

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)**

**HOLDEN AT COURT 14, APO ABUJA**

**ON THE 27<sup>TH</sup> DAY OF OCTOBER, 2015**

**BEFORE THEIR LORDSHIPS: HON. JUSTICE U. P. KEKEMEKE (HON. PRESIDING JUDGE)**

**HON. JUSTICE M.A. NASIR (HON. JUDGE)**

**SUIT NO. FCT/HC/M/271/15/**

**COURT CLERK: JOSEPH BALAMI ISHAKU.**

**BETWEEN:**

**OGBADU RAYMOND.....ACCUSED/APPLICANT**

***AND***

**COMMISSIONER OF POLICE.....COMPLAINANT/RESPONDENT**

**JUDGMENT**

This is an appeal against the Judgment of the Upper Area Court of the Federal Capital Territory sitting in Zuba delivered on the 17<sup>th</sup> day of February, 2015.

The Appellant by his Notice of Appeal dated and filed on 29/09/15 set out three grounds of appeal.

1. The trial Upper Area Court erred in law when it decided to assume jurisdiction on the complaint in the absence of particulars disclosing any triable criminal offence thus occasioning a substantial miscarriage of justice.

2. The trial Upper Area Court erred in law when it adopted a wrong procedure in the trial and denied the accused/appellant access to a legal representation thus occasioning a miscarriage of justice.
3. That the judgment is against the weight of evidence.

The appellant sought the following reliefs:

1. An Order setting aside the judgment of the Lower Court delivered on the 17<sup>th</sup> day of February, 2015.
2. An Order discharging and acquitting the accused/appellant.

The Notice of Appeal, Records of Appeal and the Appellant's brief were served on the Respondent on the 9<sup>th</sup> day of October, 2015. The Respondent failed, refused and or neglected to file a Respondent's brief.

Learned Counsel to the Appellant adopted his brief of argument filed on 29/09/15. The Appellant raised three issues for determination in this appeal.

1. Whether the particulars of the offences contained in the First Information Report discloses any offences against the appellant.
2. Whether the Appellant was given fair hearing considering the procedure adopted at the trial.
3. Whether the judgment is not against the weight of evidence.

On issue 1, Learned Counsel argued that the Appellant was arraigned before the trial Court on a two count charge of criminal breach of trust contrary to Section 312 of the Penal Code Law.

That the evidence before the trial Court upon which the two count charge was based as contained in the FIR is that Appellant between 2013 and 2014 criminally swindled the nominal complainant of bakery ingredients for bread production at Hovit Bakery, Jigo, Bwari worth N1,733,160:00.

That there was no evidence before the trial court that the said bakery ingredients collected was not used for bread production at Hovit.

That there was no evidence of dishonest misappropriation or conversion to constitute the offence of criminal breach of trust for which the defendant was charged.

Learned Counsel submits that none of the elements or ingredients exists in this case i.e. *mens rea and actus reus* for the trial Court to take cognizance of the offences upon which it assumed jurisdiction.

That the trial Court ought to have terminated the case, strike out the case and discharge the Appellant.

That the transaction even on the face of the First Information Report can at best be described as a contractual or commercial transaction between the nominal complainant and Hovit Bakery.

That a Court can only assume jurisdiction where the Charge discloses offences which the court has power to hear and determine.

Learned Counsel finally urges the court to hold that the Charge in the First Information Report having not disclosed any offence against the Appellant was not only the charge before the lower court as can be garnered from page 1 of the

records of appeal is Criminal Breach of Trust and Cheating contrary to Sections 312 and 322 of the Penal Code Law.

***“That on the 24<sup>th</sup> January, 2015 at about 12:30 hours, you John Ogbadu Raymond of Jigo village, Bwari, Abuja between 2013 and 2014 criminally swindled one John Otikpa of Bakery ingredients for bread production at Hovit Bakery Jigo Bwari worth N1,733,160 and disappeared “temporary extinction” thereby committed the offence as charged.”***

In page two of the records of appeal, the Charge was read to the accused and the Accused/Applicant pleaded guilty.

The record on page 3 is that the accused heard and understood the content of the First Information Report and pleaded guilty to the Charge. He was thereafter accordingly convicted.

The First Information Report at page 1 of the record is clear. I have earlier in this judgment reproduced same. It is to the effect that the Appellant swindled one John Otikpa of bakery ingredients worth N1,733,160:00 at Hovit Bakery Jigo, Bwari and disappeared.

We cannot therefore see the basis for the argument that the Charge can at best be described as a civil or contractual transaction or that it does not disclose an offence against the Defendant. We have gone through the whole gamut of the records, it is a very short one. No evidence was led as the Appellant pleaded guilty. The argument of Learned Counsel to the Appellant relating to the absence

of ingredients of dishonest misappropriation or conversion to say the least is misplaced.

The argument of Learned Counsel to the Appellant that proceeding was conducted in chambers is not borne out by the records. Page 2 of the Records of proceedings states that the Court resumes sitting today the 17<sup>th</sup> of February, 2015 cannot be interpreted to mean that sitting took place in chambers.

The appeal lacks merit and it is dismissed.

**HON. JUSTICE U.P. KEKEMEK**  
**(PRESIDING JUDGE)**  
**27/10/15**

**HON. JUSTICE M.A. NASIR**  
**(HON. JUDGE.)**  
**27/10/15**