

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP JUSTICE A.A.I. BANJOKO- JUDGE**

CHARGE NO: FCT/HC/CR/78/2005

BETWEEN

**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT
AND
GEORGE CHIGBU.....DEFENDANT**

**THE PROSECUTION WAS REPRESENTED BY CHILE OKOROMA ESQ WITH
CHIOMA OKONGWU ESQ AND M.E. EIMONYE ESQ.**

THE DEFENDANT WAS REPRESENTED BY GODWIN N. CHIGBU ESQ.

JUDGMENT

The Defendant was initially arraigned with Two (2) other Defendants under a Three Count Charge filed on the 30th June, 2005 and during Trial through to the Stage of No-Case Submission, a Case to Answer was entered against the Defendant vide a Ruling delivered dated 14th of June 2012. The Defendant, unsuccessfully appealed the Ruling and subsequent to the Appeal, the Defendant Entered and Closed his Defence with the Case adjourned for Adoption of Final Written Addresses. At the Stage of Adoption, the Prosecution Amended the Charge, dispensing with the Offence of Theft in Count 2, leaving just One Count of Offence of Criminal Breach of Trust, which reads: -

COUNT ONE

That you, George A. Chigbu, on or about the 1st of November 2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being entrusted with Property, that is, an Intercontinental Bank Plc. Cheque in the Sum of N12, 635, 000.00 (Twelve Million, Six Hundred and Thirty-Five Million Naira) or Dominion over the said Property belonging to West African Medical Relief Centre and/or Associated Medical Relief Limited, Dishonestly Misappropriated or Converted to your own Use the said Sum of N12, 635, 000.00 being the Proceeds of the said Intercontinental Bank Plc. Cheque after paying the same into the Diamond Bank Limited Account of Workspace Properties Limited, a Company owned by you or in which you have interest, in violation of the Legal Contract expressed or implied, which you made touching the Discharge of the Trust and thereby committed an Offence contrary to Section 311 of the Penal Code

Act Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 312 of the same Act.

The Defendant, after an Overruled Objection was Re-arraigned under the above Charge and a Plea of Not Guilty was entered. The Prosecution elected not to lead evidence in regard to the Amended Charge but adopted the Final Written Addresses in line with the Evidence laid.

On the 22nd of September 2005, the Prosecution opened its case by calling the Nominal Complainant, Mr. Roger Matthews (now Late) as **PW1**, who testified on Oath that he is a United States Citizen living in Southfield, Michigan and works with the World Medical Relief Centre (referred to as "**WMRC**"), Haiti Outreach, West Africa Medical Relief Centre (referred to as "**WAMRC**") and the Associated Medical Relief Limited (referred to as "**AMR**"). These Organisations supply donated Medical Equipment to Third World Countries, Haiti and West Africa. He had been working with the WMRC for over Ten (10) Years in Haiti and desired to start donations in West Africa, starting with Nigeria and to convince the WMRC, he took full responsibility for its start-up.

PW1 stated that he had a friend in the United States by name Mr. Cyril Nwaguru, who introduced him to the Defendant, whose legal assistance was sought for, to form the Non-Governmental Organization (referred to as "**NGO**") and who in turn, assured them that he was responsible and trustworthy. He came to Nigeria, met the Defendant and supplied to him information that were required to form the NGO by name the West Africa Medical Relief Centre (WAMRC) and wanted to know from the Defendant his intention of becoming a Trustee or "his man" in Nigeria. The Defendant suggested forming also a Limited Liability Company named Associated Medical Relief Limited (AMR), because the Paperwork for Registering the NGO with the Corporate Affairs Commission (referred to as "**CAC**") would take a longer time.

Mr. Roger Matthews was the Chairman of the both WAMRC and AMR (now referred to as "the **ORGANIZATION**") and the Defendant, before his suspension, was a Trustee, whom he appointed as Secretary in both Organizations. The Modus Operandi of the Organization were that either a State or an NGO would write requesting for aid and thereafter, a Needs Assessment would be conducted on the Requesting State's existing medical facilities. After the Assessment, the Organization through its Secretary would draw up a Memorandum of Understanding (MoU) and in this instance, it was drawn up by the Defendant. The MoU would then be delivered to the State Governor or Health Minister for his Signature, and a Half Deposit in the Sum of Fifteen Thousand US Dollars (\$15, 000) per Container, is paid by the State Government to the Organization.

The Basic Charge per Container was Thirty Thousand US Dollars (\$30, 000), representing the Cost of Packing, Shipping and Administrative Cost and the

Average Cost of each Container containing the Merchandise ranged from Four Hundred and Fifty Thousand US Dollars (\$450, 000) to Five Hundred Thousand US Dollars (\$500, 000) according to the US Custom Service and US Internal Revenue Service Scale.

According to this witness, the Needs Assessment were carried out in Katsina, Ondo, Imo, Nasarawa and Anambra States and in his absence, the Defendant would visit either a State or NGO with the MoU, ensure all Paperwork are signed and collect the Cheques.

The Charge centred on Sums of Money the Defendant failed to deposit into the Account of WAMRC and AMR. He explained that he was in the United States, when he received a telephone call from the Anambra State Liaison Office asking him when the State was going to receive her Consignment. He pointed out to the Liaison Office that an Initial Deposit needed to be paid before a Container would be made ready for Shipment. He was then informed that Payment had been made, to which he sought to verify this fact and give feedback. He put a call through to the Defendant, who denied any payment by Anambra State. For over Three (3) Months, he had repeatedly been asking the Defendant these sets of fact but the Defendant had always been telling him that Anambra State never paid Deposit, explaining that the State was waiting for February or March to receive their Federal Government Allocation.

PW1 again received another telephone call from one Dr. Akigkwe, who notified him that the State Health Minister was on his neck pertaining to the Payment made to the Organization. He again reiterated non-receipt of this Payment but stated that he would double check and give a feedback. Dr. Akigkwe, later called back again informing him that the Defendant received and signed for the Cheque. He then told Dr. Akigkwe to secure the Paperwork evidencing Payment before his arrival to Nigeria.

Upon arrival, Dr. Akigkwe couriered the Paperwork, which were Payment Voucher, Register and the MoU, and PW1's Personal Assistant picked it up.

He identified Photocopies of these Documents now labelled as **IDX1, IDX2 and IDX 3** and the Amount involved therein was Twelve Million, Six Hundred and Thirty-Five Thousand Naira (N12, 635, 000).

PW1 confronted the Defendant with the fact of Anambra State Payment but the Defendant maintained, Non Payment and on that basis, he demanded and was handed over MoU Files that were in the Defendant's Custody. Going through the Files, that of Anambra State was not included and through his Personal Assistant, he secured a Lawyer to whom he briefed his predicament.

According to this Witness, his Organization maintained Two Accounts with the Prudent Bank and Payments were made into only those Accounts depending on

the Name used to lodge Payment. In this instance of Anambra State, the money paid, was not paid to his Organization or into any of the Two Accounts.

PW1 stated that for every Four to Six Weeks, he would be in Nigeria for about Ten (10) Days, and he and the Defendant managed the running and operation of the Organization. The Running Costs of the Organization's Office were included in the \$30, 000 Flat Fee and Further Costs were incurred by a Requesting State depending on Logistics.

Finally, under Examination-in-Chief, he stated that the Defendant entered into an MoU with Anambra State, payment was made but there was No Supply since money was not received by his Organization.

Under Cross-Examination, he stated that he lodged a Complaint at the Police Station. Learned Counsel representing the Defendant sought to show that Several Complaints were made to the Force CID, State CID and to the Assistant Inspector General of Police, who all exonerated the Defendant of any wrongdoing. PW1 could not say whether any Charge had been filed by the Police but stated that he engaged the services of a Lawyer who, may have made these Complaints to the Police and even before these Complaints were made, a Petition had been written to the EFCC.

The Drugs and Medical Equipment from the WMRC were not Free, as the WAMRC needed to pay Packing and Administrative Costs only. The WMRC appointed him Chairman of the WAMRC and the Personal Representative of the WMRC. He gave instructions personally whenever he was in Nigeria for Ten (10) Days or by Emails or via Telephone. He charged only \$30, 000 per Container and added that Requesting States made Payments in Cheques, not in Dollars and he could not say how much Requesting States paid in Naira. No Funds from Nigeria went to Haiti except for Fact Finding as in the Case of Guinea, which is part of West Africa.

To the best of his knowledge, he had never put any Request that his Trip Expenses be paid in Nigeria nor did he Email such a Request. He knew one, Abubakar Konate, who visited Nigeria and Cameroon and whose visit was not on the Account of WAMRC. When asked, he could not remember how many times WAMRC or the Defendant made any Money Transfer to the United States for his Travel Expenses.

PW1 acknowledged transfers into his Account from Workspace Properties Limited and the WAMRC but No Transfers were made in regard to his Trips to Fiji, Haiti and the Philippines. Transphere handled the Shipment of Containers and the Cost of Handling was paid by WAMRC.

The Defendant, one Ifeanyi Enunwosu, the General Counsel and himself, constituted the Management of the Operations of the WAMRC but the Two were later suspended by a Resolution. Ifeanyi Enunwosu was responsible for Drafting

MoUs, Minutes and Correspondences whilst the Defendant was responsible for Collecting Cheques as well as given the Mandate to secure Loans.

At certain periods, the Defendant used his own Money for Operational Costs and made Submissions for Reimbursements, which were yet to be approved for Payment, however, he could not say to what extent the Defendant was owed.

When he first met the Defendant, he supplied Information and Documents required to register WAMRC and told the Defendant to kick-start the process. Although, the WAMRC at inception did not have any Capital, it was untrue that the Defendant funded the Organization and moreover, his being in Court was not on the basis of Monies expended by the Defendant.

PW1 stated that part of the Transfers from Workspace and WAMRC went into his Personal Account. He paid to WMRC \$8, 000 Charges or more per Container adding that the Equipment was Free but not the Supplies. WMRC's Charges for Administration and Packing Fees was \$8, 000 per Container. He was referred and shown certain Payments and Dates and replied that these Payments and Dates represented Schedule for the Containers. He explained that at the beginning of the Year, he made Estimates in List Form, which is compiled into a Schedule and sent to the WMRC. Requesting States that have not made Payments are not arranged into the Schedule but a Schedule could be arranged in Anticipation of Payment for Budgetary Purposes. He identified his Schedule for the Year 2005 and another Schedule for Budgetary Purposes, which were tendered and admitted with an Overruled Objection as **Exhibits A1 and A2**.

PW1 disagreed with the fact that the at the time the Petition was pending, the EFCC had instructed him not to withdraw any Money from the Accounts until after investigation as he alone did the disbursement. He agreed that the Defendant was instructed to surrender Cheques received from any of the Requesting States including a Yobe State Draft of N16.8Million, which Draft he later collected, processed, disbursed and value was given. According to him, he withdrew the Sum Seven Million Naira (7, 000, 000) whilst the Excess of Eight Million, Four Hundred Thousand Naira (N8, 400, 000), was returned back to Yobe State Government and Transphere Limited did the Shipment.

The Defence through a Subpoenaed Witness, Mr. Michael Ozigi, a Staff of Prudent Bank now Skye Bank produced Photocopies of Money Transfer Instructions from Workspace's Account to Mr. Roger Matthews and Uche Kanu in the United States, which were Objected to by the Prosecution on the basis that Proper Foundation as to the whereabouts of the Originals were not established and therefore, failed to comply with the Provisions of **Section 97 of the Evidence Act**. The Objection was upheld but the Defence applied that the Documents be admitted for Identification Purposes and was eventually marked as **ID 2**.

Defence called another Subpoenaed Witness from the Corporate Affairs Commission, Mr. Mustapha Issa, who tendered Under **Part C of CAMA**, WAMRC's Minutes appointing Trustees, its Constitution, Certificate of Registration and

Affidavit Sworn to by Nkaru Ifeoma on behalf of Mr. Roger Matthews, which were admitted as **Exhibit B**. Also, tendered under **Part A**, was the AMR Limited's Memo and Articles of Association, Allotment of Shares, and Particulars of Directors, which were admitted as **Exhibit C**.

PW1 was re-sworn for Further Cross-Examination and through a Notice to Produce, tendered Thirty-Five (35) Email Correspondences between himself and the Defendant, which were tendered and admitted by their Dates as **Exhibits D to N**. Learned Counsel for the Defence confronted this Witnesses with some of the Email Correspondences to show financial instructions between him and the Defendant as well as Monetary Transfers Instructions.

Further, Monies paid by Anambra State belonged to the AMR as the WAMRC was still in the Process of Registration with the CAC. He did not know one Uche Kanu but only knew Ms. Kudu Kanu, a Travel Agent handling most of his Travels, whom he introduced to the Organization for business.

Concerning Monies received from Yobe State, PW1 stated that both his Solicitor, Ibrahim Abdul and the EFCC, took care of the Excess Money initially received by the Defendant and the Excess was in the Custody of his Solicitor, whom he appointed because the Defendant was Stealing Money.

As regards, Supply to Benue State, Payments were not received and the Audit Report showed that Payment made by Benue went into the Account of Workspace and he was not aware Benue State received any Container even after contact with the Liaison Officer in Abuja. He remained Chairman of Organization and did not know whether the WAMRC would continue to function without him.

Finally, he stated that Operations in Nigeria started in early 2004 and agreed that the Defendant paid Money for the Lease. He also agreed he had a US Bank Account indicating all transactions that went through it.

The Prosecution called a Subpoenaed Witness, Mr. Shehu Tawoju, a Lawyer working with the Intercontinental Bank as a Legal Officer who tendered Certified True Copies of Intercontinental Bank Cheque bearing an Instruction by the Anambra State Government in the Sum of Twelve Million, Six Hundred and Thirty-Five Thousand Naira (N12, 635, 000) and a Banker's Draft, which was admitted without Objection as **Exhibits O1 and O2** respectively.

The Defence recalled Subpoenaed Witness, Mr. Michael Ozigi, of Prudent Bank now Skye Bank who produced Certified True Copies of Transfer Instructions from Workspace Properties Limited to Mr. Roger Matthews, Uche Kanu, WMRC and Certified True Copies of Habib Bank Cheques deposited into AMR's Account, numbering Eight (8) Documents in total were produced, tendered and admitted, without Objection, as **Exhibits P1 to P8**.

Another Subpoenaed Witness, Bashir Oniyomi Oyetunde, a Legal Adviser working with the Nigeria Immigration Service produced a Certified True Copy of a File Record with **Reference NO. ABJ/HQ/V/90142** opened in favour of Mr. Roger Matthews, which was admitted into Evidence as **Exhibit Q**.

The Prosecution called its next Witness, Ndagan Bala Alhaji, as **PW2**, who under Affirmation testified that he lives in Central Bank of Nigeria (CBN) Staff Quarters and works for the WAMRC and AMR and is the Personal Assistant to Mr. Roger Matthews. His Job Function was to represent the Chairman in all activities pertaining to the Organization and he gets feedback from Staff. He started working for this Organization on the 31st of January 2005, approximately Eleven (11) Months and he knew the Defendant.

Sometime on the 3rd of February, the Chairman, Mr. Roger Matthews, enquired from him whether he had received a Cheque from Anambra State Government and he replied in the negative. The Chairman then directed him to enquire this fact from the Defendant and the Defendant's response was also in the negative adding that an MoU had been sent to Anambra State and the Organization was awaiting response, which feed back was relayed to the Chairman.

The Chairman informed him that he would be in Nigeria for few weeks and Paperwork would be couriered to Abuja by an Anambra State Government Official. Upon the Chairman's arrival to Nigeria, he was directed to ABC Transport to pick-up Anambra State Government Parcel. After the Chairman went through the Paperwork, he then handed them over to him to read. He discovered the Paperwork were Photocopies of MoU, Anambra State Government Payment Voucher and the Register of Payment, which documents he identified to be **IDX1 to IDX3**.

PW2 and the Chairman went to the Office of the Defendant, where the Chairman confronted the Defendant on whether he had received any Payment from Anambra State Government, which fact the Defendant denied receiving. The Chairman then demanded all the State Files in the Defendant's Custody, which was then provided to him. While in the Chairman's Office, he was instructed to bring out Anambra State Government File but PW2 could not find it. He then was instructed to retrieve the File from the Defendant, who told him he was going for a meeting and a Lady Staff would search, sign and bring the File. She too could not find the File, which outcome was relayed to the Chairman.

The Chairman then instructed him to secure a Legal Practitioner in order to make a Petition to the EFCC pertaining to Anambra State. He secured the services of A.I. Associates through whom a Petition was written and signed by the Chairman.

According to PW2, up to date, the Anambra State Government File could not be found.

Under Cross-Examination, his Letters of Application and Appointment were in the custody of the Defendant and on the day of his resumption, the Chairman, through an Email, forwarded to him a Provisional Letter of Appointment confirming his Salary Package. Till date, he was yet to receive his Letter of Appointment and was not angry at the Defendant's refusal to issue to him his Letter of Appointment.

PW2 acknowledged the EFCC Petition as well as the Defendant's detention but could not say how long the detention lasted. He was aware of the Defendant's release and re-arrest but could not also say whether he was released on Bail or detained for another Sixteen (16) Days.

According to this Witness, the WMRC donated Medical Equipment and Supplies to State Government and NGOs. He was aware of State Governments making Payments for these Donations and also aware that States paid \$30, 000 Handling Charge per Container. He did not visit the Office of the WAMRC/AMR at the UAC Building because the Defendant had threatened to kill him.

The Prosecution called its Last Witness **PW3**, DSP Godwin Job Eyojo, on secondment to the Investigation Unit of the EFCC. Through this Witness, the EFCC Statements of the Defendant were admitted into Evidence after a Trial within Trial on Each Statement, and after a Considered Ruling, the Statements of the 29th of April and that of the 14th of April 2005 were admitted into evidence as **Exhibits S1, S2** and **Exhibit TA** respectively. The Defence had no Objection on the Statement of 5th of May 2005, which was admitted in evidence as **Exhibit T** but Objected to the Statement that was made on the 13th of May 2005 on ground that it was obtained under Duress.

During a Trial within Trial of this Statement dated the 13th of May 2005, the Statement was admitted into Evidence but was not marked by the Registry as an Exhibit and therefore, was not a subject of that Trial. The Documents that were admitted into evidence during the Trial within Trial with emphasis as to weight, was **Exhibit U**, the Defendant's Medical Report. The Letter of Retraction written by the Defendant was admitted as **Exhibit V** and when an observation that it was an Original Copy, the Defendant stated that on the 5th of May, Mr. Eyojo requested for another Statement, which he rendered and submitted. The Defence tendered into evidence a Letter written by the Defendant to the Director of the EFCC with Attachments, which was admitted into evidence with emphasis as to weight as **Exhibit W**. Also tendered into evidence with emphasis as to weight, was another Letter written by the Defendant to the EFCC admitted as **Exhibit X**.

Upon Conclusion of the Trial within Trial, the Prosecution could no longer produce PW3 for Continuation of his Examination-in-Chief and Cross-Examination. Eventually, after Series of Adjournments, the Prosecution was foreclosed and the Defence was ordered to open its Defence. The Defence elected

to enter a No-Case Submission and Written Addresses were filed and exchanged in that regard.

The Court delivered a Ruling on the No-Case Submission finding that the Defendant had a Case to Answer and was ordered to enter his Defence. The Defence then filed a Motion of Stay of Proceeding, which was dismissed and thereafter, the Defence appealed this Decision.

Four Years Later, the Defence opened its Case and called its Sole Witness, Mr. George Amaechi Chigbu, who testified as **DW1** and under Affirmation stated that he is a Lawyer, a Full-Time Businessman and he knew Mr. Roger Matthew.

Sometime in 2003, an old friend, Mr. Cyril Nwaguru called him from the United States informing him that he would be coming to Nigeria with some inoculations and needed his assistance to facilitate their clearance. Mr. Nwaguru came and spent Three (3) Weeks in Nigeria and he assisted him with a Driver who aided distribution of the inoculations to Charity. After the Three (3) Weeks, Mr. Nwaguru returned to the United States and Three (3) Weeks Later, Mr. Nwaguru called him again informing him of his intention to supply Medical Equipment from the WMRC for the benefit of the Needy in Nigeria and West Africa but the challenge was finance and logistics.

DW1 stated Mr. Nwaguru was confident of his financial exposure to meet up with the challenge and informed him that a Representative would be sent to Nigeria, and he was to assist with the Representative's Stay as well as make necessary arrangements for the incorporation of the WAMRC, who would partner with the WMRC.

He met at the Airport, their Representative, Mr. Roger Matthews, who introduced him to Mr. and Mrs. Nwuruku, a Former Minister of State for Industry, who was also going to feature as a Trustee in the WAMRC.

According to him, both Mr. Roger Matthews and Mr. Nwuruku did not have the financial wherewithal to incorporate the WAMRC, which fact was relayed to Mr. Nwaguru in the United States. Based on Mr. Nwaguru's belief in his capacity, he commenced the incorporate process, provided Office Space for the Organization and Logistics.

During the Incorporation Process, the CAC rejected the inclusion of Mr. Roger Matthews from being a Trustee on the basis that he was not a Nigerian Citizen, as the Requirement was meant for only Resident Nigerians. He gave this feedback to Mr. Roger Matthews, who supplied him an Affidavit sworn to at the High Court of Aba evidencing his Nigerian Citizenship, which was resubmitted and subsequently, the WAMRC was registered and he was appointed a Trustee, Secretary and Head of Administration. His Job Function was to handle all the Operations in Nigeria particularly Contracts with States and Local Governments and establish relationships with Persons to whom donations were made.

According to him, WAMRC is an NGO, whose Objective is to receive for West African Agencies, Medical Equipment and Consumables from WMRC, whose Headquarters is at Detroit, Michigan.

To qualify for Donations, a Team of Doctors and Pharmacists from his Organization conduct a Needs Assessment Inspection on State and Local Government Hospitals to determine what Equipment and Consumables are required. The Commissioner of Health, Director of Medical Services, Director of Pharmaceutical Services and Matron would then do List of all unavailable items, which his Organization forwards to the WMRC, who in turn, determines Items in Stock and fit for Supply.

Each Recipient of Supplies had Standards to meet, and in the instances of a State, Local Government and Parastatals, the minimum and maximum value of Supplies ranged from \$600, 000 to between \$5Million and \$10Million. The Recipient does not pay for the Equipment and Consumables but only Handling Charge of between \$35, 000 and \$65, 000 depending on the Recipient's Location. For Port Cities such as Lagos, Calabar or Port-Harcourt, as low as \$25, 000 could be charged whilst Cities such as Maiduguri, Yobe State etc., the maximum could be charged.

The Defendant knew the AMR Limited, was a Creation of Necessity due to delays in registering the WAMRC under Part C. The delay in Registration, led the Prospective Trustees to incorporated AMR and who then doubled as its Directors. The AMR was a conduit for receiving Payment pending the Formation of the WAMRC, whose Registration was finally concluded on the 24th of December 2004 and thereafter, the AMR was no longer required and all its Transactions were suspended.

The Defendant acknowledged there were many relationships with Anambra State, explaining that on the 30th of October 2004, his Organization, the WAMRC, entered into an MoU with the Anambra State Government to donate Equipment Valued at \$45, 000. He and Ms. Ifeanyi Etuwe signed on behalf of the WAMRC whilst the Honourable Commissioner of Health through his Secretary and Permanent Secretary signed on behalf of Anambra State. He identified a Photocopy of the MoU, which was admitted as **Exhibit Y**.

After signing the MoU, the WAMRC was supposed to deliver the Equipment but unfortunately due to Hurricane Katrina, the WMRC directed that all available Medical Equipment and Consumables were to be diverted to the affected areas including Haiti, which explained WAMRC's inability to consummate the MoU with Anambra State and other States including Republic of Niger. Consequently, Anambra State did not pay any Money nor did the AMR supply any Medical Equipment to the State.

Concerning his relationship with Mr. Roger Matthews, DW1 stated that Mr. Roger Matthews was like a father figure to him. Sometime in 2004, Chief Nwuruku approached him narrating his financial ordeal after losing Ebonyi State Governorship Election and informed him that his Son was about to be expelled from School. Mr. Nwuruku borrowed the Sum of Five Hundred Thousand Naira (N500, 000) stating his Agric. Loan would be ready in Three (3) Week's time, which would be used to defray the money borrowed. A Month and Three (3) Weeks down the line, Mr. Nwuruku failed to payback this Sum and on Mr. Roger Matthew's return to Nigeria, he narrated this fact to him but was chided for loaning out this Money to Mr. Nwuruku with first obtaining clearance. The Defendant then explained that the Money loaned was his personal money and therefore, needed No Clearance.

Mr. Roger complained to him about Mr. Nwuruku and wanted him removed from the Board of Trustees. He was instructed to serve on all the Trustees with Notice of a Meeting and on the Agenda, was the Removal of Mr. Nwuruku as Trustee. The Defendant explained that Mr. Nwuruku must also be served with the Notice otherwise he would have a Defence.

He met with Mr. Nwuruku to know the reason attributing their discord since he and Mr. Rogers hailed from Ebonyi State and to also know Mr. Roger's Citizenship as per the Affidavit deposed in Nigeria. Mr. Nwuruku then told him that Mr. Roger was a "full blooded American".

According to DW1, Mr. Nwuruku had informed him that sometime in 2001, when serving as Minister, he went for Igbo Day in Atlanta where he met Mr. Rogers, who promised to make a Donation in Nigeria. On the basis of this promise, he helped Mr. Roger get a Chieftaincy Title from Ebonyi State.

Based on the foregoing, the Defendant confronted Mr. Rogers and advised him to resign as Chairman and Trustee of the WAMRC but remain the Organization's Liaison Officer in Detroit.

Mr. Rogers felt that the Defendant and Mr. Nwuruku both planned for his removal and had told him that he would not get away with it, threatening to report him on the allegation of Overcharging the Handling Charge and sharing the Excess with State Officials.

Subsequently, the Police invited all the Trustees but they were exonerated and the EFCC Petition was a General Petition, which dealt with the Organization's Transactions.

As regards the Payment of the Sum of N12, 635, 000 into the Account of Workspace Properties Limited, DW1 denied collecting such Sum from Anambra State Government either on behalf of WAMRC or AMR. Mr. Rogers had played No Role in all the negotiations and Contracts with States, including Anambra State, or with any Local Government, as he was not resident in Nigeria. Further, none of the Trustees played any Role in relation to this Charge.

During the Pendency of Trial, he sustained spinal cord injury from an accident he was involved in and almost lost his life. He also had reason to fly Overseas for several Meetings but none fell through, as he needed to be in Court. Personally, he had spent his hard earned money for WAMRC and all the Monies he previously had was lost to this Organization.

Under Cross-Examination, DW1 stated that the Anambra State Commissioner of Health sent a Representative, who took the Organization to selected hospitals and the only time he personally met the Commissioner of the State was during the signing of the MoU. He explained the signing took place in the Office of the Permanent Secretary and thereafter, they were ushered in to see the Commissioner and after seeing him, a Copy of the MoU was handed over to them.

The WAMRC could not donate due to a Tsunami and Flood that had occurred. This fact was not in writing but communicated orally to him by Mr. Rogers. The Anambra State Government was notified of the Tsunami and Flood Occurrence and was told that his Organization would not be able to supply until Operations resumed. DW1 could not remember whether the Tsunami occurred in December 2004 or whether Mr. Rogers communicated this fact to him in January 2005.

Shown **Exhibit Y**, particularly Article 1 Subparagraphs 4 to 6 of the MoU, the Defendant acknowledged the fact that any Payment not made into the Account of either the WAMRC or AMR was fraudulent. He was then confronted with his Statement of the 29th of April 2005 and 5th of May 2005, to which he replied that these Statements were made under Force.

His Counsel had objected citing **Section 29(2) of the Evidence Act**, and arguing that the Statements was not voluntarily made and the circumstances through which they were made rendered them Unreliable. Further, the Witness, PW3, through whom these Statements were tendered, was never produced for Cross-Examination and therefore, any Evidence, Oral or Documentary, went to No issue.

Counter-arguing, the Prosecution submitted that the arguments as rendered by the Defence bothers on the Question of Admissibility. However, the Statements could still be admitted from the Bar other than through Viva-Voce Evidence. Moreover, a Trial-within-Trial had been conducted on the Statements, in which the Defendant had the opportunity to Cross-Examine the Witness, and so far as the Statements were concerned, the Court had received that Evidence. The Court had ruled on the Statements, No Appeal is pending and therefore, the Statements stands as Exhibit and he referred to the Case of **GBOKO VS THE STATE**.

The aforesaid Objection was overruled and he read out Lines 1 to 3 of **Exhibit S2** dated 29th of April 2005 and maintained the point of not collecting the Cheque of N12, 635, 000.

DW1 stated he knew Mr. Rogers, who was a half-cast, he did see Mr. Rogers' Affidavit, but not his Residence Permit when he submitted these Documents to the CAC during the Incorporation Exercise. The Affidavit was provisionally admitted into Evidence as **Exhibit Z**, which the Defendant identified to be the Document given to him by Mr. Rogers.

Concerning the Conflict between Mr. Roger and Mr. Nwuruku, DW1 stated that when he left the Premises of the EFCC after a long detention, he was told to tabulate all that had happened, which he did. He also handed over a Cheque and the Tabulated Statements to the EFCC but none were tendered and admitted into Evidence. When asked, he could not say with precision whether the fact of Conflict was contained in his Statements.

According to him, the Sum of \$10, 000 from Katsina State was collected by him and transmitted into the Organization.

The Prosecution tendered, with an Overruled Objection, a Certified True Copy of Workspace Properties Limited Incorporation Documents, which were admitted as **Exhibit Z1**. The Defendant acknowledged being a Director and Shareholder in the Company, having a Bank Account with the Defunct Prudent Bank, where the AMR also had an Account.

Finally, depending on the circumstances, a Cheque from Anambra State Government, when collected, could be paid into WAMRC's Account with Prudent Bank and that Cheque, was never paid into the Workspace's Account nor did he convert to his own use the Cheque as alleged.

With the foregoing, the Defence closed his Case and Parties were ordered to file their Final Written Addresses.

The Defence filed and served on the 5th of April 2018 its Final Written Address dated the 4th of April 2018 and also filed and served its Reply on Points of Law on the 27th of November 2018, which was dated the same day.

The Defence in its Final Written Address formulated a Sole Issue for Determination, which is: -

“WHETHER THE PROSECUTION PROVED THE GUILT OF THE DEFENDANT BEYOND REASONABLE DOUBT”

The Prosecution, on their own part, filed and served its Final Written Address on the 5th of June 2018, which was dated the Same Date, wherein it also formulated a Lone Issue for determination, which is: -

“WHETHER THE PROSECUTION HAS PROVED ITS CASE OF CRIMINAL BREACH OF TRUST AGAINST THE DEFENDANT BEYOND REASONABLE DOUBT”

According to the Defence, where the Commission of Crime by a Party to the Proceeding is directly in issue, it must be proved Beyond Reasonable Doubt, and the Burden of Proving that a Person is Guilty of a Crime, is on the Person who asserts. In this instance, the Asserter is the Prosecution on whom rested that Burden of Proof that the Defendant actually committed the Crime of Criminal Breach of Trust as charged. Reference was made to **SECTION 135(1) AND (2) OF THE EVIDENCE ACT 2011 (AS AMENDED) AND THE CASE OF NJOKWU VS THE STATE (2016) ALL FWLR PART 842 PAGE 1668 AT PAGE 1686, 1687 PARAS H-A.**

The Prosecution can discharge the Burden of Proof or establish Guilt through the following Modes, namely: -

- A. Confessional Statement voluntarily made by the Defendant;
- B. Circumstantial Evidence; and
- C. Evidence of Eyewitness, citing the Cases of **JUNAIDU VS THE STATE (2016) ALL FWLR PART 850 PAGE 1045 AT PAGE 1078 PARAS A-C, AND NWAKOYE VS THE STATE (2016) ALL FWLR PART 850 PAGE 1183 AT PAGE 1206 PARAS C-E.**

Through the Cases of **UZOAGBA VS COP (2013) ALL FWLR PART 685 PAGE 337 AT PAGE 347 PARAS E-G; ONUOHA VS THE STATE (1988) 3 NWLR PART 83 PAGE 460**, Learned Counsel for the Defence enumerated the Four (4) Elements of Criminal Breach of Trust, which must be concurrently proved through Credible Evidence led by the Prosecution to establish Guilt of the Crime by the Defendant.

On the **Element of Entrustment**, being the Lone Element elaborated by the Defence, Learned Counsel argued that the Prosecution must first prove the Existence of the Property alleged to have been entrusted, otherwise there is no Entrustment. He submitted that the Alleged Offence was analogous to the Offence of Theft or Stealing, where the Law requires that the Prosecution must prove the Existence of the thing alleged Stolen, in order to establish that Offence, citing the Case of **ONAGORUWA VS THE STATE (1993) 7 NWLR PART 303 PAGE 49 PAT PAGE 88, 89 PARAS G-A.**

In this instance, however, none of the Prosecution Witnesses proved the Existence of the Cheque in the Sum of N12, 635, 000, that is, the Property alleged to have been entrusted with the Defendant. PW1, in an attempt to prove the Existence of the Cheque, rendered Hearsay Evidence based on information he received from one Dr. Akigkwe, an Official of Anambra State, who told him that the Defendant signed for and received the Cheque in issue. Learned Counsel contended that this Form of Evidence was bad, inadmissible in Law and Contrary

to **SECTION 77 OF THE EVIDENCE ACT**, citing the Case of **OGBEIDE VS OSULA (2004) 12 NWLR PART 886 PAGE 86 AT PAGE 115 PARAS B-C**.

Further, PW1 tendered for Identification Purposes Three Uncertified Photocopies of Public Documents allegedly sent by the Anambra State Government, now marked as **IDX1 to IDX3**. These Documents have No Evidential or Probative Value and are Unknown to Law, as the Law prescribes that only Secondary Evidence of Public Documents, i.e., Certified True Copies are admissible, citing **SECTIONS 87(A), 89(E) AND 102 OF THE EVIDENCE ACT; AND THE CASES OF OWOR VS CHRISTOPHER (2010) ALL FWLR PART 511 PAGE 962 AT PAGE 984; ABDULLAHI VS MILAD, KADUNA STATE (2004) 5 NWLR PART 866 PAGE 232 AT PAGE 250; ARAKA VS EGBUE (2003) 17 NWLR PART 848 PAGE 1 AT PAGE 18 ; EGWA VS EGWA (2007) 1 NWLR PART 1014 PAGE 71 AT PAGE 94; AND ISIAQ VS ISIAQ (2009) ALL FWLR PART 498 PAGE 345 AT PAGE 379**.

According to him, PW2, Bala Alhaji, did not receive the Cheque and the Evidence rendered by PW3, the Investigating Police Officer, went to no issue nor can any Evidentiary Value be ascribed thereto, as he never completed his Examination-in-Chief nor was he produced for Cross-Examination. Further, the Extra-Judicial Statements of the Defendant dated the 29th of April 2005 as informed by **Exhibits S1 and S2**, tendered through PW3, determined only its Voluntariness and not its Substance, for which the Defendant ought to Cross-Examine the Contents of the Statements through him to enable the Court determine the Probative Value to be accorded the Statements but that Opportunity was never offered. Therefore, the Extra-Judicial Statements, which formed part of the Evidence of PW3 as enunciated in the Case of **YUSUF VS OBASANJO (2005) 18 NWLR PART 956 PAGE 96 AT PAGE 132 PARA H, PAGE 216, 217 PARAS H-A**, rendered the Statements irrelevant and of No Evidentiary Value, having not been subjected to Cross-Examination.

Apart from that, the Best Evidence of Payment of Money into a Customer's Bank Account is the Production of that Customer's Statement of Account in which that Account is domiciled and reference was made to the Case of **N.A.S. LTD VS UBA PLC (2005) 14 NWLR PART 945 PAGE 421 AT PAGE 441 PARAS G-H**.

However, in this instance, there is No Evidence from the Prosecution showing that the Payment of the Property in the Cheque was paid into the Account of Workspace Properties Limited with Diamond Bank Limited and the Evidence of PW2 and PW3, were irrelevant on this Point.

By the foregoing, the Prosecution had failed to prove the Existence of the Cheque of N12, 635, 000, a Property made in favour of the WAMRC/AMR, alleged to have been entrusted to the Defendant or prove the paying of the Cheque into Workspace's Account in Diamond Bank Limited. Therefore, it was needless to

consider Other Ingredients constituting the Offence of Criminal Breach of Trust and urged the Court to so hold.

Apart from the above, Learned Counsel representing the Defence contended that the Contents of **Exhibit S2**, the Extra-Judicial Statement of the Defendant, did not fit into the definition of a Confession under **Section 28 of the Evidence Act**. The Defendant only promised to refund the Sum of Twelve Thousand, Six Hundred, and Thirty-Five Naira (N12, 635), which “promise”, cannot amount to a Confession or Admission of the commission of Criminal Breach of Trust.

On the assumption that **Exhibit S2** had any Evidential Value, during the Cross-Examination of the Defendant by the Prosecution on the 30th of May 2017, the Defendant successfully retracted the Content of **Exhibit S2**, by denying receipt of any Money from Anambra State. Referring to the Case of **IDOWU VS THE STATE (2000) 12 NWLR PART 608 PG 48 AT PG 69 PARAS D-E**, Learned Counsel submitted that where a Defendant retracts a Confessional Statement, the duty was on the Court to consider both the Confessional Statement and the Retraction to determine where the truth lies. Learned Counsel pointed out that **IDOWU's Case**, enumerated Six (6) Tests for determining the truth of an Extra-Judicial Statement, which were: -

- (a) Is there anything outside the Confession to show that it is true?**
- (b) Is it corroborated?**
- (c) Are the relevant statements of fact made in it true as far as can be tested?**
- (d) Was the accused, one who had the opportunity to commit the offence?**
- (e) Is his confession possible?**
- (f) Is it consistent with other facts, which have been ascertained and have been proved?**

According to Learned Counsel, only Test **(d)** could be answered in the affirmative, as the Defendant was both Manager and Personal Representative of the WAMRC in the transaction with Anambra State, and who could possibly have received payments, if made. The remaining Tests were to be answered in the negative, which could only mean, **Exhibit S2** failed to pass the Tests to qualifying as a Confessional Statement to be relied upon and same cannot satisfy the truth of the Statement in **Exhibit S2**.

Apart from that, Learned Counsel for the Defence stated that serious doubt existed in the Prosecution's case, which must be resolved in the Defendant's favour citing the Case of **SALE VS THE STATE (2016) ALL FWLR PART 822 PG 1619 AT PG 1636 PARA B**. Serious doubt could be seen from the testimony of PW1, Mr. Roger Matthews who had testified that the money paid, was in respect of an MoU entered between the WAMRC and Anambra State Government for the supply of Medical Donations but failed to tender any legally cognisable copy of the MoU to evidence that fact.

Further, PW1 had testified in Chief, that the Handling Charge was \$30, 000 and under Cross-Examination admitted that the Handling Charge was billed in United States Dollars contrary to the MoU in **Exhibit Y**, which showed that Anambra State agreed to the Sum of \$45, 000 with an advance payment of \$22, 500, and there was no provision in the MoU permitting the Handling Charge to be converted and paid in Naira. The Prosecution failed to lead evidence on how the Dollar Sums in the MoU translated to the Sum of N12, 635, 000, which created a doubt to be resolved in favour of the Defendant.

From the foregoing, Learned Counsel representing the Defence submitted that the Prosecution failed to prove the Guilt of the Defendant beyond reasonable doubt and therefore, the Charge should be dismissed and the Defendant acquitted.

In response, the Prosecution made Submissions on the Requisite Burden of Proof, (which need not be reproduced), submitting further that the burden shifts to the Defendant upon a Prima Facie Case being established, citing the Cases of **IGABELE VS THE STATE (2005) ALL FWLR PART 285 PG 592 PARAS F-H; OKOKO & ANOR VS THE STATE (1964) 1 ALL NLR PG 423.**

The Prosecution set out the Ingredients necessary to prove Criminal Breach of Trust as provided in **Section 311 of the Penal Code** and the Case of **UZOAGBA VS COP (SUPRA)** to argue on the **Element of Entrustment or Dominion over Property**. According to Learned Counsel, the Defendant was a Secretary and Trustee of the WAMRC, which puts him in a fiduciary relationship, as seen signed in **Exhibit Y**, the MoU entered into with Anambra State Government on behalf of the WAMRC.

Learned Counsel representing the Prosecution agreed with the Defence on the Three (3) Modes of Proving the Commission of Crime, and conceded that all Documents tendered by the Prosecution for Identification Purposes went to no issue and that no direct evidence was established showing the Defendant collected the Cheque.

However, the Confessional Statements **in Exhibits S, S1, T and Statement made on the 13th of May 2005**, evidenced the fact that the Defendant actually collected the Cheque and it was Settled Principle of Law that a Confessional Statement may be sufficient to ground a conviction so long as it is Direct, Positive and Properly Proved even if retracted by the Defendant citing the Cases **IDOWU'S CASE AND DIBIE VS THE STATE (2007) 9 NWLR PART 1038 PG30 AT PG51 PARAS A-C.**

The Retraction of the Statements by the Defendant during Trial would not avail him, as the Inconsistency Rule did not apply to him and his testimony, which conflicts with his Statements, should be treated as an afterthought. Reference was made to the Cases of **OGUGU VS THE STATE (1994) 9 NWLR PART 366 PG 35,**

36 PARAS H-A; SIMON VS THE STATE (2017) LPELR-41988(SC) PG 1 AT PG26 PARAS A-C.

According to the Prosecution, as to the desirability of having some Evidence outside the Confession that would corroborate the Statement, thereby making it Contents true, Learned Counsel pointed out that **Exhibits M and M1** and the Statements themselves, both had corroborative effect. More so, the Defendant had the opportunity of committing the Offence being a Person entrusted with the Affairs and Transactions of the Organization in Nigeria.

Responding to the contention raised by the Defence that the Testimony rendered by **PW3**, DSP Godwin Eyojo together with the Confessional Statements tendered through him should be entirely expunged on the basis of not being Cross-Examined by the Defence, the Prosecution argued that this contention was misconceived. According to the Prosecution, even though the testimony may be expunged, a Statement, held to be Confessional in nature, cannot be expunged, and he referred to the Case of **GBOKO VS THE STATE (2007) 17 NWLR PART 1063 PAGE 272 AT PAGE 297 PARAS B-H; 304-306 PARAS D-E, PARAS A-B**. Further, the Statements were duly admitted after a Trial-within-Trial and the Defence cross-examined PW3 on the Statements. Moreover, **PW3** did not author the Statements and his testimony cannot be contradicted through the Statements under Cross-Examination, since the Defendant was the Maker, who had averred to their Contents. Referring to **Section 232 of the Evidence Act**, Learned Counsel submitted that the Defendant denied collecting any Money or Cheque from Anambra State, and the Statements were used to contradict him.

According to the Prosecution, the Sum of N12, 635, 000 is the only Sum in Issue and No other. By the Defendant's Statements, the Testimony of PW1, and by **Exhibits M1 and M2** and also, by the failure by the Defendant to lead Oral or Documentary Evidence on the Sum of N12, 635, all go to show that No Other Sum was in controversy.

The Prosecution took Excerpts from the Statements for the purposes of showing that the Defendant made positive, direct, unequivocal and clear admission of collecting the Cheque, and submitted further that the Extra-Judicial Statements corroborated themselves and were consistent with the fact of collection of that Cheque, which all amounts to a Confession under **Section 28 of the Evidence Act** as well as the Cases of **NKIE VS FRN (2014) LPELR-22877(SC) PG 1 AT PG 29 PARAS D-F; IKEMSON VS THE STATE (1989) 3 NWLR PART 110 PG 455**.

Therefore, it was superfluous and unnecessary to produce Documents evidencing collection of the Cheque, or calling a person who witnessed that collection, or producing the Statement of Account of Workspace Properties Limited citing the Cases of **SANI GWANDU VS FRN (2014) LPELR-23992 (CA) PG1 AT PG41, 42 PARAS F-C; ONOGWU VS THE STATE (1995) 6 NWLR PART 401 PG 276 AT**

In response to the Submission made by the Defence that the Defendant only made a “promise” as contained in the **Exhibit S2** (the Defendant’s Extra-Judicial Statement), and that the “promise” did not amount to a Confession or Admission, the Prosecution submitted that such a Submission was absurd, and contended that the promise made expressly and reasonably, with all necessary inference, fell with the ambit of **Section 28 of the Evidence Act**.

As regards the Case of **N.A.S. LTD VS UBA PLC CITED SUPRA** by the Defence, where the Defence argued that the Production of a Customer’s Statement of Account was the Best Evidence showing Lodgement of Payment, the Prosecution again contended this Submission to be irrelevant and inapplicable in this circumstance, arguing that the Defendant, in **Exhibit TA**, his Extra-Judicial Statement, admitted paying the Cheque into his Workspace Properties Account with Prudent Bank Limited. Although, the Defendant erroneously stated the Cheque was paid into Workspace’s Account, the Stamp on **Exhibit M2**, showed that the Cheque was paid and value given to it in Diamond Bank, UAC Building, Central Area Garki Abuja.

Apart from the above, the Prosecution submitted as unfounded the Submission made by the Defence that there was Doubt in the Prosecution’s Case in regard to MoU entered into between the WAMRC and the Anambra State Government wherein the Handling Charge was billed in Dollars and not in Naira and so, there was no nexus with the Sum of N12, 635, 000 contained in the Charge. The Prosecution submitted that even though the MoU mentioned Payments in Dollars, this was not a Case of Debt Recovery, as what is in Issue concerned Conversion or Misappropriation of Money received by the Defendant on behalf of the WAMRC/AMR. The Contention of the Defence that after the Signing of the MoU, the WAMRC/AMR could not supply the Medical Relief Materials due to Hurricane Katrina, was a lie and lacked credibility.

According to the Prosecution, the Supply of the Material as per the MoU was contingent upon the Payment of 50% of the Handling Charge, which Anambra State Government paid as seen in **Exhibits M1 and M2**, which the Defendant collected but diverted. It was as a result this payment and the non-supply by the Reliefs that the Anambra State Liaison Office reached out to PW1. The Defendant having collected the Cheque, it behoved on him to give reasonable explanation on what he did with the Proceeds of the Cheque. The inescapable circumstantial inference goes to show that he misappropriated or converted the Cheque to his own use, citing the Case of **IGABALE VS STATE (SUPRA) PER ONNOGHEN JSC**.

Based on the above, the Prosecution submitted that the Element of Entrustment as well as Misappropriation and Conversion have been proved against the Defendant.

On the **Element of Violation of any Direction of Law prescribing the Mode in which such Trust is to be discharged or any Legal Contract Expressed or Implied made concerning the Trust**, the Prosecution submitted that the Defendant was a Trustee in Law, as the Cheque did not belong to him and he stood in a fiduciary relationship with the WAMRC/ AMR and owed a Duty of Care and Good Faith in the Management of the Organizations' Property. Reference was made to the Black's Law Dictionary on the Definition of Fiduciary Relationship. Further, the Relationship between the Organization and the Defendant was that of Principal and Agent and he was under a Duty to demonstrate Good Faith and Accountability in respect of the Money that came into his Possession. In this instance, the Defendant, violated the Terms of Discharge of that Trust when he misappropriated or converted the Proceeds in the Cheque and when he failed to show that he used it in any way for the benefit of the Organization.

Finally, it was argued that the Defendant acted **Dishonestly**, and submitted that the dishonest intention is inferable when he denied collecting the Cheque or rendered any account on what he did with the Proceeds. Further, the Defendant hid the Collection of the Cheque from PW1 and also refused to deliver the File of Anambra State's transaction with the WAMRC/AMR as contained in the Testimonies of PW1 and PW2. It was therefore obvious from the surrounding circumstances that the Defendant intended to and did convert the Proceeds of the Cheque to his Personal Use by hiding it from PW1, who was based in the United States.

Based on the foregoing, the Prosecution submitted that the Formulated Lone Issue was positively answered, the Requisite Burden had been discharged Beyond Reasonable Doubt and urged the Court to convict the Defendant.

By way of the Reply on Points of Law, Learned Counsel representing the Defendant after highlight the Principles on *stare decisis*, distinguished **GBOKO'S CASE** to argue the point that failure to Cross-Examine PW3, automatically would lead to expunging his testimony as well as the Exhibits tendered through him otherwise, it would breach the Defendant's Constitutional Rights in **Section 36(6)(d) of the 1999 Constitution** as well **Section 214 (2) of the Evidence Act**. According to Counsel, the appropriate precedent to be followed was not **GBOKO'S CASE** but that of **ISIAKA VS THE STATE (2011) ALL FWLR PART 583 PG 1966 AT PG 1984 PARAS C-D**.

Further, Learned Counsel represented the Defendant contended that **Exhibit TA**, the Defendant's Extra-Judicial Statement dated the 14th of April 2005, relied by the Prosecution to argue that the Defendant confessed to the alleged Crime was admitted into Evidence during a Trial-within-Trial Proceeding. However, this Statement was rejected in the Main Trial by a Ruling delivered on the 5/03/2007

at the end of the Trial-within-Trial. Therefore, Exhibit TA was not before the Court nor can it be relied upon.

Apart from that, Learned Counsel cited the Cases of **UBN VS NWAOKOLO (1995) 6 NWLR PART 400 PG 127 AT PG 154 PARAS D-F; INYANG VS EBONG (2002) 2 NWLR PART 751 PG 284 AT PG 329 PARAS C-D**, to argue that a Court should adopt the Literal Rule when interpreting the Words in a Document in order to give those Words their Ordinary Natural Meaning. The Court is not speculate what the Writer intended to write once the Document is unambiguous. According to Learned Counsel, the Defendant in Exhibit S2 wrote the Sum of N12, 635,00, which when written in words translates to the Sum of Twelve Thousand, Six Hundred and Thirty-Five Naira. Also, in the Statement of 13th May 2005, the Defendant wrote the Sum of N12.6, which was translated in words meant the Sum of Twelve Naira, Six Kobo. Learned Counsel then contended that none of these Sum in these Statements add up to the Value of the Cheque alleged to have collected by the Defendant from Anambra State and so, both Statements did not amount to Confession under **Section 28 of the Evidence Act**.

As regards the Banker's Draft in **Exhibit M1** and the Cheque in the Sum of N12, 635, 000 issued in favour of West African Medical Relief Centre/Associated Medical Relief Limited in **Exhibit M2**, which according to the Prosecution were erroneously marked as **Exhibits O1 and O2** respectively, Learned Counsel representing the Defendant argued that **Exhibit M2** did not show who collected it. Mr. Segun Tawoju, a Subpoenaed Witness, only tendered Exhibits M1 and M2, without given any Oral Evidence. It was not enough for the Prosecution to simply show that a Draft was issued in the name of Associated Medical Relief Limited and perhaps, to be drawn at Diamond Bank, UAC Building Branch without showing that it was the Defendant who collected the Cheque in **Exhibit M2** and paid it into his Account with Diamond Bank or into any other Bank Account other than where the Associated Medical Relief Limited maintained an Account.

From the foregoing, the Prosecution failed to lead any evidence and is Trite Law that a Person only assumes Criminal Liability or Responsibility for an Offence when it has been shown that he committed that Offence, citing the Case of **GAMBO GARBA VS THE STATE (2011) ALL FWLR PART 584 PG 148 AT PG 160 PARAS C-D**.

Finally, as regards **Exhibit Y**, the MoU entered into between the WAMRC and the Anambra State Government wherein the Financial Obligation was stated in Dollars and not Naira, Learned Counsel contended that the Prosecution sought to rely on Oral Evidence to contradict or vary the Content of a Document, which is contrary to the Provisions of **Section 128 (1) of the Evidence Act** and the Case of **FBN PLC VS IMASUEN & SONS NIG LIMITED (2014) ALL FWLR PART 725 PG 339 AT PG 363 PARAS B-C**.

Based on the foregoing Principles of Law and Authorities cited, the Submissions rendered by the Prosecution were unfounded in Law and should be discountenanced in its entirety.

In conclusion, Learned Counsel representing the Defendant urged the Court to resolve the Sole Issue in favour of the Defendant, acquit and dismiss the Charge preferred against him.

Now, after a Careful Consideration of all the Evidence, both Oral and Documentary, as seen through the Exhibits tendered, the Court will formulate the following Issues for Determination: -

- 1. Whether the Prosecution has the Burden of Proving its Case of Criminal Breach of Trust Against the Defendant Beyond Reasonable Doubt;***
- 2. Whether the Court ought to disregard the Statements admitted after the Conduct of a Trial-within-Trial based on the Incomplete Testimony of PW3;***
- 3. Whether the Retraction of the Defendant of his Extra-Judicial Statements is meritorious; and***
- 4. Whether the Prosecution successfully discharged his Burden to establish Criminal Breach of Trust committed by the Defendant.***

Now, in relation to the **First Issue** raised for Determination, the Burden of Proof on the Prosecution is as imposed under **Section 135(1) of the Evidence Act 2011 (As Amended)**, which states “*that if the Commission of a Crime by a Party to any Proceeding is directly in issue in any Proceeding Civil or Criminal, it must be Proved Beyond Reasonable Doubt.*”

In the Case of **AKALEZI VS THE STATE (1993) 2 SCNJ 19**, it was held that “Proof Beyond Reasonable Doubt is not attained by the number of witnesses fielded by the Prosecution. It depends on the Quality of the Evidence tendered by the Prosecution.”

In the case of **ADIO & ANOR VS THE STATE (1986) 4 S.C. AT 195, OPUTA J.S.C.** it washeld as follows: - “How is a case Proved Beyond Reasonable Doubt? Direct Oral Evidence can prove a Case. If the testimonies of witnesses who saw and heard were believed, there would be proof Beyond Reasonable Doubt. Circumstantial Evidence can also prove a case Beyond Reasonable Doubt. The Case of **JOSEPH OGUNBAYODE & ORS VS THE QUEEN (1954) 14 W.A.C.A. 458 (OTHERWISE KNOWN AS THE APALARA CASE)**, is an excellent example of Proof Beyond a Reasonable Doubt, based purely on inferences from Circumstantial Evidence. It is often said that witnesses can lie but circumstances do not, so in that sense, circumstantial evidence affords better Proof Beyond Reasonable Doubt.”

Section 36(5) of our Constitution is very clear that every person who is charged with the commission of an offence shall be presumed innocent until proven guilty. He who asserts must prove and that must be Beyond Reasonable Doubt. Once the Proof of a Crime Beyond Reasonable Doubt is discharged, then **Section 135 (3) of the Evidence Act** shifts the burden of proving Reasonable Doubt to the Defendant. See also the Cases of **WOOLMINGTON V. DPP (1935) AC 462; AIGBADION VS THE STATE (2000) 4 SC PT 1 PG 1 AT PG15, 16 (SC); SIMEON NEBEIFE OBIDIKE VS THE STATE (2014) LPELR-22590 (SC); YONGO V. COP (1992) 4 SCNJ 113**. Reasonable Doubt which will justify Acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is doubt which a reasonable person might entertain and it is not a fanciful doubt, it is not imagined doubt.

It is such as would cause a prudent man to hesitate before acting in a matter of importance. Reference is made to **Black's Law Dictionary, 6th Edition, PAGES 161, 1266; ANI & ANOR VS THE STATE (2009) LR ELR SC 239/2006; AMUSA VS THE STATE (2005)**.

The Prosecution or Defence must create a Reasonable Doubt in the mind of the Trial Judge. All it means, is that, the Prosecution must adduce such evidence, which if believed and if left uncontradicted and unexplained, could be accepted by the Trial Court, as Proof.

In the light of the above, the Prosecution is expected to discharge the Requisite Burden of Proof, Direct or Circumstantial, sufficient enough to ground the Offence of Criminal Breach of Trust in the Charge.

As regards the **Second Issue** of Statements, it was contended by Learned Counsel to the Defence, that the Court ought to disregard the Statements subjected to Examination in a Trial-within-Trial, for the simple reason that the PW3, DSP Godwin Eyojo, did not complete his Examination-in-Chief and was not subject to Cross-Examination by the Defence.

In **ALO VS STATE (2015) LPELR-24404 (SC) PER OGUNBIYI, J.S.C. (P. 24, PARAS A-E)**, held that It is pertinent to state also that the whole concept of Trial within Trial is for the purpose of safeguarding the interest of the Accused, which strengthens further the Constitutional Provision of an Accused's Presumption of Innocence until proved otherwise... When an Accused Person alleges that a Confessional Statement credited to him was made under duress or was not made voluntarily by him, an Objection must be raised as to the Admission of the Statement when it is sought to be tendered in Evidence and not after it had been admitted. See also **AKPAN VS THE STATE (1992) 6 NWLR (PT. 248) 139 AND MOHAMMED VS THE STATE (1991) 5 NWLR (PT.192) 438"**

His Lordship **KEKERE-EKUN, J.S.C.**, in the Case of **BABARINDE & ORS v. STATE (2013) LPELR-21896 (SC)**, held that a Mini Trial is a Complete Process in itself within the Substantive Trial. The Trial Court halts the Main Trial to conduct a Mini Trial, specifically to determine whether or not a Confessional Statement allegedly made by a Defendant was made voluntarily. See also the Cases of **ADELARIN LATEEF & ORS VS F.R.N. (2010) 37 WRN PG 85 AT PG 107 LINES 25 - 45; AND JIMOH & ANOR VS THE STATE (2011) LPELR-4357; C.O.P. VS ALOZIE (2017) LPELR-41983 (SC); MBANG V STATE [2013] 7 NWLR (PART 1352) 48, 72; NSOFOR VS STATE (2004) 18 NWLR (PT. 905) 292; AUTA V STATE [1975] 4 SC 125; GBADAMOSI V STATE [1991] 6 NWLR (PART 196) 182." PER NWEZE, J.S.C. (P. 20, PARAS. C-E). KAMILA VS STATE (2018) LPELR-43603 (SC) PER SANUSI, J.S.C. (P. 13, PARAS B-D);OLAYINKA V STATE (2007) 9 NWLR [PT.1040] 5; OBASI V STATE [1965] NWLR 119; STATE VS SANI (2018) LPELR-43598 (SC) Per RHODES-VIVOIR, J.S.C. (Pp. 24-26, PARAS C-F), who further held that once the Trial Judge orders a Trial-within-Trial, the Main Trial is suspended until the Conclusion of the Trial within Trial.**

The Court is also persuaded by the Case of **OWIE VS THE STATE (1985) LPELR-2847 (SC)**, which held **PER KARIBI-WHYTE J.S.C. (PG24, 25, PARAS F-A)** thus: - The Rule with respect to conducting a Trial within a Trial operates only in cases Questioning the Voluntariness or otherwise of Confessions. It does not apply to Questions of Weight to be attached to admissible evidence admitted. The Question of Weight of evidence is always decided, as in this Case, at the end of the Trial in relation to the Totality of the Evidence adduced before the Court. See **R VS NWIGBOKE & ORS (1959) 4 FSC PG 101, 102.**

From the facts of this Case, the Trial-within-Trial was conducted in respect of **Exhibits S1, S2, T and TA**, and during this Mini-Trial, the Prosecution opened and closed its Case and the Defendant also fully completed his Defence. During the Examination of DSP Godwin Eyojo's Evidence in this Mini-Trial, he was Cross-Examined by the Defence and therefore, the Defence had the full opportunity to react to his testimony rendered before the Court. At the Conclusion of this Mini-Trial, the Statements were admitted into Evidence. The Voluntariness of these Statements was the Main Issue for Determination and not the Merits of the Contents in the Statements. I hasten to add, that unless DSP Eyojo was privy to the facts in the Statements, he could only testify as to the Authenticity and Voluntariness of the Statements.

Since a Mini-Trial is a Complete Trial within the Context of Voluntariness, then any Document admitted after a Strict Examination by the Court of its Voluntariness, remains admitted for all purposes in the Substantive Trial and the Court is justified to regard the Statements and the Facts contained therein as Valid Evidence.

Therefore to all intent and purposes, the Court will regard and utilize these Statements in its Determination.

As regards the Value to be placed on the Evidence rendered by DSP Eyojo, since it is clear that he did not complete his Testimony in Chief and under Cross-Examination, it is Trite that when Death, Illness or Other Causes prevent the Completion of an Examination-in-Chief and a Cross-Examination, the Evidence still remains admissible, albeit with Little Probative Value placed on it. It all depends on the facts, circumstances of the Case and on the Issue of whether the Examination of this Witness was substantially completed. Testimony of a Witness whose Cross-Examination became impossible, can be treated as Evidence and the Court would carefully see whether there are any indications that by a Completed Cross-Examination, his Testimony was likely to be seriously shaken or his Good Faith would have been successfully impeached.

As long as it is not proved that the Completion of his Examination-in-Chief and his Cross-Examination were not deliberately evaded, or deliberately prevented, his Evidence is admissible. Reference is made to the Cases of **FOOD INSPECTOR VS JAMES N.T., (1998) Cr LJ PG 3494, 3497 (KER) AND DIWAN VS R, A (1933) L PG 561.**

Turning to the **Third Issue** of Retraction of the Contents of **Exhibit S2**, Learned Counsel representing the Defendant submitted that the Defendant only promised to Refund the Sum collected of N12, 635 and not the Sum of N12, 635, 000 as alleged in the Charge from Anambra State. He relied on **Section 28 of the Evidence Act**, to state that the Promise to Refund did not amount to an Admission or Confession of the Offence. The Defendant, from **Exhibit S2**, did not admit collecting the Cheque of N12, 635, 000 and neither did he admit paying this Sum into the Bank Account of Workspace Properties Limited or even converting the Sum to his own use. He urged the Court to note that even the Promise to Refund the Sum of N12, 635 did not state that it emanated from Anambra State.

According to him, **Exhibit S2** has No Evidential Value, PW3 having not been Cross-Examined on it and assuming but not conceding that it does have value, any Statement contained therein suggesting an Admission by the Defendant was successfully retracted during the Testimony of DW1, the Contents of **Exhibit Y** and the Evidence of PW1 on the ground that the amount West African Medical Relief Centre (WAMRC) charges as Handling Charges from Recipients of medical donations are expressed in Dollars and not in Naira.

Further, he argued that to safely convict a Defendant based on a Confessional or Extra-Judicial Statement, the said Statement must satisfy the Conditions of being freely and voluntarily made, direct and positive and he urged the Court to consider both the Statement and the Retraction to determine where the truth lies.

The Prosecution on his own part had contended that the Inconsistency Rule does not apply to the Defendant and his Testimony before the Court, which conflicts with the Statement in Question, is an afterthought.

Now, it is important to state yet again, that a Statement that went through the rigours of an Investigative and Probing Trial such as that conducted during a Trial-within-Trial remains admissible for all purposes. The Court must have been satisfied that the Statement was obtained voluntarily and therefore, admissible. Learned Counsel representing the Defence, is taken to be rehashing arguments on the Admissibility of **Exhibit S2**, which unfortunately for him, he is estopped from doing so.

The Court cannot sit on Appeal over its Decision and as long as that Ruling remains extant, the Question of Voluntariness is closed. The Retraction ought to have taken place during the conduct of the Mini-Trial and obviously this Court arrived at its Decision based on Hard Facts. In the Case of **ALHAJI MUHAMMADU DINGYADI & ANOR VS INEC DELIVERED ON THE 26TH DAY OF NOVEMBER 2010 IN SC. 32/2010 (R2), HIS LORDSHIP CHUKWUMA-ENEH JSC, AT PG 23 PARAS D-E**, re-emphasized the Trite Law that a Court cannot sit on Appeal over its Decision. Reference is also made to the Case of **JEV & ANOR VS IYORTOM & ORS (2015) LPELR-24420 (SC)**.

Further, the Defendant's Retraction is based on facts, which has been fully resolved. In the Case of **NWANGBOMU VS THE STATE (2000) 2 ACLR PG 9 AT PG 14; (1994) 2 NWLR PART 327 PG 380 AT PG 401**, it was held that "Where an Extra-Judicial Confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an Admission of Guilt, it will suffice to ground a Finding of Guilt, regardless of the fact that the Maker resiled therefrom or retracted it altogether at the Trial, in as much as such a U-turn does not necessarily make the Confession inadmissible." **ONU JSC, in HENRY ODEH VS F.R.N. (2008) 13 NWLR PART 1103, PG 1 AT PG 38**, held inter alia that, "A Retraction of a Confession does not ipso facto render the Confession inadmissible."

In the Case of **AZEBADA VS THE STATE (2014) LPELR-23017 (SC), ONNOGHEN JSC (NOW CJN) AT PAGES 14, 15 PARAS G-D** urged the Courts to look for some Evidence outside the Confession, which would make the Confession probable. This Rule is a Rule of Practice designed to determine, which of the Two Versions of Events relating to the Commission of the Crime is the Correct One. Where, in examining the surrounding facts and circumstances revealed in evidence by the Witnesses, the Court finds relevant facts and circumstances supporting or verifying the facts confessed to by the Defendant in the Retracted Statement, it means that the Confessional Statement is reliable and can be so relied upon in convicting the Defendant, his Retraction notwithstanding. See also the Cases of **GALADIMA VS THE STATE (2012) LPELR- 15530 (SC); NTAH VS THE STATE (1972) 4 SC PG 1; ANKPEGHER VS THE STATE (2018) LPELR- 43906 (SC); AMOS VS THE STATE (2018) LPELR- 44694 (SC); AWOSIKA VS THE STATE (2018) LPELR- 44351 (SC); AND YAHAYA UMAR VS FRN, SC. 614/2016 DELIVERED ON THE 14TH OF DECEMBER 2018.**

Therefore, to all intents and purposes, the Statements in **Exhibit S2**, is found as properly admitted and relevant. Being Confessional in nature, it would secure a Conviction unless there is No Evidence outside that Confession to show that it was true and corroborated by Other Evidence led by the Prosecution. The Court must also determine that the Relevant Facts contained in the Statement are true as far as they can be tested and that the Defendant on Record had the opportunity of committing the Crime. Further, the Court would have to determine whether that Confession was possible and finally, whether the Statement was consistent with Other Facts, which have been ascertained and proved. The Court is guided by the Cases of **NSOFOR VS THE STATE (2005) ALL FWLR PG 242, PAGE 397 AT PAGES 411, 412; (2001) 18 NWLR PART 905 PG 292 PER OGUNTADE JSC; AND NNAMDI OSUAGWU VS THE STATE (2009) 1 NWLR PART 1123, PG 523 AT PAGES 541-542.**

Now, as regards the **Final Issue** set for Determination, it is initially important to set out the Ingredients of this Offence to guide the Court in the determination of the Defendant's Innocence or Guilt of the Offence brought under this Head and the Court finds that the Offence of Criminal Breach of Trust is defined under **Section 311** and punishable under **Section 312 of the Penal Code Act** is as follows: -

Section 311 states that: - ***"Whoever, being in any manner entrusted with Property or with any dominion over Property, dishonestly misappropriates or converts to his own use that Property or dishonestly uses or disposes of that Property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits Criminal Breach of Trust."***

Section 312 of the Penal Code, states as follows: -

"Whoever commits Criminal Breach of Trust shall be punished with Imprisonment for a Term which may extend to Seven Years or with Fine or with both."

Now, there are Two Distinct Parts involved in the Commission of the Offence of Criminal Breach of Trust.

The **First** consists of the Creation of an Obligation in relation to the Property over which the Defendant acquires Dominion or Control. The **Second** is the Misappropriation, Use, Conversion or Disposal or Otherwise Dealing with the Property, Dishonestly and Contrary to the Terms of Obligation Created.

The Person handing over the Property must have Confidence in the Person taking the Property, so as to create a Fiduciary Relationship between them or to put him in position of a Trustee. The Person who comes into Possession of the Property

receives it legally but illegally retains it or converts it to his own use against the Terms of the Contract.

The definition of "Property" is not restricted to moveable or immoveable alone, as the definition of the particular kind of Property envisaged, could be extended to cover the Purpose, i.e., whether that Property can be subject to the ambits/acts contemplated under this Section.

Therefore, the Defendant must be in such a position where he could exercise his Control over the Property i.e., Dominion over the Property and Dishonestly put that Property to his own use or to some unauthorized use, as Dishonest Intention to Misappropriate, Convert or Dispose, are crucial Elements to be proved to bring home the charge of Criminal Breach of Trust.

In NWAMARA'S ENCYCLOPAEDIA OF THE PENAL CODE AND CRIMINAL PROCEDURE CODE OF THE NORTHERN STATES OF NIGERIA AND ABUJA AT PAGE 608, the Author defined the Offence of Criminal Breach of Trust as an Aggravated Offence of Criminal Misappropriation, where the Person comes into possession by Express Entrustment or by some Process placing the Defendant in a Position of Trust and there is Dishonest Use or Disposal of the Property in Violation of the Trust. Reference is made to **His Lordship CRAIG JSC**, in the case of **THEOPHILUS ONUOHA VS THE STATE SC.8/1988 AT PAGES 10, 11 AT PARAS F-C; (1988) 3 NWLR PART 83 AT PAGE 460 (SC)**, who referred to the Case of **AKWULE VS THE QUEEN (1963) NNLR PAGE 105**, to the effect that, what the Prosecution was expected to prove was: (1) That the Defendant was a **Public Servant**; (2) That in such Capacity he had been **entrusted** with the Money in question; (3) That he had committed a Breach of Trust in respect of the Money, i.e., either (a) He had **Misappropriated** it; or (b) **Converted** it to his Own Use; or (c) In any way whatsoever **Disposed** of it **Fraudulently** and in a Manner Contrary to the **Directive(s)** given to him.

It is worthy to note that the Punishment Section, under which the Defendant is brought under **Section 312**, does not stipulate the Requirement of a Public Servant as opposed to **Section 315** of the **Penal Code**, which does. Therefore, the Prosecution must prove the following in this Singular Count: -

That the Defendant: -

- 1. Was Entrusted with the Monies or with Dominion over the Monies;**
- 2. That he committed Criminal Breach of Trust in respect of the Monies by-**
 - i. Misappropriating; or**
 - ii. Converting to his own use; or**
 - iii. Using the Property; or**
 - iv. Disposing of the Monies or intentionally or willfully allowing any other Person(s) to do so,**

4. That he acted dishonestly in Misappropriating, Converting or Disposing of the Monies.

5. That he did so in Violation of: -

- i. **Any Direction of Law or Directive prescribing the Mode in which such Trust is to be discharged; or**
- ii. **Any Legal Contract touching the discharge of such Trust; or**
- iii. **He intentionally allowed some other Persons to do so or commit the above stated.**

Now, it is clear that before there can be a Conviction on a Charge of Criminal Breach of Trust, there must be Evidence of Entrustment and of Dishonest Misappropriation or Conversion of what was entrusted, see **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153.**

“To Entrust” and “To have Dominion” were stated disjunctively in the Penal Code. To Entrust means to assign responsibility for doing something to someone and also means to put something into someone’s care or protection. Dominion, on the other hand, means Sovereignty, Control over the Property and the Power or Right of governing or controlling that Property.

In R VS GRUBB (1915) 2 KB PAGE 683 AT PAGE 689, Lord Reading held that where the Defendant has obtained or assumed the control of the Property of another Person under circumstances whereby he becomes entrusted or whereby his receipt becomes a receipt for or on account of another person, and fraudulently converts it or the proceeds, then he has committed an Offence. The words “being entrusted” should not be read as being limited to the moment of the sending or delivering of the Property by the owner, but may cover any subsequent period during which a person becomes entrusted with the Property...”

In the case of **M/S INDIAN OIL CORPORATION VS M/S NEPC INDIA LTD., & ORS ON 20 JULY, 2006 SUPREME COURT OF INDIA; AND CENTRAL BUREAU OF INVESTIGATION VS DUNCANS AGRO INDUSTRIES LTD., CALCUTTA (1996) (5) SCC 591**, it was held that the Property in respect of which **Criminal Breach of Trust** can be committed, must necessarily be the Property of some Person other than the Defendant or the beneficial interest in or ownership of it must be in that other Person and the Defendant must hold such Property in **trust** for, and is accountable to, such other person or for his benefit. If the Defendant was entitled to keep the Money and use it for his own purposes, then plainly there could be no question of entrustment and it is not necessary that the loss to the owner should have been actually suffered by that time. The implication of the word ‘Entrustment’ is that the person handing over the Property continues to be the owner of the Property.

The next Element to be satisfied is the Quadruplet Modes or the Four Options upon which the Offence of Criminal Breach of Trust is established.

Now, it is important to note that **Section 311 of the Penal Code**, the Definitive Section, lists the Elements of the Offence in a **DISJUNCTIVE FASHION** by the consistent use of the word **“OR”**. This is to say that any of the under listed could operate independently in order to establish the Offence, as proof of one, dispenses with proof of the others. Whilst Entrustment is paired with Dominion, the Prosecution may then decide to proceed on the basis of any of the Four Options, or **Quadruplet Modes**, through which the Entrustment or Dominion was breached. It is very **important** to understand, that none of the Quadruplet Modes takes greater pre-eminence over the other, as Proof of One is sufficient to sustain the Charge.

These **Quadruplet Modes** are that the Defendant, being Entrusted and having Dominion over the Funds of West African Medical Relief Centre and/ or Associated Medical Relief Limited,

a) Misappropriated; **OR**

b) Converted the Funds to his Own Use; **OR**

c) Used the Funds; **OR**

d) Disposed the Funds **OR** by intentionally **OR** willfully allowing any other Person(s) to do so. It is also worthy of note that in regard to the element of Disposal, the Section again, appears to widen up, by expanding the Defendant's culpability under this Charge to include his Influence or Interference in Causing or Affecting another Person's Actions by suffering them to Dispose of the Property.

After determining any of the above from the evidence adduced at Trial, the Prosecution is then mandated to prove that the Defendant committed this Offence, Dishonestly and in Violation of any Direction of Law, prescribing the Mode in which such Trust is to be discharged or in Violation of any Legal Contract, Express or Implied, which he made touching on the Discharge of such Trust.

As regards the Mode of **Conversion**, it is an unauthorized control, wrongfully and intentionally, exerted over another's Property, in denial of, or inconsistent with, his Title or Rights therein, or in derogation, exclusion, or defiance of such Title or Rights, **WITHOUT** the Owner's consent and **WITHOUT** lawful justification. It involves an unauthorized assumption of the right of ownership over another's Property. Generally, any Type of Conversion that occurs after a person obtains lawful possession of the Property is sufficient.

Further, in order to commit misappropriation of Funds, a person must not only take the Money, but must use it for his own purposes. However, this does not require that the Defendant actually took the Money and used it to buy something or otherwise spent it. Courts have held it enough that to transfer the Money to a

Bank Account or even to refuse or fail to hand over the owner's Money when the owner demands it, amounts to Conversion.

The element of knowledge is found when the Defendant engages in the conduct and he is aware to a high probability that he is doing so. An essential element of Criminal Conversion is that "the Property must be owned by another and the conversion thereof must be without the consent and against the will of the Party, to whom the Property belongs, coupled with the fraudulent intent to deprive the owner of the Property. See the case of **PEOPLE VS FIELDEN, 162 COLORADO 574, 576 (COLORADO 196)**. Knowledge coupled with the intentional exertion and Criminal Intent of unauthorized control, forms the crux of the Crime of Conversion. Exerting Control over the Property means, "to Obtain, Take, Carry, Drive, Lead Away, Conceal, Abandon, Sell, Convey, Encumber or Possess Property, or to Secure, Transfer, or Extend a Right over the Property. See the case of the case of **IRVIN VS STATE, 501 N.E.2D 1139, 1141 (INDIANA CT. APP. 1986)**.

The Defendant must have converted the Property to his Own Use or for purposes other than those for which it was entrusted. It is clear that Conversion may not ordinarily be a matter of direct proof, but when it is established that the Property, is entrusted to him or that he had dominion over it and rendered false explanations for his failure to account for it, then an inference of conversion may readily be made. A whole series of contemporaneous facts and surrounding circumstances of an event must be considered together in the circumstances of the case, in order to fix the Defendant irresistibly to the Commission of the Offence of Criminal Breach of Trust. See the cases of **LORTIM VS THE STATE (1997) 2 NWLR PART 490, PAGE 711 AT 725 PARAS C-D; AND MAGDALENE ONOGWU VS THE STATE (1995) 6 NWLR PT 401 PAGE 276**.

His Lordship ADEKEYE JCA, (AS SHE THEN WAS, NOW JSC RTD) in PATRICK OKOROJI VS THE STATE (2002) 1 NCC PAGE 279 AT PAGE 297, held that the Prosecution must establish the following Elements of Conversion, which are: - 1) Intent to convert the tangible or intangible Property of another to one's own possession and use; and 2) The Property in question is subsequently converted. It is immaterial whether the thing or Money converted is taken for the purpose of conversion, or whether at the time of the conversion, it was in the possession of the person who converts it.

The intention must also be shown that the unauthorized act deprives another of his Property, permanently or for an indefinite time. See **FRANCIS AKILAPA VS COMMISSIONER OF POLICE (1981) 4 OYSHC AT 558 AT 562-563**, where it was held that the intent to permanently deprive the owner of the Money can be formed either at the time of the receipt of the Money or subsequently after the receipt. See also the case of **OKOROJI VS THE STATE (2002) 5 NWLR PT 759 PAGE 21 AT PAGE 49 PARAS G-H**.

As regards the Second Mode of **Use**, it refers to the applying, taking, holding, employing or deploying something, or consuming an amount of that thing from a

limited supply. It also includes obtaining a benefit from something or putting into service to attain an end or availing one's self of something as a means to an end. Depending on the Context in which it is used, it could have a positive or negative connotation. A Person who misappropriates Funds with the intent to later return the Money to the rightful owner is still Guilty of Use or Misappropriation. It also does not matter if the Misappropriation or Use only lasted for a short amount of time.

As regards the Third Mode of **Disposal**, it refers to the Act of transferring the Property or relinquishing the Control over the Property to Another's Care or Possession, where through the Operation of Law, the Title over that Property is lost. This Act of Disposal could either be done by the Defendant for his own Personal Interests or could on behalf of a Third Party or Parties. It could also mean the Systematic Destruction by the Defendant, who had Power and Authority to dispose as he willed.

At this juncture, it is important to decide whether the Cheque in the Sum of N12, 635, 000 issued in favour of the WAMRC/AMR Limited was **MISAPPROPRIATED**, which is the Fourth and Final of the Quadruplet Modes.

Misappropriation and a clear understanding of what the Term actually means, is important. It is the Intentional and Illegal Use of Property or Funds and is also the Improper Application of Funds entrusted to a person's care.

The Legal Scholar NWAMARA at PAGE 621 defined Misappropriation of Money to be the wrongful setting apart or assigning of a Sum of Money to a purpose or use, for which it should not lawfully be assigned or set apart. **Reference is made to ALL INDIA LAW REPORT MANUAL VOLUME 28 PAGE 678.**

Misappropriation is the Umbrella Term under which the different ways of misusing someone else's Funds are grouped. **Black's Law Dictionary, Seventh Edition**, defines it as the unauthorized, improper, or unlawful use of Funds or other Property for purposes other than that for which it is intended, including not only stealing but also unauthorized temporary use for one's own purpose, whether or not he derives any gain or benefit therefrom. It thus includes defalcation, defined in **Black's** as misappropriation of trust Funds or Money held in any fiduciary capacity, and failure to properly account for such Funds, and conversion, which is any unauthorized act which deprives an owner of his Property permanently or for an indefinite time. See the case of **Re Lunt, 255 Kan. 529, 1994.**

It is important to note that it is not enough to establish that the Money has not been accounted for or that it was mismanaged. It has to be established that the Defendant had dishonestly put the Property to his own use or to some unauthorized use. See the case of **Y.O. BAKARE & 2ORS VS THE STATE PER COKER JSC SC. 338/67; LC VOL. 1 2004 AT PAGE 173**, where His Lordship held

that the necessary Criminal Intent is as stated in **Section 16 of the Penal Code**, which had to be proved.

Dishonest Intention to Misappropriate is a Crucial Fact to be proved to bring home the Charge of Criminal Breach of Trust.

In the case of **I.G. TIRAH VS COP (1973) NNLR AT PAGE 143, PER JONES SPJ**, it was held that the Defendant, in dealing with the Money or Property entrusted to him, did something else with it, constituting Misappropriation.

The Next Essential Element to be established by the Prosecution is the Violation of Law or Contract, and he must prove that the **Defendant** did so in violation of:

- i. Any **Direction of Law** or **Directive** prescribing the **Mode** in which such **Trust** is to be discharged; **OR**
- ii. Any **Legal Contract** touching the Discharge of such **Trust**; **OR**
- iii. He intentionally **allowed** some other Person(s) to do so **OR** commit the above stated.

Violation of Law therefore is any Act (or, less commonly, failure to act) that fails to abide by Existing Law or **Something that needs to be treated with RESPECT**. Some Acts, such as Fraud or Misappropriation, can violate both Civil and Criminal Laws. It is an Action taken in Breach of a Law or Code of Behavior, and is an Infringement, Transgression, Infraction, and Contravention of a Duty or Right, Interrupting or Disturbing the Natural Prescribed Order of Things. It could also mean the Failure to do what is required or Expected by a Law, Rule or Agreement, and it could occur when a Person crosses a Legal Boundary or a Binding Business Deal.

In the instance of Violation of a Contract, it is synonymous with the Term "Breach of Contract" and could include many different types of Violations. Once a Contract is signed, the Parties are bound/obliged to keep their own part of the bargain, as failure to do so, can result in legal consequences. To excuse a Party from performing his or her own end of the bargain, under the Strict Regulating Guidelines of the Contract, that excuse or justification for the breach or errancy of the Terms of the Contract, imposes on the Party, the necessity of providing or adducing legal excuse recognizable by the Courts and Contract Law. Nothing else will suffice.

Now, Dishonesty is to Act WITHOUT Honesty. It is used to describe a Lack of Probity, Cheating, Lying, or being Deliberately Deceptive or a Lack in Integrity, Knavishness, Perfidiosity, Corruption or Treacherousness. Dishonesty is the fundamental component of a majority of Offences relating to the Acquisition, Conversion and Disposal of Property (Tangible or Intangible).

A Person must knowingly misappropriate the Money, and cannot commit the Crime by making a mistake or error. A Person who misappropriates Funds does

not have to intend to actually physically take the Money. It can be enough for the Prosecution to show that the Defendant intended to take any action that results or would likely result in the misappropriation of Funds. In some instances, the Defendant must know that the Action is illegal, while in other instances the Defendant only has to Act intentionally and does not need to know that the Conduct is Criminal.

Section 16 of the **Penal Code** defines “Dishonestly” as “A Person is said to do a thing “dishonestly”, which does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person.” By wrongful gain this was defined under **Section 13** of the Act, as gain by unlawful means of Property to which the person gaining is not legally entitled. The Penal Code Act also went further to define what is meant by wrongful loss in **Section 14** to mean, the loss by unlawful means of Property to which the person losing it, is legally entitled. Under **Section 15**, a person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully, and a person is said to lose wrongfully when such person is wrongfully kept out of any Property, as well as when such person is wrongfully deprived of Property. A dishonest intention is an essential ingredient of Criminal Breach of Trust.

Further, the intention may frequently be presumed from the consequences of the act, as a person is presumed to intend the natural consequences of his act. See **WIGMORE ON EVIDENCE VOLUME 2 PAGE 42 PARTICULARLY AT PARAGRAPH 242**

The Decision in **ONUOHA VS THE STATE (1988) 7 SC PT 1 PAGE 74 AT PAGE 94** recognized that it is sufficient to construe dishonestly in its natural meaning, i.e., intended to cheat, deceive or mislead. See also **His Lordship, PETER-ODILI, J.C.A. (AS HE THEN WAS)** in the case of **HON. YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA) per (P. 18, PARAS B-E)**. Further reference is made to the cases of **J. ONIBANIYI & ANOR VS THE STATE (1972) SUIT NO: SC.235/1971 8-9 SC PAGE 97; TIRAH VS COMMISSIONER OF POLICE (1973) NNLR PAGE 143 (CA); AND OKONKWO VS COMMISSIONER OF POLICE (1985) HCCLR PAGE 1277.**

In Australian Jurisprudence, the words, “Honesty” and “Dishonesty” as discussed in the case of **R VS SALVO (1980) VR PAGE 40 AT PAGE 407**, are used in ordinary parlance to connote respectively, “noncompliance with or disregard of the dictates of the Moral Virtue of Justice, which acknowledges and gives effect to the rights of others to, or in respect of material things, or of the relationship of one person to another, e.g. Master and Pupil, Vendor and Purchaser, Employer and Employee, etc. The Terms may in certain contexts connote respect for or disregard of the Moral Virtue of Truth. The word “Dishonestly” implies reference to a Standard of Morality underlying the Law: they derive not from the Law but from the Standard of Ethics accepted by the Community. The Law sets Standards

of Legality and Illegality but cannot set and never has purported to set Standards of Morality.”

The Court of Appeal in England in the case of **R VS GHOSH (1982) 2 ALL ER PAGE 689 AT PAGE 696** at **RATIO 154**, held that Dishonesty is an element of *Mens Rea*, clearly referring to a State of Mind, and that overall, the Test that must be applied is Hybrid, but with a Subjective Bias which "looks into the mind" of the person concerned and establishes what he was thinking. The Test was Two-Stage, namely:

- "Where the Person's Actions honest according to the Standards of Reasonable and Honest People?" If a Jury decides that they were, then the Defendant's claim to be honest will be credible. But, if the Court decides that the Actions were dishonest, the further question is: -
- "Did the Person concerned believe that what he did was dishonest at the time?"

The **Queensland Court of Appeal in Australia** in the Case of **R VS DILLON; EX PARTE ATTORNEY GENERAL (QLD) (2015) QCA PAGE 155 OR (2016) 1 Qd. R 56 (14/194)**, departed from the Dictum in **R VS GHOSH (CITED SUPRA)**, when it held inter alia that, "...Queensland Courts must now construe the Term "Dishonestly" as requiring the Prosecution to prove only that what the Accused Person did was dishonest by the Standards of Ordinary Honest People, and to secure a Conviction, the Prosecution **need not prove** that the Accused Person must have realized that what he or she was doing, was Dishonest by the Standards of Ordinary Honest People."

The Decision in **R VS GHOSH (CITED SUPRA)** was also criticized in 2017, and overruled by the **United Kingdom's Supreme Court** in the case of **IVEY VS GENTING CASINOS (UK) LTD TRADING AS, CROCKFORDS [2017] UKSC 67. DELIVERED 25TH OCTOBER 2017**, where the Supreme Court concluded that the Correct Approach is:

- To determine what the Defendant actually knew of or believed as to the Facts. Whether the Defendant's beliefs were reasonable, are not a Separate Issue – but goes to whether the Beliefs were genuinely held;
- To decide whether the Defendant's Conduct is dishonest by the Standards of Ordinary, Reasonable and Honest People;
- There is no further Requirement that the Defendant knew or appreciated that he or she acted Dishonestly.

The Position as a result is that the Court must form a view of what the Defendant's belief was, of the relevant facts **but it is no longer necessary to consider whether the Defendant concerned, believed that what he did was dishonest at the time.**

Now, from the evidence adduced before the Court, the Witnesses fielded by the Prosecution and the Defence particularly PW1, Mr. Roger Matthews and the Defendant, Mr. George Chigbu, are on the same page as to the Modus Operandi of their Organization, which kicks off with a Needs Assessment, followed by the Signing of a Memorandum of Understanding, Payment and then, shipment of Medical Facilities from the World Medical Relief Centre stationed in Detroit, Michigan in the United States. Their evidence also tallied to the fact of a relationship between their Organization and the Anambra State Government for the Supply of Medical Facilities.

The Documentary Evidence that proved their Relationship is seen in **Exhibit Y** dated the 30th of October 2004 showing that there was an Agreement between Anambra State Government and the Organization. From this Memorandum, the Cost of Administration, Handling and Shipping of the Container was put at \$45, 000 **FOB Nigeria** and Anambra State was to pay \$22, 500 **upfront**. It was also mandated that Anambra State was to pay all Charges into the Account of Associated Medical Relief Limited or West African Medical Relief Limited. This Memorandum was signed on behalf of the Organization by Mr. George Chigbu and a Secretary and the Counterpart Signatories on behalf of Anambra State, was a Barrister in the Ministry of Health, who signed on behalf of the Commissioner of Health.

The Case of the Prosecution is that Anambra State Government issued in favour of West African Medical Relief Centre/Associated Medical Relief Limited a Cheque in the Sum of N12, 635, 000, which the Defendant, as Legal Secretary of the Organization personally collected and instead of paying the Cheque into his Organization's Account, he paid it into his Company's Account domiciled with Diamond Bank Plc.

For the purposes of establishing the foregoing allegation beyond reasonable doubt, the Prosecution called PW1, Mr. Roger Matthews, the Chairman of the Organization, who queried the whereabouts of the Cheque from Anambra State but Mr. George Chigbu maintained Non-Payment of the Sum of N12, 635, 000 by the Anambra State and did not include the Memorandum concerning Anambra State in his Handover File of Memoranda of Understanding. PW1 in his Testimony-in-Chief stated that the Organization had Two Accounts with Prudent Bank and Payments were to be made **ONLY** into these Accounts, stating further that for Anambra State, the Money was not paid into them.

The Evidence of PW2, Bala Alhaji, was that when he questioned the Defendant about the whereabouts of the Cheque, he was told that it was still in progress. The value of this piece of evidence can only be attributed to the Defendant's Mens Rea and also to the fact that the Defendant threatened to kill him.

The Defendant in his Testimony-in-Chief, admitted being a Director and Shareholder in the Company, Workspace Properties Limited that had an Account

with the Defunct Prudent Bank, where the West African Medical Relief and Associated Medical Relief also maintained an Account. He acknowledged the fact that there were many relationships with Anambra State and also acknowledged the relationship typified in **Exhibit Y**, the Memorandum of Understanding. He explained that the West African Medical Relief could not deliver the Equipment due to Hurricane Katrina and therefore could not meet their Commitment to Anambra State.

According to him, Anambra State did not pay any Money and no Equipment was supplied. It is noted that the Defendant did not produce any written evidence of the diversion of equipment to meet the emergency situation in Haiti and it is amazing that under Cross-Examination, he flipped from Hurricane Katrina to Tsunami and Flood! The Defendant also acknowledged that any Payment not made into the Account of the Organization was fraudulent.

The Defendant finally stated that the Cheque from Anambra State Government could be paid into West African Medical Relief and Associated Medical Relief Account with Prudent Bank and stated that the Cheque was never paid into the Account of Workspace nor did he convert to his own use the Cheque as alleged.

The Big Question therefore is, into which Account was the Cheque paid into?

It is worthy of note that during Trial, the Prosecution did not produce any Statement of Account from Prudent Bank or Diamond Bank or produced any Transfer or Lodgement Instruction in relation to any of these Banks. It was the Defence that produced for Identification Purposes, Statements of Account and Transfer Instructions in Two Sets of Documents marked as **ID2**.

The First Set of Document is recognized as a Five Year Statement of Account for both Workspace Enterprises Limited and Associated Medical Relief Limited, which started from Year 2000 to 2005. From the Five Year Statement of Account for Workspace Enterprises Limited, which is a Domiciliary Account, this Company made Fund Transfers to the United States of America and none of the figures contained any amount of Monies affiliated to the Charge.

The Second Set of Document is a Statement of Account regarding the Associated Medical Relief Limited and was a Naira Account and likewise, none of the figures contained therein related to the Charge.

Also attached to **ID2** are the following: -

- a) A Letter dated 27th of August 2004 written by Workspace Properties Limited regarding the Transfer of Funds not relative to the Charge.
- b) Prudent Bank Domiciliary Account Funds Transfer Form dated 2nd of September 2004 in the Sum of \$4, 000 for the benefit of Roger Matthews, PW1, and Funds therein is not related to the Sum in the Charge.

- c) There is another Prudent Bank Domiciliary Account Funds Transfer Form dated 2nd of September 2004 but it is for the Sum of \$8, 000 for the benefit of World Medical Relief Inc., which has nothing to do with the Sum in the Charge.
- d) Finally, there is another Letter dated the 3rd of September 2004, written by Workspace Properties Limited regarding Transfer Instruction in the Sum of \$4, 000, which Sum equally has nothing to do with the Sum contained in the Charge.

From the above analysis, it can be seen that these Two Sets of Documents albeit marked for Identification Purposes, had no relevance to the Sum as contained in the Charge and the Evidence rendered before the Court. The Defence regularized some of these Documents by tendering into Evidence Certified True Copies as informed in **Exhibits P1 to P8**.

Exhibit P1 is a Statement of Account of the Associated Medical Relief Limited from Year 2003 to 2006, spanning Three Years and the Account is designated as a Corporate Current Account. It can be seen from this Account, that Payment was made to the West African Medical Relief Centre/ the Associated Medical Relief Limited but none of the Figures as contained in the Charge were reflected in this Statement of Account.

Exhibit P2, is a Prudent Bank Domiciliary Transfer Form dated 25th of August 2004 from Workspace in the Sum of \$4, 000 in favour of an Undemonstrated Recipient and this Exhibit is not related to the Sum stated in the Charge.

Exhibit P3, is a Letter from Workspace dated 3rd of September 2004 and it is a Transfer Instruction on the Sum of \$4, 000 and this Exhibit is equally not related to the Sum contained in the Charge.

Exhibit P4, is an identical letter to **P3** and is dated the 27th of August 2004 in the Sum of \$4, 000, and it too, is unrelated to the Sum in the Charge.

Exhibits P5 and P6, bear the same date of Transfer with different Transfer Amounts, which are not related to the Charge.

Exhibit P7, Workspace's Domiciliary Statement of Account from 20th of January 2002 to 27th of January 2006 shows transfers to PW1, Mr. Roger Matthews and the World Medical Relief and they involve Sums not relevant to the Charge.

Finally, **Exhibit P8**, a Habib Bank Certified Cheque dated 13th of May 2005 was issued in favour of Associated Medical Relief Limited and it is noted that this Sum is also not related to the Charge.

From all these Exhibits, it is clear that the Actual Figure of N12, 635, 000 is not visible in any of these Documents and like its Sister Documents in **ID2**, it has absolutely No Relevance to the Charge. The Question therefore remains, "To what end were they tendered into evidence?"

The Defendant did not attempt to explain the Purposes of these Sums in **Exhibits P1 to P8** or demonstrate in Open Court its purpose, which act is tantamount to

what is known in Nigerian Jurisprudence as Dumping of Evidence. In the Case of **SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA ADEYEMI AJIMOBI & 3 ORS SC.12/2016, His Lordship OGUNBIYI JSC**, held that, "...the Law is Settled on Documents tendered in Court, that the purpose and worth must be demonstrated through a Witness. It is also settled also that the duty lies on a Party who wants to rely on a Document in support of his case to Produce, Tender and Link or Demonstrate the Documents tendered to specific parts of his Case. The fact that a Document was tendered in the Course of Proceedings does not relieve a Party from satisfying the Legal Duty placed on him to link his Document to his Case. See also the Cases of **C.P.C V. INEC (2011) 18 NWLR (Pt 1279) 493 at 546 - 547; AND INIAWA VS AKPABIO (2008) 17 NWLR PT 1116 PG 225 AT PG 299. In OMISORE VS AREGBESOLA (2015) 15 NWLR PART 1482 PG 205 AT PG 323**, where the Supreme Court held that, "Documentary Evidence, no matter its relevance, cannot, on its own speak for itself without the aid of explanation, relating to its existence. The validity and reliance of Documents to admitted facts or evidence is when it is done in Open Court...Of Course, the Essence of the above Principle is to shield the Court from the Error of abandoning its Role of Impartial Arbiter, to descend into the Arena of Conflict, trying to make a Case for a Party. See also the Cases of **SUBERU VS THE STATE (2010) 8 NWLR PART 1197 PG 586; AND AJAKAIYE VS THE STATE (2015) 5 WRN PG 64**.

In this instance, the only relevance the Court can deduce from **Exhibits P1 to P8**, is that before the incidence in the Charge, Workspace Properties Limited, as a Company, had made transfers to the United States both to Mr. Roger Matthews, the PW1, and to West African Medical Relief as well as to the Associated Medical Relief Limited.

During Trial, Mr. Roger Matthews testified that at certain periods, the Defendant used his own personal funds for Operational Costs even though he did not know the extent of the Amount owed for Reimbursement, and according to him, the Debt was yet to be approved for payment. He also acknowledged that transfers from Workspace Properties Limited and the West African Medical Relief Centre/Associated Medical Relief Limited, went into his own Personal Account. This piece of evidence, corroborates the Evidence of the Defendant, to the effect that, to their knowledge, payments were made from Workspace in relation to their activities and lends further credence to the fact that Payments in respect of their activities could come from other Accounts aside of Accounts belonging to West African Medical Relief or Associated Medical Relief Limited.

Further, there is an irresistible fact that the Defendant not only handled the Administrative Operations of the West African Medical Relief Centre/ Associated Medical Relief Limited in Nigeria but also solely handled and was responsible for its Monetary Operations. By virtue of his Position in the Organization, he would be aware of any Payments made by a State, Local Government or an NGO. The Prosecution, therefore, had the requisite burden to establish a diversion by the

Defendant of the Cheque issued by the Anambra State Government in favour of the Organization in which he was Trustee and Legal Secretary.

Now, at this point, it is pertinent to point out the mistake in identifying the Exhibits properly. **Exhibit M1 and M2** referred to, were part of the Emails tendered and admitted in **Exhibits D to N** and the proper referral ought to have been **Exhibits O1 and O2**. These are Two Certified True Copies of the Anambra State Government Cheque dated the same day in the Sum of N12, 635, 000. A Subpoenaed Witness from the Intercontinental Bank tendered them and both Exhibits relate to the Amount in the Charge. At the Back of **Exhibit O1**, is a Request for a Draft to be issued in favour of the West African Medical Relief or Associated Medical Relief Limited dated the 28th of October 2004. In **Exhibit O2**, the Copy of the Actual Cheque issued in favour of West African Medical Relief or Associated Medical Relief Limited, reflected the Exact Amount contained in the Charge. The Stamps on the Cheque indicated that Diamond Bank Limited was involved in the Processing of this Cheque.

It is certainly not enough to tender the Cheque, except to prove its existence. The Movement of the Cheque needed to have been tracked by the Prosecution from Anambra State Government into Workspace Properties Limited's Account with Diamond Bank Plc belonging to the Defendant.

From the foregoing, it was expected that the Prosecution ensured that the Documents relating to the Bank Activity of the Cheque from Anambra State, irresistibly showed that the said Cheque was paid into Workspace Account and not into the Organization's Account and further, that the said Cheque was the Exact Amount in that Account.

Apart from that, the Prosecution needed to demonstrate by Positive Proof that the Naira Amounts reflected in the Statement of Account of the West African Medical Relief or Associated Medical Relief Limited, did not equal the Amount reportedly collected by the Defendant and conversely, that the Naira Amounts reflected in the Statement of Account of Workspace Properties Limited did. PW1, Mr. Roger Matthews, himself had testified that the Requesting States made Payment in Naira Cheques and not in Dollars and could not say how much Requesting States paid in Naira. It was therefore the duty of the Prosecution to show that these Amounts in the Statement of Account clearly not received in Naira, equalled the Sum alleged in the Charge.

Above all, it was expected that the Prosecution furnish Evidence of the Actual Lodgement of the Cheque in question, from Anambra State into Workspace and not simply rely on the exhibited Workspace's Domiciliary Account and Details tendered by the Defence, which had absolutely nothing to do with the Figures in the Charge.

They are simply irrelevant. Had there been a Naira Account for Workspace for that period of time, then, the Prosecution would have been heading for a home stretch.

Further, the Statement of Account with Diamond Bank Plc., said to belong to Workspace Properties Limited into which the alleged Cheque of N12, 635, 000 was lodged into, was not tendered into evidence as an Exhibit.

A very important omission was the inability of the Prosecution to secure the admittance of **IDX1 to IDX3**, as Exhibits before the Court. Aside of the fact that these **IDs** are Public Documents, which required Certification, there is also the fact that they were merely Photocopies of the Originals with no Proper Foundation laid as to their Originals.

It is clear from the Decision of the Supreme Court that Originals of Public Documents can be tendered as held in the Case of **IDI VS THE STATE (2017) LPELR-42587 (SC), where His Lordship EKO JSC AT PG 40- 42 PARAS F-C, held, “...There seems some erroneous impression, or misconception that the Evidence Act outlaws the production of the Original of a Public Document. Section 88 of the Act is permissive of Secondary Evidence of the Contents of a Document, only when the Primary Evidence is not available. In any case, Section 88 of the Act does not outlaw Primary Evidence. Section 89(e) of the Act does not categorically say that the only admissible Public Document is the Secondary Evidence of it...The words “may be given” in the Context of Section 89 of the Evidence Act is not Mandatory or a Command, that only Secondary Evidence of a Public Document is Admissible in Evidence...”**

His Lordship KEKERE-EKUN JSC in the Case of ANAGBADO VS FARUK (2018) LPELR-44909 (SC) AT PAGES 26, 27 PARAS D-D held that, Public Documents, being Original Documents, do not require Certification. See also the Cases of KASSIM VS THE STATE (2017) LPELR-42586 (SC); DAGGASH VS BULAMA (2004) 14 NWLR PART 892 PG 144.

It is also clear that in the absence of Originals of Public Documents, there is need for Certification as held in the Case of **GOODWILL& TRUST INVESTMENT LIMITED& ANOR VS WITT& BUSH LIMITED (2011) LPELR-1333 (SC) His Lordship PER ADEKEYE JSC held that, “Section 112 of the Evidence Act stipulates that: - “Such Certified True Copies may be produced in Proof of the Contents of the Public Documents or Parts of the Public Documents of which they purported, to be copies. In effect, the essence of demanding for the Certified True Copy of a Public Document is to assure the Authenticity of the Document viz-a-viz the Original. There is emphasis in the Evidence Act and under the Companies and Allied Matters Act, that every Public Officer who has Custody of a Public Document shall do the Certification.**

The absence therefore of the Certification of these Documents in **IDX1 to IDX3**, was costly.

Costly in the sense that the Defendant's unflinching denial of collecting the Sum of N12, 635, 000 from Anambra State and further denial that Anambra State paid the said Sum, would have been positively negated by the Prosecution, had they ensured Certification of the Proof, that the Defendant in fact did collect the Cheque in the Sum N12, 635, 000 as reflected in the **IDXs**.

From the Records of the Court, and through the **IDXs**, Anambra State Government paid through a Payment Voucher dated the 30th of October 2004, the Sum of N12, 635, 000, as set out in the Charge. On the same date, the Defendant signed this Payment Voucher. The Payment Register shows that George Chigbu on the 30th of October 2004, collected and signed for Cheque No. 00000045, Intercontinental Bank Plc. Cheque for the Sum stated in the Charge. The Prosecution failed to tender these Documents as Exhibits and to all intents and purposes, the Court cannot regard them, being tendered only for Identification Purposes. The Law is Trite that a Document marked for identification only is not part of the evidence to be utilized. It cannot be admitted for identification "or "exhibit for identification as it is not yet an exhibit. Such document is only noted so that when it is later admitted it will be identified as the document, which the witness earlier referred to. It is not proper to refer to its contents. See the Cases of **MICHAEL HAUSA VS THE STATE (1994) 7 - 8 SCNJ 144; ANOKWU VS C.O.P. (1975) 1 NMLR PG 402**.

The Prosecution appears to place **ALL** his reliance on the Extra-Judicial Statements of the Defendant and exercised little effort in establishing the Proof of other essential evidence such as securing the attendance of a Witness from Anambra State and such like.

During the Defendant's Testimony and in reaction to his Comments in his Statements made on the 29th of April 2005 and 5th of May 2005, he could only say that the Statements were obtained under Force. Learned Counsel to the Defence, pointed out that in **Exhibit S2**, the Defendant promised to pay the Sum of N12, 635 and not the Sum of N12, 635, 000.

As earlier stated, the Defendant's Extra-Judicial Statements remain admissible and his assertions are taken to be made by him voluntarily.

It is therefore important at this point to determine what exactly the Defendant said in relation to the Anambra State Cheque of N12, 635, 000 in all his admitted Statements.

In **Exhibit S2**, the Defendant's Extra-Judicial Statement dated the 29th of April 2005, the Defendant stated thus: -

“I promise to Refund the Sum of N12, 635, 00 collected on behalf of Associated Medical Relief Limited from Anambra State, which is in dispute within the Organization and the balance of N10, 735,000 from Katsina State which was used for backlog of legal charges plus consultancy fees to G.A. Chigbu & Co. back to EFCC pending the determination of the actual fees being owed by the Organization (West African Medical Relief) to G.A. Chigbu & Co. This will be done between now and the next fourteen days.”

In Exhibit TA dated the 14th of April 2005 at Pages 5 and 6, the Defendant further stated thus: -

“So far the sum of N12, 635, 000 has been collected by me from Anambra State on behalf of Associated Medical Relief Centre and the money has been effectively disbursed through me and the Chairman for Payment of backlogs on rent, expenditure incurred and transfers effected to meet up other Organizational Local Expenditure. However, the time we collected the Cheque because of the urgency required to make transfers it was also lodged in my account as we do often and the bulk was used to service monies we collected. The money was lodged in Workspace Properties’ Account in Prudent Bank Abuja with the knowledge and approval of the Chairman as we do when the Account of the Organization was not ready.”

By the foregoing Excerpts, the Question, whether a Promise could amount to a Confession is irrelevant because the Defendant has expressly admitted that he collected and lodged the Cheque into his Account. The disparity in the figures he wrote in **Exhibit S2** for the Sum of N12, 635, therefore, pales into insignificance.

Therefore, the Court finds this line of argument untenable and somewhat irrelevant to the fact that by all indications, the Sum mentioned was N12, 635, 000 and not N12, 635. It is not in evidence that he was questioned in regard to the Cheque of N12, 635.

Exhibit TA is clearly confessional in nature and the Defendant clearly collected the said Sum, but attributed the collection to be used for Payment of Backlogs of Rent, Expenditure Incurred and Transfers effected to meet up with other Local Expenditures. He also admitted that due to the Urgency, the Cheque was lodged into his Workspace Account as often done, and stated that the bulk was used to service monies collected.

All these Excuses will amount to a Crime if the requisite *Mens Rea* is established that the Defendant retained the funds fraudulently, which is an Element of Criminal Breach of Trust.

Further, the Admission that he collected the Cheque in issue **MUST** be corroborated with positive evidence furnished by the Prosecution. It is clear that the Prosecution must initially establish an Offence Beyond Reasonable Doubt before the Burden shifts to the Defendant to answer.

It is NOT the Quantity of Witnesses and Evidence that will secure a successful shift of the Burden of Proof but the Qualities of Evidence and Testimonies of the Witnesses.

Further, in this instant case, every other Statement uttered viva voce by DSP Eyojo, aside of his Testimony during the Trial-within-Trial, were to be subjected to Cross-Examination by the Defence, and in the absence of the Cross-Examination, little weight will be placed on those pieces of evidence aside those rendered during the Trial-within-Trial.

The Prosecution had No Excuse for abruptly closing its Case. Had DSP Eyojo adduced a legitimate reason for his continued absence in Court, and then the Prosecution had the duty to call in other Witnesses to buttress their facts. It could be seen that No Witness was called from Diamond Bank Plc., the said Dr. Akigkwe from the Anambra State Ministry of Health was not called, Mr. Nwaguru, the man who introduced PW1 to the Defendant, was also not called.

There is also nothing before the Court, adduced by the Prosecution to indicate that the lodgement of the Cheque of N12, 635, 000 was made into the Defendant's Workspace Properties Limited's Account domiciled in Diamond Bank Plc.

There is also nothing before the Court to show, that in compliance with the Memorandum of Understanding, the Sum of N12, 635, 000 was Half-Deposit for the Equipment. The Exchange Rate was not demonstrated and the purpose for the Sum of N12, 635, 000 from Anambra State was also lost at Sea, because the Memorandum was clearly expressed in Dollars.

The Prosecution would have scored a Home Run had they bothered to tender into evidence the **IDXs**, by regularizing the Documents, which were not admissible in the state they were presented. BUT, they failed to do so!

The Prosecution did not also demonstrate the Extra-Judicial Statements in **Exhibits S1, S2, T and TA** in relation to **Exhibits O1 and O2**, which actually reflected the Total Amount as Charged.

They had failed to relate the who where and when the Cheque was collected, and how, when and who subsequently paid it into Workspace's Account with Diamond Bank Plc.

As it stands, the circumstances as presented before the Court, at best is a Case of Unlawful Retention or Detention of Property and perhaps, Misappropriation of the Funds in the Cheque the Defendant believed was owed to him.

The Cheque was used as a Stop Gap to deflect the Defendant's fees and expenditures and it was a wrongful deflection no matter how convinced he was as to his entitlement to the Funds.

The Defendant collected what he believed was owed him without Due Process, which as a Lawyer he ought to know was wrong. Therefore, he must refund the

said Funds of N12, 635, 000 back to Anambra State Government and then resort to reconciling his Accounts with the West African Medical Relief Centre/ Associated Medical Relief Limited on the Monies owed to him. The Defendant perhaps had a Motive to recover his fees and expenses, but the Facts, Surrounding Circumstances and Evidence, all show a Dishonest Intention towards recovering those fees and expenses.

In Conclusion, the Court would rely on the provisions of the **Administration of Criminal Justice Act 2015**, particularly **Section 328(1)**, which provides thus: -

“Where in a Charge of an Offence relating to Property and the Court is of the Opinion that the Evidence is insufficient to support the Charge, but that it establishes Wrongful Conversion or Detention of Property, the Court may order that such Property be restored and may also award Reasonable Damages to the Person entitled to the Property.”

Subsection (2) states: -

“The Damages awarded under this Section, shall be recovered in like manner, as prescribed in Section 325 of this Act.”

Therefore, on the Strict Burden of Proof Beyond a Reasonable Doubt, the Prosecution failed to prove the Offence of Criminal Breach of Trust.

The Court finds as follows: -

COUNT 1- THE DEFENDANT IS FOUND NOT GUILTY AS CHARGED

However, the Prosecution through the Confessional Statements of the Defendant was able to establish Collection of the Funds and Use of the Funds to settle matters not under the contemplation of the Givers of the Cheque that is, Anambra State and therefore committed Criminal Misappropriation.

The Court therefore finds as follows: -

THE DEFENDANT is FOUND GUILTY OF THE OFFENCE CRIMINAL MISAPPROPRIATION.

By **Section 325 of the Administration of Criminal Justice Act 2015**, which states, ***“Any Compensation ordered to be paid under this Act or any other Act relating to any Criminal Proceedings, may be enforced as if it were a Fine”***, this Order for Restitution is equal to an Order of a Fine.

The Defendant is hereby ORDERED to pay the Sum of N12, 635, 000 collected by him from Anambra State Government back into the Coffers of Anambra State Government within ONE MONTH from the Date of this Judgment.

SENTENCING

The Court Sentences the Defendant to a Term of One (1) Year Imprisonment or Payment of Fine of Five Million Naira (N5, 000, 000) in *lieu* of Imprisonment.

ALLOCUTUS: -

Learned Counsel representing the Defence submitted thus: -

We appreciate your Lordship's precious time, effort and explanation as could be seen from the Judgment but also to reconsider the Fine of Five Million Naira (N5, 000, 000.00). My Lord, we beg you to take into consideration the fact that the Defendant expended his own property and monies towards the administration of the Organization, which has not yet been recovered. My Lord has found that the way and manner the Defendant employed towards recovering his expenses was wrongful and for this reason, even though Fine is most appropriate, I crave My Lord's indulgence to reduce drastically this Fine.

Learned Counsel representing the Prosecution submitted thus: -

My Lord, looking at this History of this Case, this Trial commenced in Year 2005 and had stretched over a period of Fourteen Years. Within that period, the Defendant had for over Four Years deliberately delayed his Defence by appealing the Ruling on No Case to the Court of Appeal and in the process, had wasted the precious time of this Court.

Further, My Lord, the Cheque converted by the Defendant was meant for Handling Charges of Relief Materials and Medical Supplies for the People and Government of Anambra State and for also people from other environs who would have to travel from as far as River State for Medical Treatment. My Lord would note that many people suffer or loss their lives over inability to purchase ordinary panadol to get relief from malaria.

My Lord, the Defendant has not shown remorse despite the leniency of this Court. We appreciate your Lordship for this Judgment and for doing Justice.

ALLOCUTUS HEARD AFTER SENTENCING

Fine is reduced to Two Million Naira (N2, 000, 000.00).

**HON. JUSTICE A.A.I. BANJOKO
JUDGE**