

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 13TH DAY OF JULY 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO – ABUJA

CHARGE NO: FCT/HC/CR/255/15

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. YUSUF MOHAMMED AGABI
2. AKPORE OKEROGHENE
3. ABIBU AYINLA } DEFENDANTS

JUDGMENT

The Defendants were originally arraigned before this Court on 26/05/2016, on a **forty-six (46) Count Charge** for the offences of receiving money purportedly obtained fraudulently; and criminal conspiracy contrary to and punishable under the

Corrupt Practices and Other Related Offences (ICPC) Act, 2000.

In the course of trial, the erstwhile 4th Defendant – **Idowu Anthony Adewale**, entered into a *plea bargain* agreement with the prosecution, whereby he pleaded guilty to the offences for which he was charged and he was convicted and sentenced accordingly on 06/03/2017.

Thereafter, the Complainant amended the Charge and the Defendants pleaded not guilty to the Amended **forty-three (43) Count Charge** on 10/03/2017.

At the plenary trial, the prosecution called a total of **fourteen (14)** witnesses, including staffs of the Ministry of the Niger Delta Affairs, staffs of some Banks, and an investigator with the **ICPC**. Between them, the witnesses tendered a total number of **twenty-six (26)** sets of documents in evidence as exhibits, including the Petitions lodged against the Defendants by the

Permanent Secretary of the Ministry of Niger Delta Affairs and the extra-judicial statements obtained from the respective Defendants.

At the close of the case for the prosecution, the Defendants, through their respective learned counsel, indicated their intention to make *No Case Submissions*, pursuant to the provisions of s. **302** of the **Administration of Criminal Justice Act, 2015 (ACJA)**.

In the Ruling of the Court rendered on 01/02/2019, the Court upheld the no case submissions of the erstwhile 4th Defendant, **Ntu James Ngozi**, and he was discharged accordingly.

With respect to the 1st Defendant, the Court partly upheld his no case submission and discharged him with respect to the offences in **Counts 11, 12, 13, 17, 21** and **42** of the Charge; and ordered him to enter his defence with respect to the offences in **Counts 1, 2, 3,**

4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 18, 19 and **20** of the Charge preferred against him.

The Court also partly upheld the 2nd Defendant's no case submission and discharged him with respect to the offences in **Counts 23, 24, 25, 26, 42** and **43** of the Charge; and ordered him to enter his defence with respect to the offence only in **Count 22** of the Charge preferred against him.

For the 3rd Defendant, his no case submission was also partly upheld and he was accordingly discharged of the offences in **Counts 28, 29, 30, 31, 32, 33, 34, 35, 36** and **43** of the Charge; and was ordered to enter his defence with respect to the offence only in **Count 27** of the Charge preferred against him.

The matter thereafter proceeded to defence. For their defence, each of the Defendants testified in person. The 1st Defendant tendered a single document in evidence to further support his defence. The 2nd

Defendant tendered three (3) sets of documents in evidence to further support his defence. The 3rd Defendant also tendered a total of three (3) sets of documents in evidence as exhibits to further support his defence. They were in turn cross-examined by the prosecution learned counsel.

At the close of the defence of the respective Defendants, parties, as agreed to by them, filed and exchanged written final addresses, which the Court has duly and properly considered.

The obvious question that the Court has to determine in the instant Charge is as to whether or not on the basis of the totality of the evidence led by the prosecution witnesses and the explanations offered by the respective Defendants, it could be said that each of the offences for which each of the Defendants stood trial has been proven beyond reasonable doubt by the prosecution.

In seeking to resolve this question therefore, it is perhaps pertinent, as a starting point, to re-state the fundamental principles of a criminal trial, also alluded to by the prosecution learned counsel in his final arguments, to the effect that the prosecution could discharge the burden placed on it by the provisions of **s. 135(2) and (3) of the Evidence Act**, to prove the guilt of an accused defendant beyond reasonable doubt, in any of the following well established and recognized manners, namely:

1. By the confessional statement of the accused defendant which passes the requirement of the law; or
2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or

3. By circumstantial evidence which links the accused defendant and no other person to or with the commission of the crime or offence charged.

See Lori Vs. State [1980] 8 - 11 SC, 81; Emeka Vs. State [2001] 14 NWLR (Pt. 734) 668; Igbele Vs. State [2006] 6 NWLR (Pt. 975) 100; Iorapuu Vs. State [2020] 1 NWLR (Pt. 1706) 391 @ 395.

Keeping these well settled legal principles in view therefore, I now proceed to examine the instant Charge, in the light of the totality of the evidence adduced on record by all the sides, in order to determine whether or not the prosecution has proved commission of the offences for which the Defendants stood trial beyond reasonable doubt as required by law.

1ST DEFENDANT

As correctly highlighted by the prosecution learned counsel, the 1st Defendant stood trial with respect to

similar offences in **Counts 1 – 10, 14 – 16; and 18 – 20** of the Charge, under the provision of s. 13 of the **Corrupt Practices and Other Related Offences Act, 2000 (ICPC Act)**.

Count (1) of the Charge states as follows:

That you, Yusuf Mohammed Agabi (M), on the 4th of December, 2013 or thereabout at Abuja being a Public Officer to wit: Director of Finance at the Ministry of Niger Delta Affairs did receive for yourself the sum of N100 Million (One Hundred Million Naira) belonging to the Federal Government of Nigeria, from Kabiru Poloma knowing same to have been obtained fraudulently from bank account of the Ministry of Niger Delta Affairs and you thereby committed an offence contrary to Section 13 and punishable under Section 68 of the Corrupt Practices and Other Related Offences Act, 2000.

The other Counts also accused the 1st Defendant of receiving different amounts of money at different

times, under similar circumstances as in **Count (1)**, from the same **Kabiru Poloma** and two other staffers of the Ministry of Niger Delta Affairs, namely **Daniel Obah** and **Babadoko Aliyu** respectively.

The provision of **s. 13** of the **ICPC Act**, under which the 1st Defendant stood trial for the charges highlighted in the foregoing states as follows:

“13. Any person who receives anything which has been obtained by means of act constituting a felony or misdemeanor, or by means of any act done at a place outside Nigeria, which, if it had been done in Nigeria would have constituted a felony or misdemeanor and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a felony.”

Now, the **ICPC Act** (*supra*), under which the 1st Defendant is charged, did not define what a felony or misdemeanor is. As such, in order to properly appreciate the purport of the offence charged by **s.**

13 of the **ICPC Act**, recourse is had to the interpretation section of the **Administration of Criminal Justice Act, 2015 (ACJA)**, s. 494 thereof, in which “*felony*” and “*misdemeanor*” are defined as follows:

“Felony” – means an offence on conviction for which a person can, without proof of his having been previously convicted of an offence, be sentenced to death or to imprisonment for three years or more, or which is declared by law to be a felony;” and

“Misdemeanour” – is an offence punishable by imprisonment for not less than 6 months but less than 3 years or which is declared by law to be a misdemeanor.”

From an understanding of the meaning of offences regarded as felony and misdemeanor, the elements the prosecution will be required to prove in order to sustain the offences charged against the 1st Defendant

under s. 13 of the **ICPC Act** could be enumerated as follows:

1. The Defendant must have received anything;
2. The thing received must have been obtained by means constituting criminal offence;
3. The Defendant must have known that the thing obtained was obtained by means constituting criminal offence.

Now, the undisputed background facts of the case, as relating to the 1st Defendant, and gathered from his extra-judicial statements, **Exhibits P25** and **P25A** respectively, are that he was the Director of Finance and Accounts in the Ministry of Niger Delta Affairs. He held the position from April, 2013 until December 31st, 2013, when he retired from public service.

Now, the summary of the allegations leveled against the 1st Defendant for which he stood trial is that, at

various times whilst he held sway as the Director of Finance and Accounts in the Ministry of Niger Delta Affairs, he unlawfully received certain amounts of money belonging to the Ministry of Niger Delta Affairs, running into several millions of Naira, which monies were unlawfully obtained from the Ministry's Constituency Projects Account with the Central Bank of Nigeria (CBN), by one **Kabiru Poloma**, a staff of the Ministry; who paid the said sums to the 1st Defendant indirectly through Bank Accounts of companies to which he was sole signatory.

With respect to **Count (1)** of the Charge, the 1st Defendant was accused of receiving the sum of **₦100,000,000.00** from the said **Kabiru Poloma** on 4th December, 2013, as part of such monies unlawfully obtained by the said **Kabiru Poloma** from the Account of the Ministry from the CBN.

In order to sustain this charge, the prosecution called as its star witness, the said **Kabiru Poloma**, who, considering the far-reaching testimony he gave implicating himself, as would be seen as I proceed, could aptly be described as a self-confessed fraudster.

The said **Kabiru** testified as the **PW1**. He claimed to be a civil servant and staff of the Ministry of Niger Delta Affairs at the material time, a fact which the 1st Defendant confirmed in his extra-judicial statement. The said **Kabiru** further testified that he equally served as Personal Assistant to the 1st Defendant for a period of ten (10) years up until his retirement on 31st December, 2013; a fact the 1st Defendant denied in his evidence-in-chief.

What is however not in contention is that at the material time when the 1st Defendant served as the Director of Finance and Accounts of the Ministry of

Niger Delta Affairs, the said **Kabiru Poloma** was his subordinate in the Ministry, with whom, as evidence on record also revealed, he related very closely. From his testimony on record, it cannot be doubted that the said **PW1** clearly understood the workings in the Ministry at the material period. I shall however limit myself to his testimonies as are relevant to **Count (1)** of the Charge instant.

The **PW1** testified that the Ministry had the Constituency Projects Account domiciled with the CBN at the material time; that he was involved in the opening of the Account at CBN; that the 1st Defendant alongside another staff by name **Mrs. Aina**, were Signatories A to the Account; that himself and one **Alfa** were Signatories B to the said Account; that when withdrawals were to be made from the account, one Signatory A and one Signatory B must sign the cheque and that the cheque must be physically presented at the CBN before it could be honoured.

The **PW1** further testified that apart from his personal bank account, he operated bank accounts for four (4) different companies namely – **KP Global Energy Solutions Limited; Kapolo Global Limited; Sindaba Global Technologies (Nigeria) Limited; and Balanga Construction Nigeria Limited;** that it was through the bank accounts of these companies he transferred monies to the accounts nominated by the Defendants.

The **PW1** further testified that the 1st Defendant instructed him to raise a Memo for the sum of **₦100,000,000.00** to one of his (**PW1's**) companies as if a contract was executed, although he did not mention the name of the company; that the money was eventually paid to his (**PW1's**) company's account; that the 1st Defendant furnished him with his Bank accounts to which he transferred the money. He recalled that he paid monies to the 1st Defendant through bank accounts of companies namely **Akye Properties Nigeria Limited and Lumaco Petroleum Nigeria**

Limited. He claimed that the names of the other companies, which he could not remember, were included in his extra-judicial statement.

The witness further testified that the 1st Defendant instructed him to remove the sum of **₱15,000,000.00** from the said sum of **₱100,000,000.00** to be given to the 2nd Defendant and that the said **₱100,000,000.00** was the last movement of cash from the Ministry's Account with the CBN that took place in December, 2013.

The **PW1** testified that the said payments were not meant for any legitimate transactions and that no contracts were awarded by the Ministry for which the monies were paid to the 1st Defendant.

It is significant to note that in spite of his far reaching testimony, the **PW1** tendered no documents in evidence to substantiate his testimonies; and none was shown to him throughout. Curiously too, the **PW1's** extra-judicial

statement was equally not tendered in evidence by the prosecution.

Under cross-examination by the 1st Defendant's learned counsel, the **PW1** maintained that he was a Signatory to the Constituency Projects Account with the CBN from inception because he processed the account opening. He also admitted that the 1st Defendant did not partake in sharing out of the ~~₦~~**805,000,000.00** he claimed to have withdrawn from the Ministry's Constituency Account with the CBN.

In his testimony, the **PW2 - Mangset Dickson Longyim**, who, at the material time, was a Principal Accountant, who worked at the Central Pay Office of the Ministry of Niger Delta Affairs, stated that his duties included processing of payments by the directives of whoever was the Director of Finance and Accounts of the Ministry. He narrated the procedure for payments in the Ministry. He further testified that he knew both the

1st and the 3rd Defendants; that the **PW1 - Kabiru Poloma** served as Personal Assistant to either of them at the material time they each served as Director of Finance and Accounts of the Ministry; and that the **PW1** came with the 1st Defendant when he was posted to the Ministry of Niger Delta Affairs. The witness confirmed that whenever the 1st or 3rd Defendants were interested in any particular payment, they normally directed the **PW1** to the Central Pay Office to process the payment; that the **PW1** carried out instructions on behalf of the 1st and 3rd Defendants at the material times they each served as DFA at the Ministry.

The **PW2** also testified that at the material time, he recalled that the **PW1** always came to process payments to companies such as **KP Global Energy Limited; Sindaba Global Technologies Limited; Balanga Nigeria Limited; and Kapolo Nigeria Limited**; that because of the nature of the payments,

the **PW1** always went round all the relevant sections with the Vouchers by himself; that the payments could either be for Duty Tour Allowance; Training of Militants; Youth Empowerment and Road Construction.

The **PW2** further testified that he was aware that these payments were fraudulent payments because the **PW1** informed him so and that at the end of the day he also benefitted from the payments.

Under cross-examination by the 1st Defendant's learned counsel the witness stated further that as at the time the money were alleged to have been moved from the Ministry's account, that the 1st Defendant was no longer in the service of the Ministry; and that the companies to which payments were made belonged to the **PW1**.

The prosecution went on to call as the **PW3**, one **Walter Eze**, who testified as a Relationship Manager with the United Bank for Africa Plc. He tendered in evidence

the Mandate documents and the Statement of Account of **Sansani Farms Ltd.** as **Exhibits P1** and **P1A** respectively. He identified that the name on the Mandate card, **Exhibit P1**, is **Mr. Agabi Yusuf Mohammed**, as the sole signatory of the account.

It is also to be recalled that in his extra-judicial statement, the 1st Defendant had confirmed that he was the sole signatory to the bank account of **Sansani Farms Limited**. As such, there is no dispute about the 1st Defendant's link to the company.

The **PW3** was led in evidence to narrate the transaction of 04/12/2013 on the Statement of Account of **Sansani Farms Limited, Exhibit P1**, which reflected that there was a transfer of the sum of **₦100,000,000.00** from **Kapolo Global Limited** into the account.

The prosecution went further to call the **PW4 - Alex Yaza Tamne**, Branch Relationship Head/Relationship

Manager with Ecobank Limited. He tendered in evidence the Bank Account documents relating to **Poloma Kabiru Nuhu** as **Exhibit P2**; **Sindaba Global Technologies Nigeria Limited** as **Exhibit P3**; **Akye Properties Limited** as **Exhibit P4**; **Kapolo Global Limited** as **Exhibit P5**; **KP Global Energy Solution Limited** as **Exhibit P6** and **Balanga Construction Nigeria Limited** as **Exhibit P7**.

The witness identified **Mr. Yusuf Agabi** as the sole signatory of the account of **Akye Properties Limited**. He further identified **Kabiru Nuhu Poloma** as the sole signatory to the accounts of **Poloma Kabiru Nuhu** and **Sindaba Global Technologies Limited**.

In his extra-judicial statement, the 1st Defendant shed more light on the purported transfer of the said sum of **N100,000,000.00** to his account by the **PW1** on 04/12/2013, when he stated as follows:

“The sum of One hundred million Naira transferred to my account on the 4th of December, 2013 by Kabiru Poloma was meant for disbursement as duty tour allowance to some key officers of the Ministry who were supposed to travel to the Niger Delta Region to meet with and interact with the Militants. The money was appropriately disbursed to those officers subsequently to enable them travel to the Region.”

The portion of the 1st Defendant’s extra-judicial statement reproduced in the foregoing clearly tied up with the testimony of the **PW1** that the sum of **₦100,000,000.00** was withdrawn from the Constituency Projects Account of the Ministry of Niger Delta Affairs which, upon the 1st Defendant’s instructions, he paid into an account he nominated. The **PW3** further confirmed the **PW1**’s testimony here by identifying in the Statement of Account of **Sansani Farms Limited** with UBA Plc, **Exhibit P1A**, that on

04/12/2013, the sum of **₦100 million** was transferred into the account from the account of **Kapolo Global Limited**, operated solely by the **PW1**.

The only area of dispute between the testimony of the **PW1** and the extra-judicial statement of the 1st Defendant (*supra*) is that whilst the **PW1** testified that all the withdrawals he made from the Ministry's Constituency Account from the CBN and transferred as he was instructed by the 1st and 3rd Defendants at the material times were for unauthorized transactions; the 1st Defendant claimed that the payment of **₦100 million** paid into his account was for Duty Tour Allowance of some key staff of the Ministry who were to visit Militants at the Niger Delta Region and that he disbursed the money accordingly.

The **PW1** testified with respect to the withdrawal of the said **₦100 million** as follows:

“With respect to the 1st Defendant... He instructed that I raised a Memo for ₦100 million to one of my companies as if a contract was executed.... The money was eventually paid into my account. The 1st Defendant furnished me with his accounts, which I later transferred the sum to him. ... None of the withdrawals I referred to in my evidence were for authorized transactions.”

Now, in order to establish the correct purpose for which the said sum of **₦100 million** was paid into the 1st Defendant’s company’s account, particularly considering the claim of the 1st Defendant in his extrajudicial statement that the money was meant for duty tour allowance of key officers of the Ministry, the expectation is for the Complainant to further investigate this aspect of the 1st Defendant’s statement.

Again, the **PW12 - Abdulkadir Abdulrazaq**, investigator with the ICPC, tendered a bundle of documents being original Capital Expenditure

Payment Vouchers and contracts documents, all procured from the Ministry of Niger Delta Affairs, as **Exhibit P19**. Although no staff of the Ministry was called as witness to explain the purport of the documents, it is noted that all of the documents related to transactions that took place in 2014, which were totally unrelated to the issue of the **₦100 million** at hand.

Again, the **PW1** claimed that the 1st Defendant asked him to raise a Memo for a fictitious contract which was not executed. This was a weighty allegation which ought to have been further investigated. The Memo ought to have been retrieved, in order to debunk the 1st Defendant's claim that the money was meant for DTA of key staff who were to visit Militants at the Niger Delta region. The prosecution also failed to lead evidence to establish that the 1st Defendant authorized the withdrawal of the said sum of money from the account of the Ministry with the CBN by the **PW1** for

fraudulent purpose. The oral testimony of the **PW1**, without more, cannot be sufficient evidence of the purpose for which the money was withdrawn. I so hold.

Even though the 1st Defendant clearly admitted receipt of the said sum of **₦100 million**; however, before his guilt could be established as required by the provision of **s. 13** of the **ICPC Act**, it must further be established that the 1st Defendant knew that the money was fraudulently obtained by the **PW1** from the coffers of the Ministry of Niger Delta Affairs and that the money was given to the 1st Defendant for an unlawful purpose.

In his evidence in chief, the 1st Defendant stated, with respect to the said **₦100 million**, that he was not aware that the **PW1** fraudulently obtained the money from the account of the Ministry of Niger Delta Affairs.

In the circumstances, I must resolve the holes and doubts created in the case of the prosecution in favour

of the 1st Defendant. As it is well known, it is not the duty of an accused defendant to defend an allegation leveled against him; but for the prosecution to establish the same beyond reasonable doubt as prescribed by the provision of s. **135(2)** and **(3)** of the **Evidence Act**.

The position of the law is further that where the Court entertains even the slightest of doubt as to the guilt of an accused defendant; that doubt should be resolved in his favour. See Almu Vs. State [2009] 10 NWLR (Pt. 1148) 31.

On the basis of the foregoing analysis therefore, I hold that the prosecution has failed to establish the guilt of the 1st Defendant with respect to **Count (1)** of the Charge beyond reasonable doubts. He is accordingly discharged and acquitted thereon.

Count (2) of the Charge accuses the 1st Defendant of receiving the sum of **₦50,000,000.00** from the same

PW1 on 6th December, 2013 in similar circumstances as in **Count (1)**.

I noted that the **PW1** did not give any evidence relating to payment of specific sum of **₦50 million** to the 1st Defendant on 6th December, 2013. However, in his extra-judicial statement, **Exhibit P25A**, the 1st Defendant admitted receiving the said sum. He had this to say:

“The sum of Fifty Million Naira paid to me in the same Account on 6th December, 2013 by the same Poloma Kabiru was also meant for the same purpose as the first payment.”

The **PW3** corroborated the 1st Defendant’s statement to the extent that on 6th December, 2013, an inflow of **₦50,000,000.00** occurred in the account of **Sansani Farms Ltd.** from **Kapolo Global Limited**, as reflected in the statement of account of the company, **Exhibit P1A**.

Apart from this testimony, the prosecution failed to give any further evidence as to the purpose for which the money was paid into the said account. The prosecution also failed to further investigate the 1st Defendant's statement that the money was paid to his company's account for the same purpose as the amount in **Count (1)**. No payment vouchers were produced to establish the purpose for which the money was paid into **PW1's** account, who subsequently transferred same to the 1st Defendant's company's account.

I must therefore hold that there is indeed a shortfall of proof in order to establish all the elements of the offence in **s. 13** of the **ICPC Act**, under which the 1st Defendant was tried with **Count (2)** of the Charge.

In the circumstances, I must again discharge and acquit the 1st Defendant of the offence in **Count (2)** of the Charge.

Count (3) of the Charge is similar in substance with **Count (2)**. It alleges that on 31st December, 2013, the 1st Defendant received the sum of **₦50 million** from one **Daniel Obah**, knowing the same to have been fraudulently obtained by the said **Daniel Obah** from the bank account of the Ministry of Niger Delta Affairs.

To start with, it is significant to note that the said **Daniel Obah**, who was referred to by the **PW1** as his colleague in the Ministry of Niger Delta Affairs, from whom the 1st Defendant was alleged to have received the said **₦50 million** was not called by the prosecution as witness in this case. As such, there was no direct evidence of what transpired between the said **Daniel Obah** and the 1st Defendant.

The only evidence offered by the prosecution with respect to this particular transaction is given by the **PW3**, who identified on the bank statement of **Sansani**

Farms Limited, of which the 1st Defendant is the sole signatory, that on 31/12/2013, a sum of **₦50 million** was transferred to the account by one **Daniel Obah**. Apart from this, the prosecution led no other evidence as to who **Daniel Obah** was; where he got the said sum of **₦50 million** from; and the purpose for which he transferred the money to the 1st Defendant's company's account.

At this juncture, I must remark that in order to sustain the offences for which the Defendants were charged under s. 13 of the **ICPC Act**; the prosecution must proceed beyond identifying payments made into accounts of companies in which the respective Defendants have interest; by establishing where the monies came from and the purpose for which the monies were paid to the accounts to which they were traced. The evidence led on record by the prosecution, in most cases, left these gaps unfilled.

So, with respect to the instant **Count (3)** of the Charge, no evidence whatsoever was led to establish that the money in question was obtained from the account of the Ministry of Niger Delta Affairs.

In his extra-judicial statement, **Exhibit P25A**, the 1st Defendant, stated, with respect to the said payment, as follows:

“The sum of Fifty Million Naira paid into the same Account by Oba Daniel on the 31st December, of year 2013 is equally for the purpose of disbursement as duty tour allowance to the officers of the Ministry of Niger Delta Affairs. Oba Daniel is a staff in the Department of Finance and Accounts where I served as the Head of the Department prior to my disengagement from the service. This money was paid into my Company Account so as to allow for quick and/or prompt withdrawals and disbursements to meet and address emergency situations...”

The prosecution, yet again, failed to further investigate this statement in order to verify if indeed the 1st Defendant received the said sum for the purpose for which he claimed it was credited to his Company's account; and whether he disbursed the money also for the same purpose.

Again, in view of the gaping holes in the case presented by the prosecution with respect to **Count (3)** of the Charge, I must and I hereby again discharge and acquit the 1st Defendant of the offence therein.

With respect to **Counts (4), (5), (6), (7), (8), (9), (10), (14), (15) and (16)** of the Charge, the 1st Defendant was alleged to have received from the **PW1**, funds fraudulently withdrawn from the bank account of the Ministry of Niger Delta Affairs. The amounts and dates of receipt were stated as follows:

- (i) Count (4) – 11/07/2013 – ~~N~~**5,000,000.00;**
- (ii) Count (5) – 18/09/2013 – ~~N~~**6,000,000.00;**

- (iii) Count (6) – 20/09/2013 – ~~₦4,000,000.00~~;
- (iv) Count (7) – 11/10/2013 – ~~₦12,000,000.00~~;
- (v) Count (8) – 11/10/2013 – ~~₦18,000,000.00~~;
- (vi) Count (9) – 22/10/2013 – ~~₦5,000,000.00~~;
- (vii) Count (10) – 30/10/2013 – ~~₦12,000,000.00~~;
- (viii) Count (14) – 15/11/2013 – ~~₦4,000,000.00~~;
- (ix) Count (15) – 19/11/2013 – ~~₦4,000,000.00~~;
- (x) Count (16) – 21/11/2013 – ~~₦4,000,000.00~~.

I had carefully examined the totality of the evidence adduced by the said **PW1, Kabiru Poloma**. What seemed to be his testimony with respect to the allegations in the Counts of the Charge as enumerated in the foregoing, is as follows:

“The ICPC saw other payments made into my account from the Constituency Projects Account of the Ministry. They also saw some payments made into my account in 2013 financial year, when the 1st Defendant was the Director of Finance and Account. Apart from my personal account, I operate accounts in four (4) different

companies. They are KP Global Energy Solutions Ltd; Kapolo Global (Nig.) Ltd.; Balanga Construction (Nig.) Ltd.; and Sindaba Global Technologies (Nig.) Ltd. Payments were made from the Ministry into all of these accounts. The companies did not execute any contract with the Ministry. There were memos that the Director of Finance and Account raised for the payments to be made.”

As usual, all that the prosecution did was to request the banker-witnesses to establish that monies were transferred from the bank accounts of companies operated by the **PW1** to the bank accounts of the 1st Defendant’s companies. The narrations in these accounts could not have and did not state the purpose for the funds transfer.

Indeed, in his extra-judicial statement, the 1st Defendant, admitted receipt of these monies. But, just like the other payments, he ascribed purposes to the

payments. The portion of his statement in this regard is reproduced as follows:

“The sum of Five Million Naira (Count 4) paid into my Account, Akye Properties, on the 11th July, 2013 by Poloma Kabiru was meant for the payment of Tour Allowance to the officers of the Ministry in line with the mandate of the Ministry due to exigencies and mandate of the Ministry. The sums of Six Million (Count 5), Four Million (Count 6), and Twelve Million Naira (Count 7) paid into Akye Property Account by Kabiru Poloma respectively on the 18th, 20th and 27th September, 2013 were all meant for the payment/disbursement for staff duty tour allowance. Also the sum of ₦18m (Count 8); ₦5m (Count 9) and ₦12m paid into Akye Property Account on the 11th, 22nd and 30th October, 2013, were equally allowances paid to the officers of the Ministry. All payments of ₦3m, ₦2.5m, ₦6.5m, ₦4m, ₦4m, ₦4m, ₦4m, for the period of 1st, 5th, 11th, 15th (Count 14); 19th (Count 15); 21st (Count 16); and 26th

November, 2013 (Count 17) respectively were payments made to the Militants of Niger Delta on their various visits to the Ministry.”

In my view, the Complainant undertook a rather shabby investigation of the allegations in these Counts, just as the others reviewed in the foregoing, by failing to further investigate the statement made by the 1st Defendant in his extra-judicial statement in order to further establish whether indeed the Memos and payment vouchers raised for the payments of these sums tallied with the purpose for which the 1st Defendant claimed the monies were transferred to his account. It is not enough to get the **PW1** to testify that he transferred monies in the accounts of his companies to accounts of companies in which the 1st Defendant is the sole signatory, without concrete evidence to show that he obtained the monies from the account of the Ministry of Niger Delta Affairs fraudulently and for

fraudulent purposes known to the 1st Defendant. I so hold.

On the basis of the foregoing analysis therefore, I hereby hold that the prosecution has failed again to prove beyond reasonable doubt, that the 1st Defendant committed the offences contained in **Counts (4), (5), (6), (7), (8), (9), (10), (14), (15) and (16)** of the Charge for which he stood trial. He is accordingly discharged and acquitted on those Counts.

With respect to **Count (18)** of the Charge, the 1st Defendant was accused to have received the sum of **₦80,000,000.00** from **Kabiru Poloma** on 28th November, 2013, knowing that the said amount was fraudulently withdrawn from the Account of the Ministry of Niger Delta Affairs.

I had again scrutinized the testimony of the **PW1**. He did not mention anywhere that he paid the said sum to the 1st Defendant as alleged in **Count (18)** of the

Charge. The prosecution did not also lead evidence, through the banker-witnesses they fielded, to establish that on the said date, the said sum of **₦80 million** was transferred to the 1st Defendant by **Kabiru Poloma**.

I had equally examined the totality of the extra-judicial statement made by the 1st Defendant, **Exhibits P25** and **P25A** respectively. He did not mention that he received the said amount into any of his company's accounts.

On this basis, I must discharge and acquit the 1st Defendant of the offence alleged against him in **Count (18)** of the Charge.

With respect to **Counts (19)** and **(20)** of the Charge, it is alleged that on 27th December, 2013 and 31st December, 2013 respectively, the 1st Defendant received the sums of **₦4.5 million** and **₦4.350 million** from one **Babadoko Aliyu Mohammed**, knowing that

the money was fraudulently obtained from the account of the Ministry of Niger Delta Affairs.

The said **Babadoko Aliyu Mohammed** was fielded by the prosecution as its **PW8**. He was a staff of the Ministry of Niger Delta Affairs at the relevant period and he claimed to have known and worked with the respective Defendants at different times in the Ministry. He testified that at the material time, he was working at the Advances Section of the Ministry; that there was trip to be made to the South-South region of Nigeria; that his name was used to process Duty Tour Allowance for officers to go on that trip; that the money was paid into his account and that when the value dropped, that he transferred the whole amount, the sum of **N4.5 million**, to the 1st Defendant, through bank transfer. He claimed that he could not confirm if the tour was embarked upon or not.

The **PW8** also testified that with respect to the sum of ~~**N4.350 million**~~, that the money was also meant for official duties, that it was paid through his account and that when the value dropped, he transferred the sum to the 1st Defendant's account. He could not recall the nature of the official duty for which the money was paid and he could also not recall if the duty was carried out or not.

Apart from adducing oral evidence, the said **PW8** tendered no documents to establish his testimonies that he paid the sums involved in the two Counts to the 1st Defendant. Evidence of official transactions ought to be supported by necessary documents in order to earn some credibility. The **PW8's** evidence of these transactions is very vague and feeble and no conviction can be sustained on such low quality evidence. I so hold.

In any event, it is not the testimony of the PW8 that the said monies were fraudulently withdrawn from the Ministry's Account for fraudulent purpose known to the 1st Defendant.

On his part, the 1st Defendant did not also refer to the sums he was alleged to have received in **Counts (19)** and **(20)** in his extra-judicial statement. In his evidence-in-chief, he denied outright that he received the sums alleged in **Counts (19)** and **(20)** from the said Babadoko.

There is apparently no credible evidence on the record that linked the 1st Defendant to the commission of the offences contained in **Counts (19)** and **(20)** of the Charge. On that score the Court must discharge and acquit him of the offences.

As I round up here, I must make reference to the Petitions written on behalf of the Hon. Minister, Ministry of Niger Delta Affairs to the Chairman, ICPC, that

instigated the investigations that culminated in the instant Charge preferred against the Defendants. The Petitions were tendered in evidence as **Exhibits P18** and **P18A** by the **PW12**, investigator with the ICPC.

The Petition, **Exhibit P18**, dated 26th November, 2014, relates to purported unauthorized withdrawal of the sum of **₦605,073,540.00** from the Ministry's 2014 Constituency Project Account with the CBN.

By another letter, dated 9th January, 2015, tendered in evidence as **Exhibit P18A**, which is more or less a supplementary Petition and follow up to **Exhibit P18**, the Hon. Minister, passed additional information to the Chairman, ICPC, about the discovery of additional unlawful withdrawals from the same Account of the 3rd Quarter Allocation to the Ministry, in the sum of **₦197,078,712.88** from 19th to 25th November, 2014; and that a part refund of the sum **₦110 million** paid

into the account by **Mr. Poloma** and subsequently withdrawn, leaving the account in Nil balance.

The **PW12** was cross-examined by the 1st Defendant's learned counsel with respect to the Petitions, **Exhibit P18** and **P18A** respectively and he had this to say:

“It is correct that the two letters contain specific amounts allegedly withdrawn from the Ministry’s account. The monies contained in the letters were illegally removed from the Ministry of Niger Delta Affairs. The first amount was removed in two tranches from the account of the Ministry on 3rd September, 2014 and 17th September, 2014, at the CBN – ~~₦~~300 million and ~~₦~~305 million (approximately). The third withdrawal was ~~₦~~198 million. It was made in November, 2014. I cannot remember the exact date. It is correct that the 1st Defendant was no longer in the Ministry of Niger Delta Affairs as at these dates. With respect to the ~~₦~~605 million contained in the Petition, Exhibit P18, I did not discover that any of the amounts entered the

account of the 1st Defendant. It is correct that the 1st Defendant retired on 31st December, 2013. ... Apart from Exhibits P18 and P18A, no other Petitions were written from the Ministry to the ICPC. ... I do not have anything to show that any of the sums of ₦803 million in contention was traced to the 1st Defendant or his accounts or any company related to him. I agree that our investigation relating to the ₦803 million in contention had no bearing to the 1st Defendant.”

The **PW1** was equally cross-examined by the 1st Defendant’s learned counsel with respect to the said missing ₦805 million and he had this to say:

“It is correct that I stated that I withdrew ₦805 million from Constituency Account with CBN. The 1st Defendant did not partake in sharing from that money.”

The point to be made by the revelation of the **PW12** and the **PW1** in their respective testimonies under

cross-examination here is that it was clear that the ICPC exceeded its brief when it chose to charge the 1st Defendant for offences of which his employers did not accuse him.

In totality, with respect to the 1st Defendant, the decision of the Court, on the basis of the analysis of the evidence on record as undertaken in the foregoing, is that the prosecution has failed to discharge the burden on it to prove beyond reasonable doubt, any of the offences for which the 1st Defendant stood trial. He is accordingly hereby discharged and acquitted of all the Counts of the instant Charge for which he stood trial.

2ND DEFENDANT

The 2nd Defendant offered explanations with respect of only **Count (22)** of the Charge. It states:

That you, Akpore Okeroghene (m) between the year 2011 and March, 2014, at Abuja, being a public officer to wit: Deputy Director of Finance at the Ministry of Niger Delta Affairs, did receive for yourself the sum of ~~N~~6 million (Six Million Naira) belonging to the Federal Government of Nigeria from one Nuhu Gadu knowing same to have been obtained fraudulently from the account of the Ministry of Niger Delta Affairs and you thereby committed an offence contrary to Section 13 and punishable under Section 68 of the Corrupt Practices and Other Related Offences Act 2000.

In his testimony, the 2nd Defendant stated that **Nuhu Gadu** was the Director of Budget, Ministry of Niger Delta Affairs and that he was Head of the Budget Unit of the Ministry.

It is to be noted that the prosecution failed to call the said **Nuhu Gadu**, who was said to have fraudulently withdrawn the said sum of ~~N~~6 million from the

Account of the Ministry and given same to the 2nd Defendant.

The prosecution fielded the **PW6, Remijus Ogwu**, staff of Zenith Bank, where the said **Nuhu Adamu Gadu** maintained an account. The said **PW6** tendered in evidence as **Exhibit P11A** the statement of account of the said **Nuhu Adamu Gadu** and highlighted the transactions of 21/01/2014; 27/02/2014 and 18/03/2014 respectively reflecting that the sums of **₦2 million; ₦3 million** and **₦1 million** respectively were transferred from the said account to **Akpore Okeroghene Joseph** in his First Bank Plc account. He stated that from the transactions he highlighted on **Exhibit P11A**, a total of **₦6 million** was transferred to the account of the 2nd Defendant.

The prosecution also called as **PW7, Ifeanyi Innocent Ezeoba**, staff of First Bank Plc., to tender the statement of account of the 2nd Defendant with the bank. The

witness highlighted transactions reflecting in the statement of account from one **Solomon Sunday Tor**; but did not pinpoint any of the transfers purportedly made by **Nuhu Gadu** to the 2nd Defendant in **Exhibit P12**. In other words, no evidence was led to show that the 2nd Defendant received the said sum of ~~N6~~ million allegedly paid by **Nuhu Gadu** vide **Exhibit P11A**.

It must be reckoned that it is not the duty of the Court to be wading through exhibits tendered by a party in order to discover what the case of that party is when the party failed at the trial to demonstrate the relevance of the document tendered to his case. See *Esezobor Vs. Said* [2018] LPELR-6491 (CA).

I have also examined the 2nd Defendant's extra-judicial statement on record. Nowhere therein did he make reference to receiving any amount of money whatsoever from **Nuhu Gadu**.

In his oral testimony, the 2nd Defendant indeed admitted receiving the said sum of ~~N6~~ **million** in three installments from the Account of the said **Nuhu Gadu**. He however claimed that the money was not fraudulently obtained; that the amounts were approved by the relevant authorities and that they passed through due process. He stated further that the legitimate purpose for which the sums were approved included monitoring and evaluation of section 1-4 of the East-West Road; the Warri-Kyama-Portharcourt-Eket-Oron Roads which were being constructed by Setraco, RCC and Gitto Construction companies on behalf of the Ministry. He tendered in evidence as **Exhibits D2, D3** and **D4** respectively, official memos from the Ministry to support his testimony that the money released to him was for legitimate purposes.

In order for the prosecution to establish the guilt of the 2nd Defendant with respect to **Count (22)**, it must be established that the said **Nuhu Gadu** obtained the

said sum of ~~N6~~ **million** paid to the 2nd Defendant fraudulently from the account of the Ministry to the knowledge of the 2nd Defendant. No such evidence was adduced at trial to establish these facts.

It must further be noted that whilst the **PW12**, the ICPC investigator was cross-examined by learned counsel for the 2nd Defendant, he had this to say:

“It is correct that of the ~~N803~~ million missing funds of the Ministry of Niger Delta Affairs, nothing was traced to the 2nd Defendant.”

The effect of the testimony of the **PW12** here is that the 2nd Defendant ought not have been charged to Court for the commission of any crime relating to the Petitions **Exhibits P18** and **P18A**. I so hold.

On the basis of the analysis of the evidence available on record with respect to the allegation in **Count (22)** of the Charge, the conclusion the Court must arrive at is that the prosecution failed woefully to establish the

culpability of the 2nd Defendant with respect to the Count. He is hereby accordingly discharged and acquitted.

3RD DEFENDANT

The evidence on record is that 3rd Defendant resumed as the Director of Finance and Account of the Ministry of Niger Delta Affairs on 3rd April, 2014. He offered explanations with respect only to **Count (27)** of the Charge which states as follows:

That you Ayinla Abibu (m) in the month of March, 2014 or thereabout, at Abuja, being a public officer to wit: Director of Finance at the Ministry of Niger Delta Affairs, did receive for yourself through a proxy ZEOCAT NIG. LTD., the sum of N60 million (Sixty Million Naira) belonging to the Federal Government knowing same to been obtained fraudulently from the account of the Ministry of Niger Delta Affairs which you used to build a house at Ogbomosho, Oyo State for yourself and you

thereby committed an offence contrary to Section 13 and punishable under Section 68 of the Corrupt Practices and Other Related Offences Act, 2000.

The **PW1, Kabiru Poloma**, testified with respect of the said sum of **₦60 million** purportedly received by the 3rd Defendant. He stated as follows:

“I am aware of the charges the accused persons were facing. What I know about withdrawals from Constituency Project Account. At that material period, it was the 3rd – 5th Defendants that were in the Ministry, but the charge before the court only affected the 3rd accused, of which he collected ₦60 million from me.

With respect to the ₦60 million, when the 3rd Defendant became the Director of Finance and Account, he invited me to his office. He asked me how the Ministry ran and I gave him the relevant information. He was posted on 14th March, 2014. The former Director of Finance and Account did not

vacate seat for him on time. I told him accounts of the Ministry closes 31st March of every year, maybe that was why the former Director of Finance and Account did not want to vacate his seat yet. The matter was reported to the office of the Accountant General... he was forced to vacate the seat.

The 3rd Defendant asked me about the accounts of the Ministry and I told him the money remaining in the account was ₦101 million in the constituency account. He then asked who the signatories were. I told him that the other signatories had retired, that I was the only signatory as of then. He also asked how payments were being done; and I said I was the only one signing for payments to contractors. So I was able to sign for A and B. He asked how could the said balance be taken out before the financial end year end closes, and I told him through payment to contractors. He now instructed me to get ₦100 million out of the account so that it would not lapse. That was how on the same day (a Thursday) I

submitted a schedule at CBN for the withdrawal. On the same day, before close of work, I received an alert for payment of ₦100 million to Balanga Construction Nigeria Ltd and Kapolo Global Nig. Ltd. The money was spread through these two companies. I thereafter notified him of the payment and he directed that I should pay him ₦60 million. He furnished me with account numbers through text message to my phone for the account numbers I should pay the money to. He said I should bring ₦10 million cash to him. He said he needed the money to go thank the Accountant General of the Federation for posting him to the Ministry. The balance of ₦30 million was shared between me and Daniel and the cashier. We took ₦10 million each.

Amongst the accounts the 3rd accused sent to me by text was a company account. I cannot remember the name. But the payments made reflected in my bank statements.

By Friday, the 3rd accused sent me messages to let me know that he had not received alerts to the account. I had made the transfers as early as 8am that day... He later confirmed that he received the monies. After the withdrawal of ₦100 million, there remained a balance of ₦11 million. He told me there was a need to mop up the account to zero balance.”

Under cross-examination by the 3rd Defendant’s learned counsel, the **PW1** testified further as follows:

“At the material time, I was not a Principal Officer in the Ministry but I was a Senior Officer. I told the Court that all the withdrawals I made from the Ministry Constituency Account to my company and personal accounts were for illegitimate and unofficial purposes. It is correct that the 3rd Defendant never gave me a letter to appoint me as his Personal Assistant. ...

It is correct that I paid ₦60 million to the 3rd accused and ₦10 million was given to him in cash. He had resumed as Director of Finance and Accounts of the

Ministry when I paid the ~~N~~60 million to him. The 3rd Defendant was enabled on 23rd March, 2014. Whoever said I paid him ~~N~~60 million before he resumed must be lying.”

My next port of call is the 3rd Defendant’s extra-judicial statement, tendered in evidence by the **PW12** as **Exhibits P21, P26** and **P26A** respectively. With respect to the alleged receipt of the said sum of **~~N~~60 million**, the 3rd Defendant stated under his own hand in **Exhibit P26A**, made on 22/01/2015, as follows:

“That Poloma Kabiru confirmed to me that some illegal withdrawals have taken place before I resumed in the Ministry of Niger Delta Affairs, from where a sum of ~~N~~60 million was sent to me. The dollar equivalent of the ~~N~~60 million was collected through Zeokat Nigeria Limited... The ~~N~~60 million transferred in March, 2014 was used to complete my house in the village. The ~~N~~60 million was used to build the house in the village in Ogbomoso, Oyo

State in Nigeria. I will provide the picture and documents of the house tomorrow.”

Even though the testimony of the **PW1** and the extra-judicial statement of the 3rd Defendant did not agree as to the time and circumstances under which the said sum of **N60 million** was withdrawn and paid to the 3rd Defendant; what is however not in dispute from the account given by the duo is that the said sum was fraudulently withdrawn from the Account of the Ministry of Niger Delta Affairs by the **PW1** and that the 3rd Defendant received the said sum through proxy. The 3rd Defendant did not only admit receiving the said sum of **N60 million**, he went on to state how he spent the money.

I must further note that the oral testimony of the **PW1** as to the circumstances under which the said sum was unlawfully withdrawn from the Constituency Account of the Ministry with the CBN, as instructed by the 3rd

Defendant and how the money was shared thereafter, was not dislodged under cross-examination.

The prosecution, in further proof that the 3rd Defendant indeed told the truth when he stated in his extra-judicial statement that he received USD equivalent of the said sum of ~~₦~~**60 million** through **Zeokat Nigeria Limited**, fielded more witnesses to corroborate this statement.

The **PW5, Kayode Balogun**, staff of First City Monument Bank, tendered in evidence as **Exhibit P10, Statement of Account of Zeocat Nigeria Limited** referred to by the 3rd Defendant in his statement; which account is domiciled with the bank. He made reference to the transaction of 31/03/2014 in which he highlighted four different transfers of the sum of ~~₦~~**10 million** each to the said account from **KP Global Energy Solutions Limited** and **Sindaba Global Technology Nigeria Limited**. According to the

narration as highlighted by the **PW5, KP Global** transferred the sum of **₦20 million** in two tranches of **₦10 million** each; whilst **Sindaba Global** equally transferred the sum of **₦20 million** in two tranches of **₦10 million** each; all on the same date – 31/03/2014.

The witness further narrated that on 01/04/2014, it is reflected in the statement of account of **Zeocat** that there was a transfer of **₦10 million** from the account of **KP Global Energy Solutions Limited** and that another transfer of the sum of **₦10 million** was made from **Sindaba Global** to **Zeocat** account on the same date.

It must be remembered that the **PW1** had in his examination-in-chief testified that he was the owners of the companies from which the said total sum of **₦60 million** highlighted by the **PW5** in **Exhibit P10** was transferred to the said **Zeocat** account. The **PW12** had

also tendered in evidence as **Exhibits P23** and **P24** respectively, certified copies of incorporation documents of these companies that revealed that the **PW1** was indeed their respective *alter ego*.

The **PW12** testified further as to how, in the course of investigation, it was discovered that there were transfers from the **PW1's** company accounts to the account of one **Zeocat Nigria Limited**, totaling **₦60 million**; that the Director of the said **Zeocat** was invited and interviewed wherein he affirmed that it was one of his friends, **Adeyemo Adedeji**, who requested that the money be changed to **USD**; and that he eventually handed over the **USD** equivalent of the sum to the said **Adeyemo Adedeji**.

The **PW12** further testified that the said **Adeyemo Adedeji** was invited who also confirmed that it was the 3rd Defendant who instructed him to convert the said sum of **₦60 million** to **USD**; and that he was the one

who forwarded the account details of **Zeocat Nig. Limited**, belonging to his friend, **Tosin Adefila**, to the 3rd Defendant.

The **PW12** further testified that it was after these fresh facts were received that the 3rd Defendant was further invited and that when confronted with the facts, he volunteered further statements with respect to **Adeyemo's** claim.

The prosecution went on to call one **Adefila Oluwatosin** as the **PW13**. He testified that he was a foreign exchange dealer in Lagos and that he was the *alter ego* of **Zeokat Nigeria Limited**. He testified that sometime in March, 2014, a friend of his, by name **Deji Adeyemo** called to inquire if he could procure foreign exchange worth **N60 million** for him which he stated that he could. He testified further that he gave his company account details with FCMB to the said **Deji Adeyemo** and that the next day, 31/03/2014, he

received the sum of **N40 million** credit payment into the said company account in four tranches of **N10 million** each; that the next day, 01/04/2014, he received credit alerts of further payment of **N20 million** into the account in two tranches of **N10 million** each; that afterwards he called **Mr. Deji Adeyemo** to let him know he had received the said sum of **N60 million**. He further confirmed that the sums of money were transferred by two companies named **KP Global Energy Solutions Limited** and **Sindaba Global Technology Nigeria Limited**. He was shown the statement of account of **Zeokat Nigeria Limited**, **Exhibit P10**. He confirmed that it was that of his company. He further confirmed that the transactions of 31/03/2014 and 01/04/2014 as they reflected on **Exhibit P10** accorded with his testimony with respect to the credit payments into the account.

The witness further testified that he could not remember the exact amount in **USD** that he converted

the said sum of ~~₦~~60 million into but that he handed the **USD** equivalent to the said **Mr. Deji Adeyemo**.

Under cross-examination by the 3rd Defendant's learned counsel, the witness agreed that his *bureau de change* was not formally registered at the material time; that he could not recall the exchange rate from Naira to **USD** at the material time; that he did not issue receipts to the companies that deposited ~~₦~~60 million into his account since he did not have direct contact with the companies and that he did not also obtain a receipt from **Mr. Adeyemo** after he handed over the **USD** equivalent of the ~~₦~~60 million to him.

The said **Adedeji Adeyemo** testified as the **PW14**. He claimed that the 3rd Defendant and he were cousins, which claim the 3rd Defendant later denied in his evidence-in-chief. He claimed to be the middleman between the 3rd Defendant and the **PW13** for the purpose of the foreign exchange transaction; that he

was the one that obtained the account details of **Zeocat** which he gave to the 3rd Defendant; and that the **PW13** later informed him that he had received the said sum of ~~₦~~**60 million**. He further testified that when he collected the **USD** equivalent of the said sum of ~~₦~~**60 million** from the **PW13**, he handed over the same to the 3rd Defendant somewhere in Olowu Street, in Lagos, where they both met.

Under cross-examination by the 3rd Defendant's learned counsel, he stated that what he meant by referring to the 3rd Defendant as his cousin was that they were both relatives. He claimed that he collected the **USD** from the **PW13** in front of the FCMB, in Marina, Lagos; that he could not remember the exact date, but that it was in April, 2014; that he did not also issue receipts to the **PW13** for the forex handed over to him. He maintained that he met with the 3rd Defendant in Lagos where he handed over the **USD** to him.

The 3rd Defendant, in his explanations in his evidence-in-chief, denied outright that he received the sum of **N60 million** from any individual or company whilst he was the Director of Finance and Account in the Ministry; that he resumed that seat in the Ministry on 03/04/2014. He tendered as **Exhibits D5**, and **D5A** respectively, CTC of handing over notes by **Mr. O. J. Akpore** (outgoing Director of Finance and Account) to **Mr. Ayinla Abibu Aremu** (Director of Finance and Account) of the Ministry of Niger Delta Affairs dated 3rd April, 2014; and as **Exhibit D6**, an official document which states that he officially resumed as Director of Finance and Account of the Ministry of Niger Delta Affairs on 3rd April, 2014.

The 3rd Defendant also denied knowledge of the company known as **Zeocat Nigeria Limited** or her Chief Executive who testified as **PW13**; stating that the said **Zeocat** did not act as proxy for him to collect the sum of **N60 million** from anyone.

The 3rd Defendant also denied ever knowing the **PW14, Mr. Adedeji Adeyemo**; that he was not related to him; that on the day the said **PW14** claimed he handed over **USD** equivalent of **₦60 million** to him in Lagos, he was actually in Abuja.

The 3rd Defendant further denied building his property in Ogbomoso with the alleged sum of **₦60 million**; that the property in question was a bungalow that was jointly built by his wife and him. He tendered receipts he claimed related to materials purchased to build the said house as a bundle as **Exhibit D7**.

With respect to his extra-judicial statement, **Exhibit P26A**, the 3rd Defendant claimed that it was the officers of the ICPC that dictated all that he wrote with respect to the **₦60 million** and **Zeocat Limited**; that he was threatened to be locked up if he refused to write what was dictated to him.

He also denied instructing the **PW1**, either in writing or orally, to pay the sum of **N60 million** on his behalf to anyone; that he only met the said **PW1** after he resumed as the DFA of the Ministry.

Now, with the respect to the 3rd Defendant's extra-judicial statement in which he admitted receipt of the said sum of **N60 million** from the **PW1** and which he retracted in his evidence-in-chief, I must say that I disbelieved his testimony that he was coerced into admitting receipt of the money upon threat of being locked up in the ICPC cell by the investigators. I do not suppose that threat of detention would sway a man of the 3rd Defendant's stature, who claimed to be a chartered accountant of **thirty one (31) years** experience, to admit to facts seriously prejudicial to his interest, by stating unequivocally that he received the said sum of **N60 million** in the manner he claimed he did, if truly he did not receive the money. I therefore hold that the totality of the 3rd Defendant's evidence

tending to retract his extra-judicial statement contained in **Exhibit P26A**, is at best a flimsy afterthought.

Even if it is conceded, for academic purposes, that the extra-judicial statement, **Exhibit P26A** was tainted and could not be relied on, the totality of the testimonies of the self-confessed criminal, **Kabiru Poloma**; and the unshaken testimonies of the **PW5, PW12, PW13** and **PW14**, which I had reviewed in the foregoing, have provided compelling and unassailable circumstantial evidence to nail the 3rd Defendant.

As I had noted earlier on, the material graphic testimony of **Kabiru Poloma, PW1**, as to how he came in contact with the 3rd Defendant and how it was agreed that he should withdraw the sum of **₦100 million** from the Ministry's account which was distributed in the manner instructed by the 3rd Defendant, was not shaken under cross-examination.

It is also rather too late in the day for the 3rd Defendant to deny having any relationship with the **PW13**, who testified as to how he provided the link between the 3rd Defendant and **Zeocat Nigeria Limited**, through whom the 3rd Defendant laundered the said sum of **N60 million**. There is nothing on the record to suggest that the **PW13** was produced by the prosecution from nowhere to give such compelling testimony against the 3rd Defendant.

It is also significant to point out that even if the prosecution did not lead any further evidence outside the 3rd Defendant's extra-judicial statement to establish that he spent the said sum of **N60 million** to build a house in his village in Ogbomoso, Oyo State, the provision of **s. 13** of the **ICPC Act**, under which the 3rd Defendant is charged with the offence, only places a burden on the prosecution to prove that the money was unlawfully taken from the coffers of the Ministry and handed over to the 3rd Defendant, who must also

be shown to have known that the money was unlawfully withdrawn. Indeed, the prosecution proved all of these facts. I so hold.

The trite position of the law must also be reckoned, in the circumstances here, that the burden on the prosecution to prove the guilt of an accused defendant beyond reasonable doubt does not place the more onerous burden to prove beyond every shadow of doubt on the prosecution. As such, proof beyond reasonable doubt need not be proof by the precision of mathematical exactitude, at least, not in the circumstances of the instant case. See Smart Vs. The State [2016] LPELR-SC 170/2012; Loto Vs. State [2017] LPELR-43343(CA).

Contrary to the submissions of the 3rd Defendant's learned counsel, whatever contradictions that existed in the evidence of the prosecution witnesses are not

material enough to exculpate the 3rd Defendant of the offence in **Count (27)**.

On the basis of the analysis of the evidence on record, as undertaken in the foregoing, the Court hereby holds that the prosecution satisfactorily proved **Count (27)** of the Charge by compelling circumstantial evidence beyond reasonable doubt against the 3rd Defendant. He is therefore accordingly found guilty and convicted of **Count (27)** as charged.

OLUKAYODE A. ADENIYI

(Presiding Judge)

13/07/2020

SENTENCE

The Court has listened attentively to the plea of *allocutus* most soberly and passionately rendered on behalf of the convict by **Mr. Akinwale**, of learned counsel. I had also taken account of the oral testimony

adduced on oath by the convict in the course of the sentencing proceedings. I had equally taken cognizance of the submissions of **Mr. Lawal**, of learned counsel for the prosecution.

In imposing what I consider to be the appropriate sentence in the circumstances of this case, I have been properly guided by and given due consideration to the parametres enumerated in the provisions of **s. 311, 312 and 416** of the **Administration of Criminal Justice Act (ACJA), 2015**. These include the consideration that each case ought to be treated on its own merits; a consideration of the objectives of sentencing, which is not necessarily to punish, but also for reformation and deterrence.

I have equally been guided by the **FCT Courts (Sentencing Guidelines) Practice Directions, 2016**, made pursuant to the provision of **Ss. 416 and 311** of the **ACJA**.

Now, the provision of **s. 68** of the **ICPC Act**, the penalty section for the offence for which the convict stood trial and was convicted, gives the Court the power and discretion to impose a fine not exceeding **Ten Thousand Naira (₦10,000.00)** or to impose a term of imprisonment not exceeding **two (2) years**; or both.

The convict is said to be a first offender, a fact the prosecution did not controvert. He is also said to be the breadwinner of his family, with aged parents, wife and children, all depending on him for their sustenance.

Learned counsel for the convict further alerted the Court that the convict, at the age of **63 years**, is within the age bracket of those who have been categorized as highly vulnerable to the **Covid-19** pandemic currently ravaging the entire universe; and as such

should not be made to serve a prison term in order not to expose him to great health hazards.

Taking all of these factors into consideration therefore, ***I hereby sentence the convict to a term of imprisonment for one (1) year, with an option of fine of the sum of ₦10,000.00 (Ten Thousand Naira) only, being the maximum amount prescribed by s. 68 of the ICPC Act.***

Pending the time the convict shall exercise the option of fine imposed on him, he shall be kept in custody of the Kuje Correctional Facility, Abuja.

I agree with the learned prosecution counsel that considering the nature of the offence for which the convict was convicted and sentenced, which involved unlawful receipt of the sum of **₦60 million** belonging to the Ministry of the Niger Delta Affairs, that it will be proper for the convict to be ordered to make restitution of the same amount, pursuant to the provision of **s. 321** of the **ACJA**.

The convict had testified before the Court that in the course of investigation, two landed properties belonging to him were seized by the ICPC, the prosecuting agency; and that the properties were listed in an advert published by the ICPC in the Punch Newspaper of December 2, 2019. He tendered a certified true copy of the said publication in evidence during the sentencing proceedings as **Exhibit C1**.

The convict estimated the value of the two landed properties in excess of **₦60 million**.

The prosecution did not deny this assertion. Learned prosecution counsel however denied that the value of the properties was worth far less than **₦60 million**.

In the circumstances, apart from the sentence imposed by the Court on the convict, it will be appropriate to order and it is hereby further ordered that the convict shall forfeit permanently to the Federal Government of Nigeria:

- (1) Plot of land described as Plot D92, situate in Shagari Village Integrated Scheme Layout, Bwari Area Council, Abuja; and**
- (2) Plot of land described as No. 1011, situate in Kubwa Extension III B of Bwari Area Council, Abuja;**

already seized by the ICPC and captured in the publication placed in the Punch Newspaper of Monday, December 2, 2019, as restitution for the loss the offence for which the convict is convicted and sentenced has caused the people of the Niger Delta Region and the Federal Government of Nigeria.

OLUKAYODE A. ADENIYI
(Presiding Judge)
17/07/2020

Legal representation:

George J. Lawal, Esq. – for the Prosecution

Abiola Akinwale, Esq. – for the 1st Defendant

Marcus A. Abu, Esq. (with **C. O. Odibe, Esq & A. J. Elaigwu, Esq.**) – *for the 2nd Defendant*

J. O. Ojo, Esq. (with **I. T. Agantem, Esq.; D. M. Ogolime (Mrs); T. O. Ayodele-Ogunjide (Mrs.); Odibe, Esq.; A. J. Elaigwu, Esq. & Oluwole Kolawole, Esq.**) – *for the 3rd Defendant*