to the Exhibit BA1 tendered by the appellant during trial and submitted that the learned trial Chief Magistrate failed to consider dispassionately the evidence of the appellant and the exhibits tendered. Learned counsel submitted that the actual money that is

N200,000 was used to pay for an office at Banex plaza for Kleencat Limited. He asked the court to resolve the issue in favour of the appellant and relied on the cases of **ARABAMBI VS ADVANCE BEVERAGES INDUSTRIES LTD (2005)19 NWLR (PT 959)1; OKEAGBU VS STATE (1992) 2 NWLR (PT 222) 244 and KINGSLEY VS STATE (2010) 6 NWLR (PT 1191)593** among others.

In respect to the above submission, learned counsel to the respondent, Chijioke Okeze Esq, argued that the accused failed to produce any evidence or document to show that the money was actually used to buy any shop. She in turn referred to Exhibit GO1, a payment voucher and which is captioned as being cost of fumigation and logistics at JDA.

On this issue, we noticed there are two vital evidence and they are both documentary. There is exhibit BA1 and GO1. And they are all on the same issue. Exhibit BA1 is the receipt for payment of a shop in the same amount while exhibit GO1 is a payment voucher for the same amount but for a different purposes. That is fumigation and logistics at JDA. Is there any confusion? The lower court relied heavily on GO1 in saying the money was not expended on buying a shop but for fumigation, hence she found the accused guilty of offence of cheating. This is what the learned Chief Magistrate said in her Judgment:

"----- both the accused and the prosecution agreed that the accused collected the sum of N200,000 from PW1 and that the amount was expended on something. Now the question is on what was the money expended? It is the case of the defence that the money was meant for the renting of a shop for Kleencat Limited. While the prosecution adduced evidence at the trial that the money was meant to be used as PRO or logistics at JDA to enable them retain the cleaning contract with

Kleenedge Limited. It is the testimony of PW1, PW2 and PW3 that the accused collected the said sum from PW1 in order to retain the contract under Kleenedge limited at JDA. Exhibit GO1 which is a payment voucher of Goomeg Group which is one of the Shareholders in kleenedge limited is instructive, it shows various sum of money collected by the accused, ranging from cost of materials, salary, cost of transportation, cost of mechanical work on Toyota Corolla, cost of cleaning JDA Wuse II, cost of cleaning Goomeg guest house at Okene, the prosecution made a particular reference to voucher in the sum of N200,000 signed for and collected by the accused on 4th March 2005 with the caption " being cost of fumigation and logistics at JDA. The defence could not produce any document to the effect that the money was actually used to pay for a shop as agreed on by PW1. It is on record that the registered office of kleencat is at 104a Mbale Street, Wuse Zone 2. One wonders the need for another shop to be used as kleencat office."

We see the above opinion or decision of the learned Chief Magistrate as a wonderful sumassault. Could be that she forgot that she had earlier admitted exhibit BA1 in evidence. Why did she ignore the existence of that BA1 in her Judgment. On the 2-2-10, while admitting exhibit BA1 in evidence, the lower court said:

"-------- thus a photocopy of the receipts for payment of a shop at Banex plaza in the sum of N200,000 is hereby admitted in evidence and marked exhibit BA1."

In the light of the above and existence of exhibit BA1, it was wrong of the lower court to have concluded that "*the defence could not produce any document to the effect that the money was actually used to pay for*

a shop agreed on by PW1" No. The defence produced exhibit BA1 and the lower court should have adverted its mind to it. What should we do now? It is trite that an appellate court would ordinarily not tamper with the findings of fact of a lower court. It seldom disturbs the finding by a trial court. But where such finding is perverse and insupportable by the evidence in court, an appeal court would act by doing an appropriate evaluation and do justice to the case.

In the present instance, there is exhibit BA1 which is the receipt of payment for rent of a shop. Exhibit GO1 is just a mere voucher raised to provide money for some other sundry issues. So, if the issue is whether or not the money was expended on a shop- (as in this case)- then exhibit BA1 proved that fact and settled the question and banished any doubt. The learned Chief Magistrate should have acted on exhibit BA1 instead of GO1. We therefore agree *in toto* with the learned counsel to the appellant that the learned trial Chief Magistrate failed to consider dispassionately the evidence of the appellant as well as exhibit BA1. In effect, we hold that the third issue is resolved in favour of the appellant. The prosecution did not prove the case of cheating against the appellant beyond all reasonable doubt. The appellant is entitled to a verdict of discharge and acquittal on count IV and we so enter it.

ISSUE IV

Whether from the nature and circumstances of the evidence against the appellant, whether the prosecution was able to prove that the appellant dishonestly misappropriated the sum of Two Million, Five

Hundred Thousand Naira (N2,500,000) belonging to Kleenedge Associates Limited and Kleencat Limited.

It is on record that the lower court convicted the appellant for the offence of criminal misappropriation of the sum of N2,500,000. He was sentenced to six months imprisonment with an option of fine of N10,000. This offence was charged in count 1.

It is the contention of the appellant's counsel that the learned Chief Magistrate did not evaluate the evidence of the prosecution witnesses properly before convicting the appellant. Referring to the evidence of PW1, PW2, PW3 and PW4, the learned counsel argued that their evidence either separately or when taken together did not establish that the appellant dishonestly misappropriated the sum alleged. He submitted the evidence of PW1 is only to the effect that the appellant removed some files from office and collected contract worth of N15.3Million from JDA. On the evidence of PW6, the investigator, Inspector Christopher Danjuma, learned counsel described it as pathetic. This is because PW6 stated that he discovered the appellant stole the sum of N2,150,000 and also in the same vein said the appellant diverted the money from Kleenedge account to Kleencat account. And that the same PW6 said he did not know how JDA paid for the contract sum.

Furthermore, learned counsel to the appellant argued that the evidence of DW2 and DW3 should have been considered by the Chief Magistrate because they showed that the contract sum in question was accounted for by the appellant. These evidences were not challenged and should have been accepted by the learned trial Chief Magistrate.

In reply, the prosecution counsel submitted that the appellant was rightly convicted by the lower court. He further argued that the appellant collected various sum of money from JDA amounting to N523,000 for cleaning jobs by Kleenedge limited and Kleencat limited. But because he said he is ready to give up or give the other shareholders 60% of it to PW3, it should be construed that he misappropriated the money in the first place and now trying to return it back. He urged the court to hold that the appellant was rightly convicted for dishonest misappropriation.

On this issue, it is important to start by X-raying the ingredients of the offence of criminal misappropriation. In other words, what is the prosecution expected to prove in order to ground a verdict of guilt? The offence of criminal misappropriation is codified under Section 308 and Section 309 of the penal code. Section 308 of the penal code defines the offence as dishonest misappropriation or conversion to personal use of any movable property. In other words, whoever dishonestly misappropriates or converts to his own use any movable property commits criminal misappropriation. So, for prosecution to succeed, they must establish the following against this appellant:

(1)That the property in question is a movable property.
(2)That the appellant misappropriated it or converted it to her own use.
(3)That she did so dishonestly.

Focusing on these three ingredients one after the other, it is clear to us that the property in question is a movable property. It is the contract sum of N2.5Million from JDA to Kleenedge and Kleencat

companies to which the appellant and PW3 are connected as Shareholders.

The vex question now is, did she misappropriate the sum in issue or converted them to personal use? This is the big question. It is on record that the accused/appellant collected the money. It is on record, that he was running the company as a director, was paying staff salaries and maintaining the companies properties while the other directors/shareholders were in Lagos. It is also on record that the appellant pledged to give the other shareholders 60% of the contract sum. To be able to answer the above question, there must be evidence of misappropriation or conversion to personal use. Now, we ask the question further, where is the evidence of conversion to personal use? None we say. She was running the company as sole director/shareholder available. She was paying salaries of staff, paying for rentage of clearing equipments used in contracts secured by the company. Are we to say these are evidences of misappropriation or personal use or conversion? Certainly not. The prosecution laid so much on the fact that she offered to pay 60% of the sum to the other shareholder not involved in the running of the companies. We ask what is wrong with that? That cannot by any strength of imagination be construed as evidence of misappropriation. To hold as such would be too absurd. We agree with the learned counsel to the appellant that the learned trial Chief Magistrate was patently wrong in her conclusion and evaluation of the evidence before her. She wrote at pages 140-142 of the record of proceedings as follows:

"…….. the testimony of the accused that she paid salary of staff, paid for cleaning equipments she rented are nothing

more than issues that she ought to have settled with the other shareholder if she was not running the company as a sole owner."

Who says running a company as a sole owner is an offence? Where is it stated that running company as a sole owner is *ipso facto* evidence of misappropriation of conversion to personal use?

With great respect to the learned Chief Magistrate, the conclusion is perverse and wrong in law. What she said further shows a wrong evaluation of facts and a wrong conclusion on same. She held thus:

" *it is a natural inference from all I have evaluated that the prosecution has proved beyond reasonable doubt that the accused not only misappropriated the sum of money she received from JDA, the exact amount not known, she also converted it to her own use as if she was the sole owner of the company"*

(the underlined is ours)

But the relevant question is, how did the learned Chief Magistrate reached this weighty conclusion of conversion to personal use? Clearly not from the evidence placed before her.

In short and in conclusion, this fourth issue is resolved in favour of the appellant. The conviction and sentence of those charges of criminal misappropriation contrary to Section 309 is erroneous. It cannot be allowed to stand and it is hereby set aside.

Having held as we have done above, it is clear the fifth issue on compensation pursuant to the conviction on count 1 would be resolved in favour of the appellant.

The issue is whether or not the order to pay compensation of N1,393.000 and N200,000 to PW3 and PW1 respectively is proper in law? It is not. And since we have set it aside, we say no more than this.

ISSUE VI

Whether the decision of the lower court is not unreasonable and unsupportable in the circumstances of this case and going by the evidence adduced at the trial?

We cannot see the utility of treating this issue any further. We say this because the appeal succeeds in part and fails in part. That shows that the lower court's decision is not unreasonable in the circumstances of this case. In the same vein, it cannot be said in total that the decision of the court is unsupportable by evidence.

To this extent that some issues were resolved in favour and against the appellant, this issue is no longer of any utilitarian value.

Consequently, and in the final analysis of this appeal, this appeal succeeds in part and fails in part.

…….…… ……..

HON. JUSTICE M.A. ANENIH HON. JUSTICE S.B.BELGORE