

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANAY JUDICIAL DIVISION

**HOLDEN AT COURT 8 NYANYA-ABUJA ON THE 3RD DAY OF JUNE,
2020**

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO:FCT/HC/CR/60/2015

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

**1. RABIU HASSAN
2. HYPERTECH NIG. LTD}.....DEFENDANTS**

JUDGMENT

The three Count Charge against the 1st, 2nd and 3rd Defendants dated 17/12/15 is for conspiracy, obtaining money under False Pretence and misappropriation.

On the 27/04/16, the Defendants were arraigned and the 1st and 2nd Defendants pleaded Not Guilty to 1st Count, the 2nd and 3rd Defendant pleaded Not guilty to 2nd Count while the 1st Defendant pleaded Not guilty to the 3rd Count.

The case opened and the Prosecution called five Prosecution Witnesses in proof thereof.

At the close of the Prosecutions case, Learned Counsel to the Defendants' made a No Case Submission.

In a considered ruling dated 10/03/17 the Court dismissed the No Case Submission and called upon the Defendants to enter their defence.

The 1st and 2nd Defendants appealed against the ruling separately.

The Court of Appeal discharged the 1st Defendant and struck out Count 1 and 3 of the Charge.

The 2nd Defendant's appeal also succeeds in part.

He was discharged on Count 1.

It does mean that the only surviving Count against the 2nd and 3rd Defendants in the original Charge now the 1st and 2nd Defendants is a one Count Charge of obtaining money under False Pretences.

It states:

“Statement of Offence”

Obtaining money by False Pretence contrary to Section 1(1) (a) and 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act Cap A6 Laws of the Federation of Nigeria 2004.”

PARTICULARS OF OFFENCE:

“That you Rabiou Hassan and Hypertech Nigeria Limited sometimes in November 2011 in Abuja within the jurisdiction of this Honourable Court

with intent to defraud did obtain property to wit: the sum of six hundred and twenty Million, Nine Hundred and Ten Thousand Naira property of the Federal Government under the pretence that the money represents payment for the supply of Six pieces of K-38 armoured patrol boats to Presidential Implementation Committee on Maritime Safety and Security (PICOMSS) and which pretence you knew was false.”.

Section 1 1(a) and (3) of the Advance Fee Fraud and Other Fraud Related Offences Act states:

“ Notwithstanding anything contained in any other enactment or law, any person who by any False Pretence and with intent to defraud,

(a) Obtains, from any other person in Nigeria or in any other Country for himself or any other person or,

Section 1 (3) ***“A person who commits an offence under Section (1) and (2) of this Section is liable on conviction to imprisonment for a term of not more than 20 years and not less than 7 years without the option of a fine.”***

I have earlier stated that the Prosecution called five witnesses in proof of its case.

It is trite law that the burden of proof in a criminal trial such as this, is on the Prosecution to prove the guilt of the

Defendant beyond reasonable doubt. The onus does not shift.

See ***OKAFOR VS. STATE (2006) 4 NWLR (PT. 969) 1.***

IFEJIRIKA VS. STATE (2003) 11 NWLR (PT. 830) 142.

I had summarized the evidence of the witnesses in my ruling on the Defendants' No Case Submission, nevertheless, I shall do so again. The 1st Prosecution Witness is Mohammed Mustapha, the Managing Director of 3rd Defendant.

He stated that he met the 2nd Defendant now (1st Defendant) sometimes in 2011.

They had possible business transaction. In the course of those businesses, there was a proposal for the supply of 6 Nos. of K38 Patrol Boats for the then Presidential Implementation Committee on Maritime Safety and Security.

The 2nd Defendant introduced him to 1st and 3rd Defendants.

The proposed project was discussed and the 1st Defendant requested a visit to the manufacturers Shipyard in the Netherlands. The inspection was done.

On their return, a sales contract was signed between 3rd Defendant now (2nd Defendant) Hypertech UK and the Presidential Implementation Committee.

That he signed the contract with the 1st Defendant.

He was informed by the 2nd Defendant that it was a security procurement contract that qualifies as an exclusive procurement under the office of the National Security Adviser.

The 2nd Defendant now 1st Defendant proposed that for his convenience, comfort and adequate management of the contract that he should be made a Director of the 3rd Defendant (2nd Defendant). He also wanted a separate account for the project and he introduced his Account Officer.

The 3rd Defendant now 2nd Defendant reviewed the proposals and agreed with 2nd Defendant now 1st Defendant. That in line with his request to coordinate the project, all meetings were held in his office at Asokoro.

Subsequently the account was opened and 2nd Defendant now 1st Defendant was appointed as a Director and payment of N620 Million was made into his account by the office of the 1st Defendant.

That upon payment and account opening by his Account Officer, he was signatory 'A' while witness was signatory 'B' .

The arrangement was for the 2nd Defendant now 1st Defendant to make necessary payment to the manufacturers for the purchase in line with the agreement.

That he signed two cheques of N10 Million each.

The cash was handed over to the 2nd Defendant now 1st Defendant.

That is the much he knows about the ~~N~~624 Million and the new project account.

He believed he would make all necessary coordination to effect the payment.

That M15 lay claim to have paid the sum of 500,000 US Dollars on behalf of the 3rd Defendant to the manufacturing shipyard called T.P. Maritime and was claiming a refund.

The 2nd Defendant complained of transfer issues and promised he was making arrangement to refund \$500,000.

That additional payment was made to the 3rd Defendant by the office of the National Security Adviser to a strange Hypertech Multipurpose Resources which he has no knowledge of.

That he has no knowledge of the payment.

On enquiry at Corporate Affairs Commission he found out that the Directors of Hypertech Resources are 2nd Defendant now 1st Defendant and similar surnames of 2nd Defendant.

The 3rd Defendant was incorporated in 1992.

The 2nd Defendant was made a Director on the 3rd of November 2011.

The Shipyard in the Netherlands was visited and they found the Six Numbers of K38 Armoured Patrol Boats.

The monies were paid for the procurement of the boats.

That he called the Account Officer for a copy of the bank statement but his findings were not clear in the sense that there was no clear bulk transfer of the money to the manufacturer.

The boats are hanging in the Netherlands.

There was evidence of payment of ~~N~~1.5 Million Euros comprising of \$500,000 paid by M15. No refunds were made.

The boats were not delivered because the contract conditions were not met particularly the payment time line as agreed.

Under Cross-examination, the witness said the N620 Million was withdrawn by the 2nd Defendant now 1st Defendant in 22 installments within a space of three years.

That he did not give any of the N620 Million to the 1st Defendant.

That there was no withdrawal in favour of the 1st Defendant or PICOMSS.

That the boats were not supplied because the 2nd Defendant now 1st Defendant failed to pay for them.

He does not believe the Court Order frustrated the supply of the boats.

That PICOMSS has not paid the full value of the contract.

The 2nd Prosecution Witness is Abubakar Umar. He is a staff of Eco Bank Nigeria Ltd. He knows the 2nd Defendant now 1st Defendant as a customer of his bank. He has a personal account and subsequently the 3rd Defendant's account (2nd Defendant) wherein the 2nd Defendant now 1st Defendant and PW1 are signatories.

That additional accounts were opened subsequently which includes Hypertech Multi Resources Ltd and RSA Project Ltd.

The 2nd Defendant now (1st Defendant) is the sole signatory to Hypertech Multi Resources Ltd.

The account documents are Exhibits A – A10.

Account Opening Package of Hypertech Multi Resources is Exhibit B.

He was the Account Officer of 3rd Defendant.

That ~~N~~620 Million came into 3rd Defendant's account. That it was an inflow from PICOMSS.

That there was a lot of activities on the account and the sum was completely expended.

That he was primarily the Account Officer. That he carried out instructions on the account as mandated by the signatories to the account such as cheques and transfer instructions for payment to third parties which include Bureau de Change or purchase of foreign exchange. The 2nd Defendant (now 1st Defendant) issued the said instructions.

That at a particular instance a total of \$1.3 Million was bought from a group of Bureau de Change which is evident in the statement of account by the Naira deductions.

3rd page of Exhibit A4 were cash withdrawals.

That he was also Account Officer of Hypertech Multi Resources. There were two significant inflows. One dated 07/06/12 for ~~₦~~118,200,000 and the second ~~₦~~174,000,000 on 10/07/12.

The above are payments from the Office of National Security Adviser.

That at the time the letter of investigation reached the bank, the funds were significantly depleted.

The 2nd Defendant now 1st Defendant could carry out transaction without the 2nd signatory.

He cannot recall any transaction in the name of the 1st Defendant. He did not witness any transfer of money between 1st and 2nd Defendants or from Hypertech Multi Resources to 1st Defendant.

The 2nd Defendant now 1st Defendant drove off with the 1.3 Million Dollars

The 3rd Prosecution Witness is Usman Abubakar Cholli. He works with the EFCC.

He stated that the account of Eco Bank received a little over ~~₦~~620 Million with the payment of ~~₦~~174 Million and a little over ~~₦~~118 Million to Hypertech Multi Resources Ltd respectively.

That 2nd Defendant (now 1st Defendant) is signatory A and the sole signatory in respect of the 2nd Company.

That he made a statement under caution. That in each statement he explained that a little over N620 Million that was in Hypertech Nig. Ltd was converted into U.S. Dollars which he gave to the 1st Defendant at various times.

That in his response to the money of Hypertech Multi Resources Ltd, he explained that the transfers were made into that account by the office of the National Security Adviser for the purpose of 6 Nos. of K38 Armoured Patrol Boats.

The 2nd Defendant's statements are Exhibits D – D3.

That investigations show that both accounts are all depleted (empty)

That the 6 Nos. of K38 Patrol Boats were not supplied neither was the money refunded.

The Fourth Prosecution Witness is Major Shay Tal (Rtd). He is from the city of Ramathasharon Israel. He is a Security and Defence Consultant.

The boats were for 1.7 Euros. He paid \$500,000 from his Company account as commitment. They later found out that PICOMSS paid to the account of the 2nd Defendant N620 Million which is an equivalent of \$4 Million:

That in January 2012, additional money amounting to 300,000 Euros was given to 2nd Defendant. It was a personal loan agreement that was not paid back.

That all monies paid into the account of 3rd Defendant has disappeared.

The 3rd Defendant paid some money but not enough to complete the 2.1 Million Euros.

The 5th Prosecution witness is Mailafia Yakubu. He is an Officer of EFCC. He is Team Leader that investigated this matter. He stated that on the interrogation of 2nd Defendant, he said the money in the account was withdrawn, changed to Dollars and handed over to the 1st Defendant. They asked for evidence and there was none.

That he mentioned his driver and banker but both of them denied seeing money or transfer being made to 1st Defendant.

That having collected all these monies, they asked for boats but they were no where to be found. The 1st Defendant denied receiving any money from 2nd Defendant.

The summary of the evidence is clear. Money meant for the supply of 6 Nos. of K38 Armoured boats were paid into the account of the 3rd Defendant.

The account was operated by 2nd Defendant.

The total sum paid is N620 Million and other sums of money.

The money disappeared but no boats were supplied.

From the above, the facts before the Court are:

1. The business for the supply of six K.38 Armoured boats was introduced to the 2nd Defendant by the PW4.
2. It was subsequently introduced to PW1 (the Managing Director of the 3rd Defendant) by the 2nd Defendant.
3. The 2nd Defendant was not originally a Director or Shareholder of 3rd Defendant but was appointed a Director of the 3rd Defendant his request to enable him have free hand in accessing the funds.

He was subsequently appointed a Director.

4. He opened a fresh bank account in the name of the 3rd Defendant and was made signatory 'A' .
5. PICOMSS transferred the sum of N620 Million into the account of the 3rd Defendant.
6. The 2nd Defendant withdrew all the money and did not make any payment for the boats.
7. The only payment made for the boats were done by the Company of PW4.

8. That further payments were made from the office of the National Security Adviser to another Company where the 2nd Defendant is the sole signatory
9. That all these sums of money had been withdrawn by the 2nd Defendant.
10. That not even one piece of boat was supplied.

It was on the above evidence and facts that the Defendants were called upon to enter their defence.

The 1st Defendant entered his defence and stated as follows:

That the question of a bond was brought up.

The bond was for the value of E15.4 Million Euros. It is a financial instrument that guarantees the repayment of the government agency that is giving out a public service contract of that value.

He took the bond in his capacity as a Director of Hypertech Nig. Ltd which is a beneficial Company that was to render the services to the government agency, in this case PICOMSS.

Accompanying the bond is a legal requirement that the bond issuer be indemnified by an individual who is either part of the Company or outside, that is capable of being identified in case of default.

He stood as indemnifier by using his properties.

There is no basis for the allegation against him except the fact that the Prosecuting agency never did any

investigation from the year 2012 to 2015. That had investigation been carried out the whereabouts of the N620 Million would have been established by simply tailing the money.

The N620 Million was a deposit payment in the local currency for a contract sum which value as at 2011 was worth well over N3 Billion Naira.

The contract was denominated in Euros.

The total sum was about E15.5 Million. The contract was duly signed and executed following due process. The N620 Million paid is roughly about 2 Million Euros. The last bid was for mobilization to commence.

The 1st Defendant explained to him that he does not have sufficient funds in the account of PICOMSS in order to make mandatory payment of 25-30% minimum of the total contract value which is the standard for the Nigeria Procurement Act.

He told him he had a little over N700 Million in his account.

He wanted the contract fast-tracked. He asked him to accept N620 Million and get on with the job.

The balance of 20-30% and the entire contract sum was to be paid by the National Security Adviser of Nigeria. The contract was duly signed.

He took the necessary legal steps of repayment by executing a bond to secure and protect the money.

The contract was signed in late 2011. It was signed by the 1st Defendant on behalf of PICOMSS while Alhaji Mohammed Mustapha signed for Hypertech Nigeria and Hypertech U.K.

The N620 Million was paid the same day in the last week of November 2011. The Manufacturers of T.P. Marine B.V. Ltd issued an invoice to Hypertech U.K. for a down payment of 30% of the cost of the craft. 30% of the cost represents about 330,000 Euros. He immediately rather than pay 30% wired through his account and Bureau de Change 1.5 Million Dollars to T.P. Marine B.V.

That on the same day his associates M15 (Major Shay) voluntarily and freely accepted to send him \$500,000 from their account in Commerce Bank, Germany to the account of T.P. Marine B.V. in Holland on behalf of himself and his Company on condition that he repays them the same day with cash here in Abuja.

Having received the confirmation of the transfer. He caused his bank to immediately repay the gentleman with \$500,000.

His bank through his Account Officer who also doubles as his personal Account Officer immediately wired the equivalent of \$500,000 to a Bureau de Change of his choice.

Immediately the money was available, they requested that the money be delivered to them inside the banking hall of their bank which is Zenith bank, Wuse Branch.

The proprietor of the Bureau de change delivered the money to the M15 representative. It was acknowledged and a receipt issued to the Proprietor and the said Proprietor issued him a receipt with a confirmation.

He completed the payment for the boat 100%. The boats were ready for immediate possession. He arranged for physical possession but could not take physical possession.

The National Security Adviser refused to fund the project. The 1st Defendant also decided to follow another part to procure the boats.

Letters were written to T.P. Marine by Mohammed Mustapha of Hypertech Nig. and U.K. That he was no longer in that capacity and therefore the boats are the legitimate properties of Hypertech. He received a correspondence from T.P. Marine informing him of this development on the basis of which they refused delivery of the boats to him.

The issue was further complicated because T.P. Marine B.V. conducted a search on Hypertech U.K. and found that the Company had been deregistered and no longer a legal entity to trade.

Thirdly, he demanded an indemnity from T.P. Marine against any loss or damage arising from anything that crops up.

All these issues were raised and sent to him as reasons why he could not take possession.

He was also served with a Court Summons from Holland together with T.P. Marine by M15 on the basis of a claim that M15 have invested \$500,000 for the purchase of the crafts and have been promised 50% of net profit.

The Court placed a temporary lien on three of the boats and gave M15 30 days to prove their claims.

The boats were fraudulently moved from the yard of T.P. Marine to a secret storage unknown to him and unknown to the Courts in Holland. He instructed his Lawyers to contest the claim. The National Security Adviser decided that PICOMSS cannot and should not operate such armoured security vessels and directed him to instead supply the boats to the Nigerian Army.

What becomes of the boat is that there was a new National Security Adviser. The 1st Defendant and Mohammed Mustapha wrote claiming the boats. He decided to fight by reporting all of them to the President of Nigeria and all relevant bodies. He petitioned that it was a sabotage.

The boats have been auctioned back to the cartel which is M15. Mohammed Mustapha and the 1st Defendant.

That M15 has been liquidated. The boats are the legal properties of Federal Republic of Nigeria.

That he gave EFCC over 4,000 pages of documentary evidence in addition to a soft copy.

That he paid over 3 Million Euros.

Under Cross-examination by 1st Defendant Counsel (Mr. Atawodi) he answered that he used the N620 Million for paying for the boats. He said the money was not given to the 1st Defendant.

The DW2 now DW1 failed to present himself for Cross-examination by 2nd Defendant and the Prosecution for about 2 years. His defence was subsequently foreclosed.

The following salient facts can be deduced from the 1st Defendant's evidence.

1. He signed a contract later 2011 to supply 6 Nos. of K38 Armoured boats to the Federal Government of Nigeria.
2. He took necessary legal steps by executing a bond to secure and protect the contract sum.
3. The sum of N620 Million was paid by PICOMSS as deposit in local currency for the contract sum.
4. That the contract was denominated in Euros.
5. That the total contract sum is E15.5 Million.
6. That the ~~N~~620 Million paid was roughly about E2 Million.
7. That 1st Defendant did not have sufficient funds in the account of PICOMSS to make the mandatory

payment of 25-30% minimum deposit of the total contract value.

8. The balance of the 20 -30% and the entire contract sum was to be paid by the NSA of Nigeria.
9. That the Manufacturers of T.P. Marine B.V. Ltd issued an invoice to Hypertech U.K. for a down payment of 30% of the cost of the crafts which is about 330,000 Euros.
10. That rather than pay 30% he immediately wired \$1.5 Million Dollars to T.P. Marine B.V in Holland on behalf of himself and 2nd Defendant.
11. That his associates M.15 (Major Shay) the 4th Prosecution Witness also paid \$500,000 to the Manufacturers on condition that he pays them cash in Abuja on the same date.
12. That he paid back the said associate with the said \$500,000 which was acknowledged.
13. That he completed the payment of the boats 100% and the boats ready for immediate possession.
14. He could not take immediate possession because the NSA refused to fund the project.
15. That letters were written to the manufacturers divesting him of authority hence they refused to deliver the boats to him.
16. That Hypertech UK was also deregistered.

17. He and T.P. Marine were also served with a Court Summons from Holland by M15 on the ground that M15 invested \$500,000 for the purpose of the crafts.

18. That the boats were eventually auctioned.

The 1st Defendant did not avail the Court with documents of transfer of the sums which he claimed he wired to the manufacturers. He also did not avail the Court with evidence of the payment of the \$500,000 he said he repaid M15.

There is no evidence of payment of any sum whatsoever showing that the N620 Million or any sum which he alleged is part payment was in fact transferred to T.P. Marines B.V.

The 1st Defendant did not tender the contract or identified any Exhibit before the Court. The performance bond is also not in evidence.

The 2nd Defendant did not call any evidence. It relies on the evidence before the Court.

Learned Prosecuting Counsel argued in his Final written Address that the ingredients of the offence of obtaining by False Pretence have been proved in this case..

That the Court of Appeal held CA/A/24/C/B1/17 in an appeal on the ruling in a submission in this case thus:

“There is sufficient evidence to warrant conviction if the evidence adduced so far is uncontroverted because the ingredients of

the offence of obtaining money by False Pretence have been loudly established to warrant the appellant to enter his defence.

The intent to defraud can be garnered from the totality of the conduct of the appellant.”

He urges the Court to so hold.

That 1st Defendant confirmed in his evidence in chief that the money was paid.

He finally submits that the Prosecution has proved all the ingredients of the offence against the Defendants particularly the 1st Defendant and urge the Court to find them guilty.

The 1st Defendant's Counsel submitted one issue for determination which is whether the Prosecution led any credible evidence to establish all the ingredients of the Charge against the 1st Defendant.

Learned Counsel argued that the Charge did not state exactly whom the 1st Defendant obtained the money from.

He canvassed that the ingredients for the offence Charged were not proved beyond reasonable doubt.

That the evidence adduced by the Prosecution are exculpatory in nature.

That there was no False Pretence and certainly no intention to defraud.

Learned Counsel further submits that it is a case of failure to do all that is necessary to ensure that the contract was

consummated. That the 1st Defendant failed to complete payment for the boats but certainly did not obtain money from the Federal Government under False Pretence.

That the N620,910,000 paid by PICOMSS on behalf of the Federal Government is not capable of being stolen because the Government obtained a Performance Bond before executing the contract and making the payment. The contract sum was therefore incapable of being stolen because the government can always enforce the bond and get its money back. That from evidence, there was a contract and a Performance Bond.

That Prosecution deliberately withheld the above documents.

The presence of the Performance Bond would have established beyond question that there was no intention to defraud.

He finally urges the Court to acquit the 1st Defendant.

The 2nd Defendant's Counsel also adopted his Final Written Address.

He urges the Court to discountenance all the additional payment made to a Company known as Hypertech Multi Resources Ltd. as the said Company is not a Defendant.

That having discharged the 1st and 2nd Defendants on the Charge of conspiracy, the said Court cannot stand against the 2nd Defendant. The 2nd Defendant cannot conspire with itself.

Learned Counsel referred to Section 10 of the Advance Fee fraud and Other Fraud Related offences Act.

That the Court should disregard the corporate entity and pay regard to the entities behind the corporate veil.

To establish the doctrine, it must be shown that the individual disregarded the entity of the corporation and made it a mere conduit for the transaction of his own private business. Liability springs from fraud perpetrated not on the corporation but on third persons dealing with the corporation.

Learned Counsel finally urges the Court to discharge and acquit the 2nd Defendant.

The issue for determination in my humble view is whether the Prosecution has proved the offence of obtaining the sum of 620,910,000 under False Pretence against the Defendants beyond reasonable doubt.

In ***ROWAYE VS. FRN (2018) 18 NWLR (PT.1650) 21 SC***, the Court held that to secure a conviction of a Defendant for the offence of obtaining under False Pretence, the Prosecution must prove the following elements.

1. There was some misstatement which in law amounts to pretence.
2. That the misstatement is as an existing fact made by the Defendant.

3. That it was false to his knowledge.
4. That it was acted upon by the person who parted with his money.
5. That the proceeding on the part of the Defendant was fraudulent.

I rely on the unreported judgment of the Court of appeal delivered on 15/01/18 in Appeal No. CA/A/24/C/B1/2017 Between Rabi Hassan Vs. FRN & 2 Ors. per Hon. Justice Tinuade Akomolafe –Wilson particularly pages 24 and 25 wherein the Court held that the Prosecution established the facts which I earlier outlined in this Judgment.

The Court further held in page 3 thus:

“The appellant was originally not a member of the 3rd Respondent’s Company but specifically sought to be appointed into the 3rd Respondent’s Company because he introduced the business to PW1, the Managing Director of the Company. He also requested that a fresh account be opened in the name of the Company for the business and insisted on being made a Signatory ‘A’ to the account which meant he could withdraw money without any other Counter signature...

That the only money paid to the Company T.P. Marine that manufactured the boats was \$500,000 paid by the Company of PW4. Appellant who is the 1st Defendant in this case pleaded with PW4 to make his payment on his behalf because PICOMSS was yet to pay the contract sum when

in actual fact PICOMSS had already transferred the ₦620,000,000 into the 3rd Defendant's account.

That it was the refusal of the Appellant to refund the said sum that made PW4 to sue the Defendants.

The Court further held that there is sufficient evidence to warrant the conviction of the 1st Defendant.”

The Defendants entered into a contract to supply the Federal government of Nigeria with 6 Nos. of K38 Armoured Boats. About ₦620 Million was paid to the 1st Defendant as part payment of the boats. The said payments were meant to be transferred to the Manufacturers of the boats, T.P. Marine.

The 1st Defendant failed, refused and neglected to transfer the said amount to the Manufacturers but instead dissipated the said money on unexplainable entities. The boats were not supplied. The monies were not refunded back.

In my view, the 1st Defendant assured the Federal Government he could supply the boats if paid. From his conduct, he knew that he would not. The Federal Government acted on it and paid the said sum. The 1st Defendant had no intention to pay for the boats as no single Euro was paid to the Manufacturers. The monies

were all paid into the 2nd Defendant's account which was solely operated by the 1st Defendant.

The 1st Defendant's Counsel argued that the 1st Defendant executed a Service Performance Bond. That the N620 Million was therefore not capable of being stolen or dissipated.

With due respect to Learned Counsel, the execution of the Service Performance Bond is a sort of guarantee that the fund will be channeled in the right direction. It is not an alternative to the N620 Million.

The 1st Defendant had said he used his properties as security.

The Bond is not before the court as it was not tendered by the 1st Defendant.

The title deeds of property used as collateral are also not availed the Court. The invoice of payment made to the Manufacturers, T.P. Marine, are also not tendered before the Court. The correspondence between him and the Manufacturers instructing him to hands off the project is also not in evidence.

I have taken a cursory look at the exhibits before me particularly exhibits A and B.

Exhibit B is the Statement of Account of 2nd Defendant which was operated by the Defendant. There is nothing therein to suggest that any money at all was paid to the

Manufacturers of the boats despite the inflows from PICOMSS.

Exhibit G are the incorporation documents of Hypertech Nigeria Ltd (2nd Defendant).

In the Form CO7 which contains the particulars of Directors, there are four Directors, the 1st Defendant being the first. There is no evidence suggesting that the other Directors knew what the 1st Defendant was doing as it relates to the contract. In actual fact, he became a Director of the 2nd Defendant to enable him solely manage the contract. He became the directing mind of the Company or arrow head as it relates to the contract and the Company. I therefore agree with the Defendant's Counsel's argument that the fraudulent acts of the 1st Defendant called for the lifting of the veil of 2nd Defendant's Company. There is no resolution of the Company as it relates to the transaction concerning the 6 Nos. of K38 Armoured Boats.

The 1st Defendant merely used the 2nd Defendant to perpetrate his scheme.

In the circumstance of this case, I find the 2nd Defendant Not Guilty. It is therefore hereby discharged and acquitted.

The Defence of the 1st Defendant is not consistent with the innocence and could not possibly be true. I find the story unreliable and untrue.

The Prosecution in my view has proved its case against the 1st Defendant beyond reasonable doubt and I so hold.

The 1st Defendant is hereby found guilty on Count II of the Charge. He is hereby convicted.

1st Defendant's Counsel: I thank the Court for the Judgment. I apply under Section 414 (2) (g) and Section 311 of the Administration of criminal Justice Act to suspend the sentence in this matter.

Prosecution: I oppose the application. He does not deserve the discretion of the Court.

2nd Defendant's Counsel: We are grateful for the erudite Judgment.

Court: Case is adjourned *sine die* for sentencing.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

03/06/2020.