

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO- JUDGE
DELIVERED ON THE 2ND OF DECEMBER, 2020**

CHARGE NO: FCT/HC/CR/81/2006

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

| | | |
|---|---|------------------------|
| 1. NUHU ALI MADAKI 2. SHEM DAMISA 3. EMMANUEL AGATI 4. SILAS VONGBUT | } |DEFENDANTS |
|---|---|------------------------|

- **THE PROSECUTION WAS REPRESENTED BY BEN UBI ESQ AND I. AGWU ESQ**
- **THE 1ST TO 4TH DEFENDANTS WERE REPRESENTED BY CHIEF G.S. PWUL SAN AND F.Z. KAATPO ESQ.**

JUDGMENT

This Trial initially commenced against Six Defendants but during the Case of the Prosecution, a Motion was filed dated the 30th of January 2007 seeking Leave of this Court to discharge and acquit the 5th and 6th Defendants on the basis of insufficient evidence. The Motion also sought a Consequential Amendment of the Charge Sheet by adding Two New Counts against the 1st, 2nd, 3rd and 4th Defendants.

Upon the Grant of the Motion, the 5th and 6th Defendants were discharged and acquitted, while the 1st to 4th Defendants were re-arraigned under the Amended Charge. A Fresh Plea was taken upon which they all pleaded Not Guilty.

In view of the above Amendment, it became necessary to recall the Witnesses i.e., PW1 and PW2, who had earlier adduced Oral and Documentary Evidence prior to the

Amendment. The Prosecution recalled them and they were Further Cross-Examined by the Defence.

For the Purposes of this Judgment, the evidence of PW1 and PW2 adduced before and after the Amendment of the Charge Sheet would be taken in one stream.

Much later on in the Trial, at the close of evidence and when the Matter was adjourned for the submission and adoption of Final Written Addresses, the Prosecution yet again filed an Application to Amend the Charges from the Original 1st Amended Charge to a 2nd Amended Charge of Ten (10) Counts of Offences. The included Count of Offence was Criminal Conspiracy contrary to **Section 96 (1) and punishable under Section 97 of the Penal Code Act Laws of the Federation 1990.**

Pwul SAN filed a Notice of Objection to the New Count of Conspiracy being added at this Late Stage of Address of the Trial. The Prosecution, on their own part, argued that the Amendment was to bring the Charge in line with the Evidence led. The Court heard their arguments on the matter, and permitted the Amendment sought based on its reference to the Case Law Authorities of **UGURU VS STATE (2002) 9 NWLR PART 771 PAGE 90 PERKALGO JSC; EYO ETA VS DAZIE (2013) VOLUME 533 NSCQR PAGE 615 and ALKALI IMAM VS FEDERAL REPUBLIC OF NIGERIA SC. 672/2015** delivered on the 15th day of February, 2019, which empowered the Court to Alter, Amend or Add to a Charge in a Criminal Case, at any time before Judgment is given in the Case. The Amendment was sought to bring the Charge in line with the evidence led and the intention behind it was not fraudulent or intending to overreach. Further, there was no injustice occasioned against the Defendants.

Therefore, the Charge dated 20th February 2020, was re-read to each of the Four Defendants and they stated that they understood the Nature of the Charges and pleaded Not Guilty to the New Charge.

This New Amended Charge reads as follows: -

COUNT 1

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) sometimes in 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities did Conspire amongst yourselves to commit an Offence to wit: Criminal Conspiracy and thereby committed an Offence contrary to **Section 96(1) of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990 and Punishable under Section 97 of the same Act.**

COUNT 2

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) on or about 3rd May, 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Plateau State Government Ecological Funds committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N204, 000, 000.00 (Two Hundred and Four Million Naira) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 3

That you NUHU ALI MADAKI, EMMANUEL AGATI and CHIEF JOSHUA DARIYE (now at large) on or about 17th January, 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Plateau Investment & Property Development Board Company Limited committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N6, 000, 000.00 (Six Million Naira) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 4

That you SHEM YAUTE DAMISA and CHIEF JOSHUA DARIYE (now at large) on or about 17th January, 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Funds of Plateau State Water Board committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N6, 000, 000.00 (Six Million Naira) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye

from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 5

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) on or about 19th July, 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Funds of Plateau State Government Ecological Funds committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N176, 000, 000.00 (One Hundred and Seventy-Six Million Naira) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 6

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) on or about 25th March, 2003 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Plateau State Government committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N10, 000, 000.00 (Ten Million Naira) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 7

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) on or about 14th April, 2003 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Plateau State Government committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N25, 000, 000.00 (Twenty-Five

Million Naira) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 8

That you SHEM YAUTE DAMISA and CHIEF JOSHUA DARIYE (now at large) on or about 6th April, 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory **Dishonestly Converted** to your Own Use Certain Properties to wit: N273, 000, 000.00 (Two Hundred and Seventy-Three Million Naira) belonging to the Plateau State Government and thereby committed an Offence punishable under **Section 309 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 9

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) on or about 29th November, 2000 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Plateau State Government Accountant General's Account committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N53, 600, 643.05 (Fifty-Three Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo) into the Private Account of an Unregistered Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

COUNT 10

That you SHEM YAUTE DAMISA, NUHU ALI MADAKI, EMMANUEL AGATI, SILAS VONGBUT and CHIEF JOSHUA DARIYE (now at large) on or about 24th November, 2001 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being Public Officers of Plateau State and in such capacities entrusted with Certain Properties to wit: Plateau State Government Statutory Allocation committed Criminal Breach of Trust in respect of the said Properties by **diverting** the Sum of N21, 000, 000.00 (Twenty-One Million Naira) into the Private Account of an Unregistered

Company known as Ebenezer Retnan Ventures whose Alter Ego is Chief Joshua Dariye from the said Properties and thereby committed an Offence punishable under **Section 315 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990.**

Now, the Court considers it expedient to Group the Offences of Criminal Breach of Trust under **Section 315**; Criminal Misappropriation under **Section 309** as well as Criminal Conspiracy under **Section 96 (1)** all of the **Penal Code Act** into Specific Factual Situations and then analyze the Evidence led in their regard to forestall Repetitive Analysis.

The Identified Factual Situations are as follows: -

1. The Ecological Funds in General in **Counts 2**, which involved **ALL** the Defendants and also in **Count 8**, where **ONLY** the 2nd Defendant was charged;
2. The Latest inflow of Ecological Funds in **Count 5**, where **ALL** Defendants were charged;
3. Isolated and Specific Instances relating to: -
 - ✓ Plateau Investment & Property Development in **Count 3** where **ONLY** the 1st and 3rd Defendants were charged;
 - ✓ Plateau State Water Board in **Count 4** where **ONLY** the 2nd Defendant was charged;
 - ✓ Plateau State Government in **Counts 6 and 7** which involved **ALL** the Defendants;
 - ✓ Plateau State Government Accountant General's Account in **Count 9**, involving **ALL** the Defendants;
 - ✓ Plateau State Government Statutory Allocation in **Count 10** involving **ALL** the Defendants, and finally: -
4. Criminal Conspiracy in **Count 1** where it can be seen that **ALL** the Defendants were all jointly charged with Criminal Conspiracy contrary to **Section 96 of the Penal Code Act** in **Count 1**.

It is clear that the Prosecution must establish the Defendants' Culpability based on the Standard of Proof set by **Section 135 (1) of the Evidence Act 2011 As Amended**, which is, Beyond Reasonable Doubt.

In **OFORDIKE VS STATE (2019) LPELR-46411 (SC) OKORO, J.S.C. at PAGES 8-9 PARAS C-B**, held that Proof Beyond Reasonable Doubt means establishing the guilt of the Defendant with Compelling and Conclusive Evidence. It does not mean Proof Beyond all Doubt or all Shadow of Doubt or Proof to the Hilt. His Lordship relied on the

Cases of **MILLER VS MINISTER OF PENSIONS (1947) 2 ALL ER, 372; AKINLOLU VS THE STATE (2015) LPELR - 25986 (SC); OSENI VS THE STATE (2012) 5 NWLR (PT 1293) 351; JUA VS THE STATE (2010) 4 NWLR (PT 1184) 217.**

In **ABIRIFON VS STATE (2013) LPELR-20804 (SC), His Lordship MUHAMMAD, J.S.C.**, set out the methods laid down by the Law in discharging the Burden of Proof Beyond Reasonable Doubt, whilst referring to **ADIO VS THE STATE (1986) 5 SC 194 AT 219-220**. A Criminal Case can be proved by: - a) Direct Oral Evidence; b) Inference from Circumstantial Evidence; and c) Voluntary Confession of Guilt by a Defendant, if it is Direct and Positive and Satisfactorily proved.

Further reference is made to the Cases of **EMEKA VS STATE (2002) 14 NWLR (PT 734) 666 AT 683; OGBA VS THE STATE (1992) 2 NWLR (PT 222) 146; OLADIPOPO VS THE STATE (1993) 2 NWLR (PT 590) 253.**

Flowing from the above, it is now important to understand **WHAT** the Prosecution is expected to **prove** in all these Ten Counts of Offences.

For the Offence of Criminal Conspiracy, the Definition is set at **Section 96 (1) of the Penal Code Act, while the Punishment Section is encased in Section 97.**

This Section stipulates that where no express provision is made, it would be the same punishment as if he had abetted that Offence.

The following are Attendant Ingredients: -

- a. There must be Two or More Persons;
- b. Who Agree or Cause to do or to be done
- c. An Illegal Act or
- d. An Act which is not Illegal by Illegal Means
- e. No Overt Act in pursuance of the Conspiracy is necessary. Where the Agreement is other than an Agreement to commit an Offence that some Act beside the Agreement, was done by One or More of the Parties in furtherance of the Agreement.
- f. The Prosecution must finally establish that each of the defendants individually participated in the Conspiracy.

As regards **Criminal Breach of Trust** punishable under **Section 315** of the Penal Code, the Definition Section is as contained in **Section 311** and is as follows: -

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

Section 315 the Punishment Section states thus: -

“Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a Public Servant or in the way of his business as a Banker, Factor, Broker, Legal Practitioner or Agent, commits Criminal Breach of Trust in respect of that property, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to a fine.”

For these Offences of Criminal Breach of Trust, there are Two Distinct parts involved. The **First** consists of the Creation of an Obligation in relation to the Property over which the Defendant acquires Dominion or Control. The **Second** is the Misappropriation, Use, Conversion or Disposal or otherwise Dealing with the Property, Dishonestly and contrary to the Terms of Obligation created.

The Prosecution must prove Beyond Reasonable Doubt **throughout the Eight Count Charges**, the following: -

- 1. That the Four Defendants are Public Servants;**
- 2. That in their Capacity as Public Servants, they were entrusted with the Monies or with dominion over the Monies;**
- 3. That they committed Criminal Breach of Trust in respect of the Monies by-**
 - i. Misappropriating; or**
 - ii. Converting to their own use; or**
 - iii. Disposing of the Monies or intentionally or willfully allowing any other person(s) to do so,**
- 4. That they acted dishonestly in Misappropriating, Converting or Disposing of the Monies and this is a crucial fact to be proved to bring home the Charge of Criminal Breach of Trust; and**

5. That they did so in Violation of: -

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

The Court refers to **His Lordship CRAIG JSC**, in the case of **THEOPHILUS ONUOHA VS THE STATE SC.8/1988 AT PAGES 10, 11 AT PARAS F-C; (1988) 3 NWLR PART 83 AT PAGE 460 (SC); AND AKWULE VS THE QUEEN (1963) NNLR P.105**

As regards the Singular and Final Offence under **Section 308** and punishable under **Section 309 of the Penal Code Act CAP 532 Laws of the Federation of Nigeria, 1990, Section 308 of the Penal Code** defines Criminal Misappropriation in this manner:

“Whoever Dishonestly Misappropriates or Converts to his Own Use any Moveable Property, commits Criminal Misappropriation.”

To prove this Offence of Criminal Misappropriation, the following Ingredients are pertinent, namely: -

1. The Property must have an Owner;
2. The Defendant must have Reasonable Belief that the Owner could be found by evidence of his Previous Acquaintance with the Ownership of the Property, the Place where the Property is found, or the Nature of the Marks upon it;
3. The Property in question is a Moveable Property;
4. The Defendant is already in Possession of the Property and is either lawfully in possession or in his Possession;
5. The Possession came by innocently;
6. There has been a change of intention by the Defendant or the Defendant is aware of some new facts, which makes his continued retention of the Property wrongful and fraudulent;
7. The Defendant Misappropriated the Moveable Property or converted the Moveable Property to his own use;

8. It is sufficient that some of the Moveable Property has been misappropriated or converted by the Defendant, even though it may be uncertain, the exact amount Misappropriated or Converted; and finally,
9. The Defendant did so dishonestly.

When a Prosecution brings a Charge of Criminal Misappropriation, he must show Beyond Reasonable Doubt, that the following happened or is true: -

- 1) **The Intent-** First, a Person must Knowingly Misappropriate the Money, and cannot commit the Crime by making a Mistake or Error. A Person who misappropriates Funds does not have to intend to actually physically take the Money. It can be enough for the Prosecution to show that the Defendant intended to take any action that results (or would likely result) in the Misappropriation of Funds. In some instances, the Defendant must know the action is illegal; while in other instances, the Defendant only has to act intentionally and does not need to know that the Conduct is Criminal.
- 2) **The Act of Conversion.** In order to commit Misappropriation of Funds, a Person must not only take the Money, but must use it for his own purposes. However, this does not require that the Defendant actually took the Money and used it to buy something or otherwise spent it. Courts have held it enough that to transfer the Money to a Bank Account or even to refuse or fail to hand over the Owner's Money when the Owner demands it, constitutes Conversion.
- 3) **Return.** A Person who misappropriates Funds with the intent to later return the Money to the rightful owner is still Guilty of Misappropriation. It also does not matter if the Misappropriation only lasted for a short amount of time.

Now turning to the Case at hand, the Genesis of the Defendants' Trial arose from a Petition addressed to the Economic and Financial Crimes Commission (EFCC) dated the 27th of September 2004 titled "**RE: INVESTIGATION ACTIVITIES-JOSHUA DARIYE**", written by Mr. S. Aliyu the Acting Director in the Office of the Attorney- General of the Federation/ Ministry of Justice.

The Case File was referred to an Investigative Team, which included **PW1**, Detective Musa Sunday. A Copy of the Petition was admitted into evidence as **Exhibit A**. Through further investigations, enquiries were made to, and information were received from the Banks concerned, the Ministry of Finance, the Central Bank of Nigeria and the Corporate Affairs Commission.

The Destination of **ALL** the Sums in the Cheques throughout the Charge was traced to an AllStates Trust Bank Account, where they were initially cleared but subsequently transferred into another Account belonging to one, Ebenezer Retnan Ventures.

PW1 then wrote a Letter dated the 9th of December 2004 to the Corporate Affairs Commission Headquarters in Abuja, in order to discover the Status of Ebenezer Retnan Ventures to discern whether it was a Registered Company, and if so, to ascertain the names of its Directors and further, whether this Company belonged to Plateau State Government, since Monies from Plateau State Government were lodged into the Company's Account.

The Corporate Affairs Commission responded through a Reply Letter dated the 10th of December 2004, which was accompanied by an Original Search Report.

PW1 identified the Certified True Copy of his Letter dated the 9th of December as well as the Reply Letter dated the 10th of December, which were tendered and admitted into evidence as **Exhibits D1** and **D2**.

The Search Report revealed that the name of Ebenezer Retnan Ventures was not found nor registered with the Corporate Affairs Commission, and that propelled the Team to visit the Head Office of the AllStates Trust Bank in Victoria Island-Lagos, where Ebenezer Retnan Ventures had an Account, even though the Account was domiciled in the Abuja Branch.

The Team recovered from Mr. Awe Odessa of the AllStates Trust Bank, the Account Opening Package of Ebenezer Retnan Ventures, which included an Account Opening Form, a Mandate Card and Four Sheets of Internal Memo written by Odessa and approved by the Executive Director.

The Photocopy of a Certified True Copy of the AllStates Trust Bank Account Opening Package of Ebenezer Retnan Ventures was tendered and admitted into evidence as **Exhibit E**, after a Considered Ruling.

PW1 testified that he was conversant with Know Your Customer (KYC) in Banking Practice, which provided Rules for Account Opening Packages, namely: -

- 1. A Signatory must supply his Passport Photograph, which is affixed on the Mandate Card, and must also state the Name in Full as well as the Address.*
- 2. Where it is a Corporate Account, in the instance of Ebenezer Retnan Ventures, there must be supplied, a Memorandum and Article of Association, Certificate of Registration, and a Company Resolution. These Documents assisted the Bank to know the Directors of the Company and whether it was duly registered with the Corporate Affairs Commission.*

However, in this instance, the Foregoing Rules were not adhered to when the Account of Ebenezer Retnan Ventures was opened and based on this Finding, the Managing Director of the AllStates Trust Bank was invited and questioned.

According to PW1, Mr. Awe Odessa orchestrated the Opening of the Account of Ebenezer Retnan Ventures by issuing on his Letterhead Paper, a Waiver in favour of Chief Joshua Dariye, the Former Governor of Plateau State. This Waiver precluded the requirement of producing Requisite Documents for the purposes of opening the Account. PW1 identified the Waiver dated the 20th December 1999 in the Last Page of **Exhibit E**. The Waiver was approved and an Account Number was written therein.

His investigation further revealed that the alter ego of the Ebenezer Retnan Ventures Account was Chief Joshua Dariye, who happened to be the First Signatory, whilst his brother, Mr. Daniel Haruna, was Second Signatory. However, only Chief Joshua Dariye, as Signatory A, was authorized to operate the Account and was responsible for giving instructions on how the Account was to be operated as well as how Monies were to be disbursed.

During the course of his investigation, it was also revealed that the Four Defendants on Record were Public Servants vested with Control over Funds of Plateau State Government. They were invited to the EFCC Office in Lagos, wherein they made Statements under the supervision of other Team Members.

Under Cross-Examination, PW1 reiterated the point that Ebenezer Retnan Ventures was not a Registered Company. From the Account Opening Package in **Exhibit E**, Chief Joshua Dariye was the True Identity behind Ebenezer Retnan Ventures. According to him, there was nowhere in this Exhibit, the name of Joshua Dariye was mentioned but his Signature featured on that Account. Further, Chief Dariye's name also did not feature on any of the Cheques recovered, as only his Signature featured in them.

Aside of PW1, Detective Musa Sunday, the Prosecution summoned Five (5) other Witnesses, which included Mr. Nosa Osemwekha, the Branch Manager of Diamond Bank Plc., Jos who testified as **PW2**.

PW3, Mr. Adamu Garba, a Police Inspector on Secondment to the EFCC testified on Oath that he knew the Defendants, who were Public Officers entrusted with the Funds of Plateau State Government. He rendered Corroborative Evidence to the Evidence of PW1 regarding: -

A. The Petition addressed to the EFCC from the Office of the Attorney-General of the Federation in **Exhibits A1 to A3**;

- B. The Team's Letters to the Banks involved, i.e., Lion Bank, Diamond Bank and the AllStates Trust Bank;
- C. A Letter of Instruction written by the 1st and 2nd Defendants to the AllStates Trust Bank in **Exhibit C**;and
- D. A Diamond Bank Statement of Account in **Exhibit K**.

He was detailed to supervise the taking of Statements from the 2nd Defendant. He administered the Cautionary Words, which the 2nd Defendant understood, before volunteering his Statements of the 23rd, 25th and 28 of January 2006. He identified these Statements, which the Prosecution tendered and same were admitted without any Objection from the Defence, as **Exhibit L**.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, PW3 stated that the EFCC Investigation was a Teamwork consisting of Eight Members, who were all present when the 2nd Defendant's Statements were taken in **Exhibit L**.

PW4, Mr. Bashiru Maikano, an EFCC Operative testified that his Schedule of Duty was Investigation through Teamwork. His Superior Officer, Mr. Illiyasu Kwarbai, brought the Four Defendants to him to supervise their Statement Taking. He administered and read over the Cautionary Words in the English Language, whereupon they signed and volunteered Statements.

He identified the Statements of the 4th Defendant, Mr. Silas Vongbut dated the **24th and 27th of January 2006**, which were admitted without any Objection as **Exhibits M and N** respectively.

He also identified the Statement of the 1st Defendant, Mr. Nuhu Madaki dated the **1st of December 2005 and 31st of January 2006**, which were admitted into evidence without any Objection as **Exhibits O and P** respectively.

Under Cross-Examination by Learned Counsel representing the 3rd and 4th Defendants, PW4 stated that apart from taking their Statements, he did nothing more, but was aware that the Defendants' confessed therein to disbursing Funds even though no Figure was mentioned. When asked, he stated that it was necessary for a Superior Officer to endorse the Statements.

PW5, Mr. Oshodi Johnson, another EFCC Operative stated that the Suspects mentioned in a Petition were shown the Petition and then told to react to it. He knew the Four Defendants through Mr. Illiyasu Kwarbai, who instructed him to supervise their Statement Taking. He supervised the Statement taking of the 3rd Defendant, Mr. Emmanuel Agati, dated the **23rd, 24th and 25th of January 2006**. He identified these

Statements, which were tendered and admitted without any Objection as **Exhibits Q, R and S** respectively.

He also supervised the Additional Statements dated the **28th and 30th January**, which were also admitted into evidence with a Withdrawn Objection as **Exhibits T and U** respectively.

Under Cross-Examination by Learned Silk representing the 1st and 2nd Defendants, PW5 was shown the **Last Line of Exhibit T**, and in response, he stated that he had read this Statement on the day the 1st Defendant volunteered it, but had reason to doubt the accuracy of the Last Statement.

Under Cross-Examination by Learned Counsel representing the 3rd and 4th Defendants, he stated that he took the Statement of the 3rd Defendant under the instruction of his Superior Officer and they both, witnessed the 3rd Defendant's Statement.

Shown **Exhibit Q**, PW5 stated that he was the only person who recorded and witnessed this Statement. Also, shown the **First Paragraph of Exhibit Q**, PW5 stated that his role was simply to record Statements.

Finally, **PW6**, Mr. Inusa Shehu, a Journalist working in the Public Relations Department of the Corporate Affairs Commission testified on Oath that his Schedule of Duties included receiving letters and enquiries from Foreign Embassies, Agencies and the General Public.

On the 9th day of December 2004, the Director-General of the Corporate Affairs Commission received a Letter from the EFCC requesting details of Ebenezer Retnan Ventures. The Director-General referred the Letter to his Department, where the name of Ebenezer Retnan Ventures was searched through their Computer System. This name could not be found nor was it registered and based on their Findings, a Reply Letter was written to the EFCC to furnish them with more particulars.

Shown **Exhibits D1 and D2**, PW6 identified the Reply Letter and his Signature in **Exhibit D2**.

There was no Cross-Examination by the Defence and consequently, there was no Re-Examination of this Witness by the Prosecution.

On the 11th of July 2007, the Prosecution elected to close its Case and the Court ordered the Defendants to open their Defence. The defence elected to enter a No-Case

Submission, which was dismissed both before this Court and before the Appellate Court.

The Evidence led by the Defendants upon resumption of Trial, would be incorporated into the analysis of Each Count of Offence.

At the Close of Evidence in this Trial, Learned Silk raised Five (5) Issues for Determination, namely: -

- 1. In view of the fact that Chief Joshua C. Dariye was charged, tried and convicted by this Honourable Court in Charge No: CR/81/2006 in respect of all the Offences with which the 1st to 4th Defendants are charged, whether the Defendants should not be exonerated.**
- 2. Having regard to the fact that the 1st to 4th Defendants were Appointees and Public Servants who were under the Authority and Control of Chief Dariye, as the Governor of Plateau State, whether the said Defendants can be Criminally Liable for obeying and carrying the Instruction and Directive of Chief Dariye when it has not been shown that such Instruction and Directives were manifestly or patently illegal.**
- 3. Having regard to the Totality of Evidence on Record, whether the Prosecution proved Beyond Reasonable Doubt that the 1st to 4th Defendants committed Criminal Breach of Trust with which they have been charged in Counts 1, 4, 5, 6, 8 and 9.**
- 4. Having regard to the Totality of the Record, whether the Prosecution proved Beyond Reasonable Doubt that the 1st and 3rd Defendants committed Criminal Breach of Trust with which they have been charged in Count 2.**
- 5. Having regard to the Totality of the Evidence on Record, whether the Prosecution proved Beyond Reasonable Doubt that the 2nd Defendant committed Criminal Breach of Trust with which he has been charged in Counts 3 and 7.**

The Prosecution on his own Part set out a Singular Issue for the Court's Determination, namely: -

Whether the Prosecution has proved its Case against the Defendants Beyond Reasonable Doubt to warrant them being found Guilty and consequently, convicted?

The Final Written Addresses are on Record and there is no need to re-state them here except for the purposes of referrals by the Court.

The Court will formulate the following Issues for the Just Determination of this Case, which is: -

- 1. *Whether the Prosecution successfully discharged its Legal Burden in this Case against the Defendants Beyond Reasonable Doubt to warrant them being found Guilty as charged for the Offences of Criminal Breach of Trust in this Charge.***
- 2. *Whether the Prosecution has proved its Case against the Defendants Beyond Reasonable Doubt to warrant them being found Guilty as charged for the Offences of Criminal Misappropriation in this Charge.***
- 3. *Whether the Prosecution has established the Offence of Criminal Conspiracy against the Defendants.***

As regards the FIRST ISSUE raised, it is expedient at the outset to determine Common Elements that binds ALL the Counts of Offence under Criminal Breach of Trust.

PROSECUTION'S 1st DUTY TO PROVE: PUBLIC SERVANT

For each of the Nine Counts of Offences in the Charge, the Four Defendants were referred to as Public Servants/Officers, so the question to be determined here is, whether the Defendants actually fall under the classification of Public Servants/Officers.

Section 318 of the 1999 Constitution does not define who a Public Servant is but defines what is Public Service and who is the Staff and Member contemplated under this definition. Public Service of the State, means the service of the State in any capacity in respect of the Government of the State, and includes Seven (7) of such Services, and of particular interest in this Case, Member or Staff of any Commission or Authority established for the State by this Constitution or by a Law of the House of Assembly.

Section 18(1) of the Interpretation Act of 1964 further defines, "Public Officer" to mean a Member of the Public Service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the Public Service of a State. A

Public Officer, is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public. See the Cases of **R VS BEMBRIDGE (1783) 3 DOUG KB 32; R VS WHITAKER (1914) KB 1283 AND IBRAHIM VS JUDICIAL SERVICE COMMITTEE, KADUNA STATE & ANOR SC 130/1990 DELIVERED ON THE 18TH OF DECEMBER 1998.**

Section 10 of the **Penal Code Act**, which is the Definition Section, on its own part, also lists out several categories of Public Servants, but of particular interest, is **Section 10(a)** thereto, which states: -*“every person appointed by the Government or the Government of the Federation or of a Region while serving in Northern Nigeria or by any native, provincial, municipal or other local authority and every person serving in Northern Nigeria appointed by a Servant or Agent of any such Government or Authority for the performance of public duties whether with or without remuneration or for the performance of a specific public duty, while performing that duty”* is a Public Servant.

In the case of **WILSON VS A.G. OF BENDEL STATE (1985) NWLR PART 4 PAGE 572, His Lordship OPUTA, J.S.Cat PAGE 64 PARAS B-D** held that, "The expression "Public Officer" has been defined in **Section 7(1) of the Public Officers (Special Provisions) Decree now Act No. 10 of 1976** as: -

"Public Officer means any Person who holds or has held any Office in: -

(b) The Public Service of a State; or

(c) The Service of a Body whether Corporate or Unincorporated established under a Federal or State law;"

See further the cases of **RE MIRAMS (1891) 1 QB AT 594, CAVE J.;LAWRENCE J., in R VS WHITAKER (1914) 3 K.B. AT PAGE 1283; ASOGWA VS CHUKWU (2003) 4 NWLR (PT. 811) 540 AT 551 per ABOKI JCA;CHIEF JOHN EZE VS DR. COSMAS I. OKECHUKWU (1998) 5 NWLR PART 548 PAGE 43 AT 73** where **His Lordship OHO, J.C.A. in PAGES 34-36 AT PARAS. E-D** held that a 'Public Officer' is a holder of a Public Office in the Public Sector of the Economy as distinct and separate from the Private Sector and that he is entitled to some remuneration from the Public Revenue or Treasury. In addition, that he has some authority conferred on him by Law, with a fixed Tenure of Office that must have some permanency or continuity; above all else that a Public Officer has the power to exercise some amount of Sovereign Authority or Function of Government."

In **STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES 7TH EDITION AT VOL. 3 PAGE 2209**, a Public Officer was further defined in the case of **HENLY VS LYME 5 BING. PAGES 107, 108** to include the fact that the Public Officer is also liable to an Action for injury to an individual arising from Abuse of Office, either by act of omission or commission."

Now, the 1st Defendant Nuhu Ali Madaki, during his testimony as **DW4** stated that he was the Deputy Director, Treasury/ Assistant to the Accountant General in 2000 and his Duties as Signatory included maintaining the Accounts of both the Plateau State Government and that of the Office of the Accountant General. He also participated in their inflows and outflows as well as supervised Accounting Staff in the Office of the Accountant General.

The testimony of this Witness was also corroborated in his Extra-Judicial Statement dated 1st of December 2005 admitted as **Exhibit O**, wherein he stated that he was the Deputy Director Treasury in 1999 to November 2004 and had been a Signatory since then.

As regards the 2nd Defendant, Shem Damisa, who testified as **DW5** he had stated that he, was the then Substantive Accountant General of Plateau State. In his Extra-Judicial Statement dated the 23rd of January 2006 admitted as **Exhibit L**, he confirmed his Designation stating that he was appointed Accountant General in August 1999 to September 2003.

The 3rd Defendant, Emmanuel Agati, testified as **DW3** that he was a Two Term Commissioner of Finance of Plateau State and Member of the Plateau State Executive Council. He led evidence regarding to his Official Duties. According to him, his duties included attending Executive Council Meetings and communicating Council Decisions, coordinating Budgets for all the Ministries in the State, sitting as Chairman of the State Tenders Board for all Contracts, supervising the functions of all Departments in the Ministry of Finance and coordinating activities of Donor Agencies in the State and attending all Federation Account Meetings, where Funds due to the State are shared.

Further, he was conversant with Payment Procedure from the Federal Government, which the biggest Source of Funds. He gave a detailed narration on the procedure Federal Funds from the Federation Account were transferred from the Central Bank of

Nigeria into a State's Bank Account, through a Mandate from the Accountant General of the Federation.

According to DW3, other Sources of funds emanated from Donor Agencies or Special Intervention Funds such as Ecological Funds, who controlled the use of the Funds. The State receives these Funds once through a Cheque bearing an indeterminable amount. Funds from Agencies goes to an Institution responsible for handling Intervention such as a State's Aids Agency and in the instance of Plateau State, the Agency was referred to as PLACA.

According to him, sometimes, counterpart funding from the State were required in order to confirm the State's Interest in the Program. Prior to the disbursement of the Agency's Funds to the State, High Level Discussions and Agreements were usually reached between the Executive Governor and the Federal Agency handling Ecological Funds.

The 4th Defendant, Mr. Silas Vongbut testified as **DW2** that prior to his retirement in 2013, he was the then Substantive Deputy Director Inspectorate and Administration in the Office of the Accountant General of Plateau State in 2001. His Schedule of Duty included Staff Promotion, Discipline, Training and Posting amongst other Ad Hoc Duties assigned to him.

Therefore, taking the above Positions, Responsibilities and Duties, the Court can clearly see that the Prosecution has successfully established that all the Four Defendants were Public Servants. They were all performing Public Functions, were all paid from Public Funds and were also empowered by the Law to carry out Public Duties for the benefit of the Public and could exercise some amount of Authority or Function on behalf of the Plateau State Government. Through their jobs, it is expected that they had a relatively Fixed Tenure of Office with some sense of Permanency or Continuity.

Further, and more compelling are the Admissions of all the Defendants in their Oral as well as Extra-Judicial Statements, where they all acknowledged this fact, categorically recognizing their Status as Public Servants.

By the above Statutory Definitions, and by the Documentary Exhibits and Oral Testimonies, which confirmed their Status as Public Servants/Officers, **ALL** the Defendants qualify to be regarded as Public Servants.

So without further ado, this Court finds the Prosecution has satisfactorily proved the **First Essential Element** Beyond a Reasonable Doubt, and this Proof remains constant through **Counts 1, 2, 3, 4, 5, 6, 7, 9 and 10**.

PROSECUTION'S 2nd DUTY TO PROVE: ENTRUSTMENT

The **Second Essential Element** necessary to ground **Counts 2, 3, 4, 5, 6, 7, 9 and 10** is the proof by the Prosecution that in their Capacity as Public Servants, they were Entrusted with the Monies or with Dominion over the Monies. These Monies were Public Monies, in that the Monies were held by the Officer in the Public Service of the State on behalf of the Plateau State Government.

Now, before there can be a conviction on a Charge of Criminal Breach of Trust, there must be Evidence of Entrustment and of Dishonest Misappropriation of what was entrusted. Reference is made to the Case of **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153**.

ONU JSC IN MARA VS THE STATE (2013) 3 NWLR (2012) 14 NWLR PT. 1320 PAGE 287 AT 318 AT 319 AT PARA C, held that the Defendant must be a Clerk or Servant or such Capacity, of the Person reposing trust in him, and in that capacity was entrusted with the property in question or with dominion over it, and had committed breach of trust in respect of it. See also the cases of **FRN VS NUHU & ANOR (2015) LPELR-26013 CA PER ABIRU JCA; AJIBOYE VS FRN (2014) LPELR-24325 CA PER ALKALI JCA**.

In R VS GRUBB (1915) 2 KB PAGE 683 AT PAGE 689, Lord Reading held inter alia that the words 'being entrusted' should not be read as being limited to the moment of the sending or delivering of the property by the owner, but may cover any subsequent period during which a person becomes entrusted with the property..."

CORNISH, J. in the case of **EMPEROR VS JOHN MCIVER, AIR 1936 Mad 353**, referred to the definition of the word "entrusted" by **Lord Haldane** in **LAKE VS SIMMONS 1927 AC 487**, where His Lordship held that entrustment may have different implications in different contexts. It could cover the Case of Property honestly obtained by the Person entrusted with it, but subsequently dishonestly misappropriated by him in breach of his trust.

The case of **JASWANTRAI MANILAL AKHANEY V. STATE OF BOMBAY [AIR 1956 SC 575]**, clarified that this Term does not contemplate the Creation of a Trust with all the technicalities of the Law of Trust. It contemplates the Creation of a Relationship whereby the Owner of Property makes it over to another Person to be retained by him until a Certain Contingency arises or to be disposed of by him on the happening of a Certain Event."

In the Case of **M/S INDIAN OIL CORPORATION VS M/S NEPC INDIA LTD., & ORS ON 20 JULY, 2006 SUPREME COURT OF INDIA; CENTRAL BUREAU OF INVESTIGATION VS DUNCANS AGRO INDUSTRIES LTD., CALCUTTA (1996) (5) SCC 591**, it was held that the property in respect of which **Criminal Breach of Trust** can be committed must necessarily be the property of some person other than the Defendant or the beneficial interest in or ownership of it must be in other person and the Defendant must hold such property in **trust** for, and is accountable to, such other person or for his benefit. If the defendant was entitled to keep the money and use it for his own purposes, then plainly there could be no question of entrustment and in **ANG TECK HWA VS PP [1987] SLR (R) 513 AT [27]**, it was held that it is not necessary that the loss to the owner should have been actually suffered by that time. See also **HIRA LAL CHAUDHARY AND ORS VS STATE ON 7 MARCH 1956 AIR 1956 ALL 619**.

Under our Laws, Public Servants, who are entrusted, have positions of greater responsibility more than the General Populace. This is because of the special status and the trust, which a Public Servant enjoys in the eyes of the Public as a Representative of the Government or Government owned Enterprises. The Entrustment to him need not be expressed, it could be implied. See also the recent Case of **BAVCHANDBHAI DAHYABHAI PATEL VS STATE OF GUJARAT & ON 20 APRIL 2017 R/CR.MA/19007/2014**.

IN SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS V SK ROY AIR 1974 SC 794, (1974) CR.LJ 678 (SC), it was held by the Supreme Court of India, that it is the ostensible or apparent scope of a Public Servant's Authority when receiving the property that has to be taken into consideration. The Public may not be aware of the technical limitations of his powers under some technical limitations of some Internal Rules of the Department or Office concerned. It is the use made by the Public Servant of his Actual Official Capacity, which determines whether there is sufficient nexus or connection between the acts complained of and the official capacity, so as to bring the act within the scope of the Section.

Applying the above Principles on Entrustment, it is clear that the 1st Defendant, Nuhu Madaki in his Testimony as **DW4** stated that the Accountant General was a Category A Signatory, whilst he was a Category B Signatory and in his absence as Category B, there was an Alternate Signatory in the person of Mr. Silas Vongbut.

According to him, Category A was the Main Signatory for all Instruments and whose Signature, must always be on them and also was also responsible for Authorizing and Opening Accounts.

The 2nd Defendant, Shem Damisa, on his own part, testified as **DW5** to the effect that he was the then Accountant General and his Portfolio included Authorization to all Accounts of Plateau State Government. He did not need a Letter from the Commissioner of Finance for the purposes of Opening of Accounts, and he was a Necessary Signatory for every withdrawal. In his absence, no Co-Signatory could withdraw money from Plateau State Government Account.

Further, in his Extra-Judicial Statement admitted as **Exhibit L**, his Schedule of Duties also included collecting Credit Advices in favour of Plateau State Government. As Authorised Signatory, he operated Central Bank of Nigeria and Commercial Bank Accounts, prepared Cash Flow and Position Slips for the Commissioner of Finance for onward transmission to the State Governor. He also prepared Budgets, approved Payments for Recurrent and Capital Projects and prepared Draft Final Accounts. He was conversant with the Procedure of Payment of all Routine and Contractual Obligations after due processing from the Originating Ministry, Board and Department.

Furthermore, in his Second Extra-Judicial Statement dated the 25th of January 2006 in **Exhibit L**, as Accountant General, he also collected all Funds such as Statutory Allocation, VAT, Ecological Funds and other Revenues.

The 3rd Defendant, Emmanuel Agati, as the then Substantive Commissioner of Finance, who testified as **DW3**, stated that he related with Officers who maintained the Accounts of Plateau State Government. He identified the 1st and 2nd Defendants, as Signatories to all Government Accounts stating that their Signatures must be on an Instrument whilst the 4th Defendant featured only as an Alternate Signatory.

In addition, he exercised oversight functions over the 1st and 2nd Defendants but those functions did not include Government Parastatals, as they were generally Self-Accounting.

As regards the Federation Account, he usually gets information regarding the inflow and outflow from the Government Account. By virtue of his participation in the Federal Account Meeting, he had an idea of how much was coming into the State's Coffers. For outflows, his source of information was the Accountant General with whom he worked hand-in-hand daily and the Accountant General was the final point for signing out Monies from the Account.

On the Procedure for Disbursement of Funds, DW3 stated that normally Memos seeking Approvals would be generated detailing the circumstances or reasons for the expenditure. When Approvals are obtained, Vouchers would then be written and Cheques raised, in order to satisfy the expenditure.

Furthermore, as Commissioner, the Executive Governor had confidence in his Appointees, which confidence translated downwards. The confidence was mutual and budget-wise, he too enjoyed the Governor's confidence. According to DW3, as Commissioner, his authority was derived through Delegation.

In addition, Plateau State Government had various Bank Accounts and neither the Executive Governor nor himself, as Commissioner, were Signatories to any Government Account. Where the Executive Governor, so chooses, he could be given Direct Withdrawal Instructions from Government Coffers.

When wrongful or fraudulent activity is discovered, investigations were conducted to look into the circumstances that led to the wrongful payment or fraudulent activity and where the need arises, the Police would be involved.

In his Extra-Judicial Statement dated the 23rd of January 2006 admitted as **Exhibit Q**, he stated that he was appointed as Commissioner of Finance from August 1999 to 2007. For all Government Projects, Payments were effected centrally from the Consolidated Revenue Funds of the State. On his Approval, the Accountant General, Treasury Department, effected all Payments and he supervised the activities of that Department.

According to DW3, he also attended Periodic Meetings with the Debt Management Office and with Banks to ascertain progress of the State's Obligations.

In **Exhibit R**, the 3rd Defendant's Extra-Judicial Statement of the 24th of January 2006, he approved the Release of Funds through the Accountant General who is responsible for producing Payment Vouchers that covered Record of Payments made.

Finally, the 4th Defendant, Mr. Silas Vongbut testified as **DW2** that he was Signatory to Plateau State Government Account. Under Cross-Examination by the Prosecution, DW2 agreed being a Signatory to the Plateau State Government Account between 2001 and 2004 and the other Signatories were the 1st and 2nd Defendants. For Monies to leave this Account it required Two Signatories to sign but he was an Alternate Signatory, signing Cheques, whose funds were utilized.

In his Extra-Judicial Statement dated the 24th of January 2006 admitted as **Exhibit M**, he stated that he was posted to the Ministry of Finance from November 1999 to March 2005, as Deputy Director Inspectorate and Administration. His Schedule of Duties was to handle all Staff Accounting Matters and other ad hoc duties assigned to him, including being a Signatory to Government Account.

Now, by their Official Functions and Schedule of Duties, it is clear that these Four Defendants were entrusted with the Funds of Plateau State having held Sensitive Financial Positions and therefore, the Prosecution is held to have satisfied this **Second Element**.

PROSECUTION'S 3RD DUTY TO PROVE: VIOLATION OF LAW, DIRECTIVES OR CONTRACT

The Prosecution must establish **that the Four Defendants, did so in violation of:**

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

These are issues on whether there were Violations of Law, Contracts, Rules, Regulations, and Directives and in the event there are Violations, whether the disposal of the monies of Plateau State Government was done dishonestly and if so, what were the consequences of those Violations.

Now, it is therefore important to consider what actions the Defendants undertook personally that constituted a Violation of Law or Contract or Directive and furthermore, what actions they took condoning such Violations committed by others.

The Established Violation was the Unlawful Diversion of the Funds belonging to a Lawful Beneficiary, Plateau State Government, in the form of Cheques/Drafts into a Private Account belonging to Ebenezer Retnan Ventures as seen in **Exhibits C, F1, F2, H, W2 and X.**

This is where the Arguments regarding the Question of the Transferability of Monetary Interest comes in as well as the Issue of Established Banking Practices regarding Assignment of that Interest through Cheques/Drafts.

In regard to the Nature of a Cheque/Draft bearing the inscription “Crossed”, “Account Payee” or “Not Negotiable”, which serves as Control Measures, the Prosecution led evidence through **PW2**, Nosa Osemwekha the Jos Branch Manager of Diamond Bank Plc.

On behalf of the Defence, Evidence was also led through Amisu Abdullahi, a Staff of the Central Bank of Nigeria and Shem Damisa, who testified as **DW1** and **DW5** respectively.

Their Oral Testimonies regarding a Crossed, Account Payee or Not Negotiable Cheque/Draft, were essentially the same, to be that Funds in the Cheque/Draft, upon Clearance, would be paid into the Payee’s Account, as per Customer’s Instruction. A Customer could also alter his Earlier Mandate on the Cheque/Draft, which is also considered Best Banking Practice.

However, despite these Control Measures, the Cheque/Draft could still be exposed to fraudulent activities, especially where a Bank acts contrary to a Customer’s Instruction or acts on Oral Instruction or pays to a 3rd Party other than the Payee or where the Cheque/Draft is stolen. In such instances, much depended on the Bank involved, but generally, that Bank would bear the Risk.

The bottom line here is that despite the Cheque being Crossed, Marked Not Negotiable or Account Payee only, the Consequence of the Action in paying the Amount Cleared into Ebenezer Retnan Ventures’ Account without the Lawful Mandate and Instruction of the Designated and Recognized Signatories was an Unlawful Act that amounted to a Violation of Banking Practice and State Regulations.

PROSECUTION’S 4TH AND 5TH DUTY TO PROVE: MISAPPROPRIATION OR CONVERSION OR DISPOSAL AND THE DUTY TO PROVE ANY OF THE MODES WERE CARRIED OUT DISHONESTLY.

Under this head, which is Terminal, it is important to note that **Section 311 of the Penal Code**, the Definitive Section, lists the Elements of the Offence in a **DISJUNCTIVE FASHION** by the consistent use of the word “**OR**”. This is to say that any of the under listed could operate independently in order to establish the offence, as proof of one, dispenses with proof of the others. Whilst Entrustment is paired with Dominion, the Prosecution may decide to proceed on the basis of any of the Four Options, or Quadruplet Modes, through which the entrustment or dominion was breached.

The Prosecution is expected to establish that the Defendants as Public Servants, being entrusted and having Dominion over Funds belonging to Plateau State,

- a) Misappropriated Plateau State’s Funds; or
- b) Converted Plateau State’s Funds to their own Use; or
- c) Used Plateau State’s Funds; or
- d) Disposed Plateau State’s Funds or by intentionally or willfully allowing any other person(s) to do so.

It is also worthy of note that in regard to the element of Disposal, the Section again, appears to widen up by expanding the Defendants’ culpability under this Charge to include their influence or interference in causing or affecting another Person’s Actions by suffering them to dispose of the Property.

After determining any of the above from the evidence adduced at trial, the Prosecution is then mandated to prove through the Eight (8) Counts of Offences that the Defendants committed these Offences, **Dishonestly**.

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

Section 16 of the **Penal Code** defines “**Dishonestly**” as “A Person is said to do a thing “dishonestly”, who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person.” By wrongful gain this was defined under **Section 13** of the Act as gain by unlawful means of property to which the person gaining, is not legally entitled. The Penal Code Act also went further

to define what is meant by wrongful loss in **Section 14** to mean, the loss by unlawful means of property to which the person losing it, is legally entitled. Under **Section 15**, a person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully, and a person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property. A dishonest intention is an essential ingredient of Criminal Breach of Trust. Further, intention may frequently be presumed from the consequences of the Act as a Person is presumed to intend the natural consequences of his act. See also **WIGMORE ON EVIDENCE VOLUME 2 PAGE 42 PARTICULARLY AT PARAGRAPH 242**

Further reference is made to the cases of **TIRAH VS COMMISSIONER OF POLICE (1973) NNLR PAGE 143 (CA); OKONKWO VS COMMISSIONER OF POLICE (1985) HCNLR PAGE 1277; J. ONIBANIYI & ANOR VS THE STATE (1972) SUIT NO: SC.235/1971 8-9 SC PAGE 97 PER UDO UDOMA JSC.**

In the case of **HON. YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA) Per PETER-ODILI, J.C.A. (P. 18, PARAS B-E)**, held that, "In considering the word '**Dishonestly**' in **Section 311 of the Penal Code**, it will be sufficient if one construes it in its natural meaning i.e. Intended to cheat, deceive or mislead."

The UK Supreme Court in the case of **IVEY VS GENTING CASINOS (UK) LTD T/A CROCKFORDS [2017] UKSC 67. DELIVERED 25TH OCTOBER 2017**, concluded that the correct approach is to:

- *Determine what the Defendant actually knew of or believed as to the facts. Whether the Defendant's beliefs were reasonable are not a separate issue – but goes to whether the beliefs were genuinely held;*
- *Decide whether the Defendant's conduct is dishonest by the standards of ordinary, reasonable and honest people;*
- *There is no further requirement that the Defendant knew or appreciated that he or she acted dishonestly.*

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

The decision of whether a particular action or set of actions is dishonest remains separate from the issue of moral justification.

The new trend in English Law is for only the actions to be tested objectively and not to apply any test as to the subjective state of mind of the actor.

Now, turning to Each Specific Count of Offence in the Charge, the Court will start-off with **COUNTS 3, 4, 6, 7, 9 and 10** and then terminate with **COUNTS 2, 8, 5 AND 1**.

In **COUNT 3**, only the **1st and 3rd** Defendants were alleged to have committed Criminal Breach of Trust in respect of the Sum of **Six Million Naira (N6, 000, 000.00)** belonging to the Plateau Investment & Property Development Board Company Limited by diverting it into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company owned by Chief Joshua Dariye.

In proof of this allegation, evidence was led by the Prosecution through PW1, Detective Musa Sunday in his Examination-in-Chief stated that the Cheque of Six Million Naira (N6, 000, 000.00) emanated from the Account of Plateau Investment & Property Development Board Company Limited with Lion Bank. This Cheque was then moved to the AllStates Trust Bank where it was subsequently cleared into the Account of Ebenezer Retnan Ventures.

Now, aside of the above Oral Evidence, the Prosecution did not tender through PW1, the Statement of Account of Plateau Investment & Property Development Board Company Limited with Lion Bank (now Diamond Bank) from the Jos Branch, which is the Origin or Source, the alleged Sum was domiciled prior to its subsequent diversion.

Further, the Lion Bank Cheque alluded to by PW1, which is the Mode through which the Sum was moved from Lion Bank Jos Branch to the AllStates Trust Bank, which later found its way into the Private Account of Ebenezer Retnan Ventures was not tendered into evidence by this Witness.

More so, this Sum did not feature any of the Extra-Judicial Statements taken from the **1st and 3rd** Defendants admitted as **Exhibits O to U** and **Exhibits Q to S** respectively.

In their **Defence**, the **3rd** Defendant, Emmanuel Agati, who testified as DW3 during his Examination-in-Chief had stated that Plateau State owned majority of the shares in Plateau State Investment Property Company, it had a Board and External Auditors and was Self-Accounting. The Government did not control the Company's internal finances, and as Commissioner, he did not know how payments were made to this Company.

Further, neither his Ministry nor its Staff nor the Accountant General had control over or participated in that Company.

Under Cross-Examination, DW3 was questioned in regard to the Plateau State Investment Property Company and he stated that there was a Subsidiary referred to as the Ministry of Finance Consolidated, which belonged to his Ministry but as Commissioner, he was not a Shareholder.

The 1st Defendant, Nuhu Madaki, testified as DW4, pertaining to diversion of Funds of the Plateau State Investment Property Company **Count 3**, and his evidence was similar to that obtained from the 3rd Defendant.

Under Cross-Examination, he stated that no money could leave Plateau State Government's Account without his Signature and that of the then Substantive Accountant General.

According to him, the Plateau State Investment Property Company was under the Accountant General but not the Plateau State Water Board, as it was a Parastatal under the State Government having its own Board and was Self-Accounting.

It is worthy of note that the Prosecution did not rebut these pieces of evidence elicited from the Defence during his Cross-Examination of the Defence Witnesses, which implies their Evidence was unshaken or not discredited as regards this Count.

In the absence of credible evidence to show their specific and individual participation in this diversion, the Court finds that the Prosecution did not prove this allegation against the 1st and 3rd Defendants and they are found **NOT GUILTY AS CHARGED** and accordingly **DISCHARGED AND ACQUITTED** on this **Count 3**.

As Regards **COUNT 4**, only the 2nd Defendant, Shem Damisa was charged for the Offence under this Count. He, as the then Substantive Accountant General of Plateau State is said to have committed Criminal Breach of Trust over the Sum of Six Million Naira (N6, 000, 000.00) belonging the Plateau State Water Board by diverting it into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company owned by Chief Joshua Dariye.

The Prosecution in proof of this allegation led evidence through PW1, Detective Musa Sunday, who testified that the Cheque of Six Million Naira (N6, 000, 000.00) emanated from the Account of Plateau State Water Board with Lion Bank. This Cheque was then

moved to the AllStates Trust Bank where it was cleared into the Account of Ebenezer Retnan Ventures. He was not Cross-Examined by the Defence in regard to this Count of Offence.

Apart from the above Oral Testimony elicited under PW1 Examination-in-Chief, he did not tender the Lion Bank Statement of Account of Plateau State Water Board showing that this Sum of Money was moved from the Board, which was the Source of this Sum contained in **Count 6**. Also, the Cheque evidencing the Movement of this Sum from Lion Bank, which later found its way into the AllStates Trust Bank Private Account of Ebenezer Retnan Ventures, an Unregistered Company owned by Chief Joshua Dariye was not tendered.

Further still, no mention of this Lion Bank Cheque in the Sum Six Million Naira (N6, 000, 000) or any other Cheque in this Sum belonging to the Plateau State Water Board was stated in the EFCC Statement of the 2nd Defendant admitted as **Exhibit L**.

The 2nd Defendant, who testified as **DW5**, in his Defence under Examination-in-Chief, denied knowledge the allegation by stating that he did not sign Accounts belonging to Sister Organizations but signed only Main Accounts of Government. Plateau State Water Board and other Boards had their own Administrative Structure, they were Self-Accounting and he was not in a position to sign their Cheques.

He never facilitated the diversion of the alleged Sum nor had control over it and there was no rebuttal of this evidence by the Prosecution.

The Court finds that the evidence adduced in regard to this Count was scanty to say the least. There was no evidence of any deduction, any transfer and the Prosecution failed to demonstrate through the Statement of Account of Ebenezer Retnan Ventures, how the Funds entered into the Account.

Therefore, without any further ado, the Court finds that the Prosecution woefully failed to prove the Actus Reus and Mens Rea of this Offence and the 2nd Defendant, Shem Yaute Damisa is found **NOT GUILTY AS CHARGED** under this Count and is accordingly **DISCHARGED AND ACQUITTED** for this Offence in **Count 4**.

As regards **COUNT 6**, the Prosecution alleged that the Sum of **Ten Million Naira (N10, 000, 000)**, belonging to the Plateau State Government, was diverted into the Private Account of Ebenezer Retnan Ventures by all the Defendants.

The Court will first analyse the Oral Testimonies of the Prosecution Witnesses to see whether any Oral Evidence had been rendered linking all the Defendants to this Count of Offence.

The Prosecution did not produce through PW1, Detective Musa Sunday, the Prosecution's Star Witness the Cheque/Draft, which is the Mode through which the Sum of Ten Million Naira (N10, 000, 000) was moved from the Funds belonging to Plateau State Government into that the Private Account of Ebenezer Retnan Ventures. No evidence was led through this Witness on the question of where this Sum was domiciled before it was allegedly diverted into the Private Account of Ebenezer Retnan Ventures. The only Bank that testified, that is Diamond Bank Plc., through its Branch Manager as **PW2**, led no Evidence, Oral or Documentary pertaining to this Sum alleged in the Court.

Further, **PW3 to PW6**, the Operatives of the EFCC played no role relating to the Investigation of this Sum nor led any Oral Evidence in this regard. Their role was simply that of Statement Taking from all the Defendants.

From the evidence adduced, the **ONLY** Documentary Evidence put forward in the Prosecution's Case in specific regard to this Sum in the Court are the Extra-Judicial Statements of the Defendants. Of particular reference were the Extra-Judicial Statements obtained from the 2nd Defendant, Shem Damisa and the 3rd Defendant, Emmanuel Agati. The 1st and 4th Defendants made no mention of this Sum and there is no evidence that the question was even posed to them and they refused to answer.

The 2nd Defendant in his EFCC Statement admitted as **Exhibit L** dated the 25th of January 2006, he stated thus: *"I have sighted three Drafts of Lion Bank of Nigeria for N53, 600, 643.05, N10, 000, 000.00 and N21, 000, 000= all debited to the Account of Plateau State Government. As these transactions were dated as far back as 2000 and 2001, I would request to avail myself the benefit of seeing the instructions to enable me comment meaningfully."*

As regards the 3rd Defendant, Emmanuel Agati, in his EFCC Statement dated the 25th of January 2016, marked as **Exhibit S**, he stated thus: -

"The three drafts shown to me NO: 71266 for N53.6M, NO: 81715 for N10M and NO: 81729 for N21M may not certainly be drawn on a Government Account. If it is established that these drafts are on Government Account I will be surprised and it will tantamount to diversion of the funds by the account holder i.e. All State Trust Bank. The photocopies of drafts shown to me, has signatures that resemble that of his Excellency Chief Joshua Dariye. As the Head of Finance, I accept responsibility for the lapses of my staff if these transactions were not detected during reconciliation."(Sic)

These were all the Evidence, Oral and Documentary, elicited by the Prosecution in proof of the diversion of the Sum of Ten Million Naira (N10, 000, 000) allegedly perpetrated by the Defendants.

The Defendants in their Defence led evidence through the 1st Defendant, Nuhu Madaki, who testified as DW4, wherein he denied the allegation in this Count and he was not Cross-Examined in relation to this Count. The 4th Defendant, Silas Vongbut, who testified as DW2 also denied this allegation and he too was not Cross-Examined in relation to this Count.

The 2nd Defendant, Shem Damisa, testified as DW5 and according to him, his Earlier Rendition in **Count 2** explained away this allegation, adding that the alleged Sum of Ten Million Naira (N10, 000, 000) was never deducted from the State Government's Account, for which he was a Signatory. Shown **Counts 13 and 14** of **Exhibit W**, Chief Dariye's Amended Charge, he stated his Office never issued out Open Cheques.

No further evidence was elicited from the Prosecution from 2nd Defendant in relation to this Sum captured in Count of the Charge.

As regards the 3rd Defendant, Emmanuel Agati, who testified as DW3, also denied this allegation in **Count 6**. He testified that he was unaware and had no knowledge that the Sum of N10 Million was withdrawn from the Account of Plateau State Government and subsequently diverted into the Account of Ebenezer Retnan Ventures. He would have had known of this withdrawal had the Auditor called his attention to it.

When referred to **Page 2 of Exhibit S**, concerning Three (3) Drafts, he referred to his Statement made before the EFCC, where he had stated that the Drafts were not drawn from Plateau State Government's Account and he could not say where they emanated from. According to him, a Draft becomes a Bank's Instrument when money moves from a Customer to a Bank and in the instance of these Drafts, it was impossible to determine from which Customer they emanated from.

Under Cross-Examination by the Prosecution, the 3rd Defendant acknowledged that as Commissioner, he received Statements of Account of Plateau State Government.

From this Oral Evidence, the Prosecution in regard to this Sum contained in this Count, elicited no further evidence.

From the above Evidence, it can be seen that the Prosecution had failed to establish this Count of Offence Beyond Reasonable Doubt by linking any of the Defendants to the Funds in this Count diverted into the Private Account of the Ebenezer Retnan Ventures. In fact, the Prosecution did not prove that this Sum of Money was diverted in the first place. The Extra-Judicial Statements of the Defendants only made mention of the fact that the Sum of Ten Million Naira (N10, 000, 000) was encased in a Draft. The 2nd Defendant having identified this Draft as emanating from the Account of the Plateau

State Government, would have been availed the opportunity of accessing the Requisite Government Record, which may lead to more Extra-Judicial Statement(s) elicited from him. This is because the 2nd Defendant was the Custodian of Accounts belonging to the Plateau State Government at the relevant time the Funds were alleged diverted.

The failure on the part of the Investigators to oblige the 2nd Defendant's Request, truncated further investigation as to how it found its way into the Private Account of Ebenezer Retnan Ventures, a Company the Defendants claimed was unknown to them.

In relation to the 3rd Defendant, Emmanuel Agati, the then Two Term Commissioner of Finance, he claimed to be surprised if the Funds in **Count 6** was withdrawn from a Government Account and with very little effort on the Prosecution's part, the investigators would have surprised him by showing him how it was withdrawn, by whom and to whom the Funds were paid. This was more so, as this particular Defendant had stated that, *"As the Head of Finance, I accept responsibility for the lapses of my staff if these transactions were not detected during reconciliation."*(Sic)

All the Prosecution had to do, was confirm that this particular Defendant authorized those payments in his Official Capacity and from one of the State Government's Accounts.

Further, this Defendant even identified the Signature of Chief Joshua Dariye, the Executive Governor, on the Drafts. He ought to have been questioned on the circumstances where a Non-Signatory to an Account can authorize Drafts or the Movement of Funds. He ought to have been questioned again on when he saw the Signatures and what actions he took.

Further, the Prosecution ought to have elicited the fact that this Defendant, as Commissioner of Finance, **KNEW** that the Erstwhile Governor authorized the Movement, as he was the Supervising Accounting Officer, and that he condoned or overlooked or connived with him to divert these Sums being the Executive Governor's Confidant.

In the absence of any incriminating evidence on the part of each of the Defendants, the Court finds that the Prosecution also woefully failed to prove this Allegation against them and the Defendants are found **NOT GUILTY AS CHARGED** and **ALL** are accordingly **DISCHARGED AND ACQUITTED** in respect of this **Count 6**.

In respect of **COUNT 7**, all the Defendants were jointly charged with Criminal Breach of Trust in regard to the Sum of **Twenty-Five Million Naira (N25, 000, 000. 00)**, belonging to Plateau State Government by diverting these Funds into the Private

Account of Ebenezer Retnan Ventures, an Unregistered Company belonging Chief Joshua Dariye.

After a careful analysis the Oral and Documentary Evidence, including the Extra-Judicial Statements of the Defendants admitted as **Exhibits L to S**, rendered by the Witnesses put forward by the Prosecution, no shred of Evidence was specifically led in relation to the Sum of Twenty-Five Million Naira (N25, 000, 000. 00) as set out in this Count. The only Pieces of Evidence placed before this Court, are the Testimonies of each of the Defendants, who specifically denied the allegation contained therein.

The 1st Defendant, Nuhu Ali Madaki, testified as **DW4** and in his testimony, denied the allegation by stating that, in all the Ten Counts, he only knew Chief Dariye as the Executive Governor of Plateau State. He denied being responsible for any impropriety, as he never signed Blank Cheques but Written Cheques. At no time, was Ebenezer Retnan Ventures a Payee and he never derived any benefit from this Company.

The 2nd Defendant, Shem Damisa, testified in his own regard as **DW5**, wherein he denied the allegation of diverting the Sum of N25Million in **Count 7**. According to him, **Counts 15 and 16 in Exhibit W**, that is, the Judgment in the Case of **FRN VS CHIEF JOSHUA CHIBI DARIYE**, were similar to this allegation.

Further, he had left Office over three (3) years ago before the EFCC summoned him to Lagos on this allegation. Upon request, they were denied Records to enable them verify this Amount. He denied ever facilitating any documented payment of this Sum to Ebenezer Retnan Ventures. Further, Ebenezer Retnan Ventures was not a Government Client, it was not Registered and so, Plateau State Government could never have even issued to it, Contracts.

The 3rd Defendant, Emmanuel Agati, who testified as **DW3**, was referred to this Count in his Examination-in-Chief, whereupon he too denied this allegation and was not specifically Cross-Examined on this Sum relating to this Count.

The 4th Defendant, Silas Vongbut, who testified as **DW2** in his Examination-in-Chief, only acknowledged being a Signatory to the Plateau State Government Account between 2001 and 2004 and named the other Signatories to be the 1st and 2nd Defendants. For Monies to leave this Account, it required Two Signatories to sign but he was an Alternate Signatory, signing Cheques, whose funds were utilized. He denied the allegation contained in **Count 7** and he was not Cross-Examined in relation to this Count.

From the above analysis it can be seen that the Prosecution in regard to this Count, presented no iota of Evidence. As earlier discussed on the Principle of Law governing Criminal Burden of Proof, it is duty of the Prosecution, who had framed the Count in the

Charge, that is to discharge that Requisite Burden by proving the allegation in the Court, Beyond Reasonable Doubt. This burden never shifts. In the absence of any Confession, the Presumption of Innocence weighs in favour of the Defence where the Prosecution leads no evidence.

Therefore, this Court without any hesitation finds that the Prosecution failed to discharge the Burden of Proof, showing the culpability of each Defendant in this Court and they are found **NOT GUILTY AS CHARGED** for this Offence and accordingly **DISCHARGED AND ACQUITTED** for **Count 7**.

As regards **Count 9**, all the Defendants were charged with Criminal Breach of Trust relating to the Sum of **Fifty-Three Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo (N53, 600, 643. 05)** belonging to Plateau State Government Statutory Allocation by diverting this Sum into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company owned by Chief Joshua Dariye.

Now, from the Evidence, Oral and Documentary, adduced before this Court, all the Witnesses from the Prosecution led no Oral Evidence in relation to this Count. The ONLY Documentary Evidence rendered by the Prosecution were the EFCC Statements obtained from the 2nd Defendant, Shem Damisa and the 3rd Defendant, Emmanuel Agati. Their Written Statements in regard to this Count were contained **Exhibits L and S**, which are set above and it would be needless to rehash them here again.

All the Defendants in their defence denied the allegation in **Count 9**. The 1st Defendant, Nuhu Madaki, as **DW4** denied the allegation in this Count in his Defence under Examination-in-Chief and he was not Cross-Examined by the Prosecution in relation to this Sum as per the Count. The 4th Defendant, Silas Vongbut, who testified as **DW2** denied the allegation in **Count 9** during his Defence in Examination-in-Chief and was not Cross-Examined by the Prosecution in relation to this Count.

The 2nd Defendant, Shem Damisa, who testified as **DW5**, denied knowledge of this Sum in **Count 9**. He had not seen any Source Document he signed, linking him to the withdrawal of this Sum from the coffers of the Plateau State Government and the EFCC never confronted him on that. Further, he maintained that he did not divert this Sum to Ebenezer Retnan Venture, as he only heard of this Company or its Account at the EFCC in January 2006, after 6 years from the date of the alleged offence.

Shown **Exhibit W**, Chief Dariye's Amended Charge, he stated that the alleged sum was similar to the Sum contained in **Count 9**.

The 3rd Defendant, Emmanuel Agati, testified as **DW3** and in his Defence under Examination-in-Chief, he too denied the allegation in **Count 9** and was not Cross-Examined on this Sum contained in the Count.

Now, it can be seen that the Prosecution had failed to establish this Count of Offence Beyond Reasonable Doubt by linking any of the Defendants to the Funds in this Count diverted into the Private Account of the Ebenezer Retnan Ventures. In fact, the Prosecution did not prove that this Sum of Money was diverted in the first place.

The Defendants categorically denied any diversion or complicity or condonation in their Oral as well as in their Extra-Judicial Statements of the Sum of Fifty-Three Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo (N53, 600, 643. 05).

The 2nd Defendant having identified this Draft as emanating from the Account of the Plateau State Government, would have been availed the opportunity of accessing the Requisite Government Record, which may lead to more Extra-Judicial Statement(s) elicited from him. This is because the 2nd Defendant was the Custodian of Accounts belonging to the Plateau State Government at the relevant time the Funds were alleged diverted.

The failure on the part of the Investigators to oblige the 2nd Defendant's Request, truncated further investigation as to how it found its way into the Private Account of Ebenezer Retnan Ventures, a Company the Defendants claimed was unknown to them.

In relation to the 3rd Defendant, Emmanuel Agati, he claimed to be surprised if the Funds in **Count 9** was withdrawn from a Government Account and with very little effort on the Prosecution's part, the investigators ought to have showed him the Mode and Manner the Funds were initiated and the eventual destination of the Draft. All the Prosecution had to do, was confirm that this particular Defendant authorized those payments in his Official Capacity and from one of the State Government's Accounts. This, the Prosecution failed to do and it is fatal to their Case on this Count.

Further, as earlier stated, this Defendant even identified the Signature of Chief Joshua Dariye, the Executive Governor, on the Draft for the Sum of Fifty-Three Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo (N53, 600, 643. 05). He ought to have been questioned on the circumstances where a Non-Signatory to an Account can authorize Drafts or the Movement of Funds. He ought to have been questioned again on when he saw the Signatures and what actions he took.

Further, the Prosecution ought to have elicited the fact that these Defendants with their sensitive positions and roles, in the Plateau State Government, **KNEW** that the

Erstwhile Governor authorized the Movement and that they condoned or overlooked or connived with him to divert these Sums being the Executive Governor's Confidant.

In the absence of any incriminating evidence on the part of each of the Defendants, the Court finds that the Prosecution also woefully failed to prove this Allegation against them and the Defendants are found **NOT GUILTY AS CHARGED** and **ALL** are accordingly **DISCHARGED AND ACQUITTED** in respect of this **Count 9**.

In regard to the Final Count in **Count 10**, all the Defendant were alleged to have committed Criminal Breach of Trust in the Sum of Twenty-One Million Naira (N21, 000, 000) from the Plateau State Government Statutory Allocation by diverting this Sum into the Private Account of Ebenezer Retnan Ventures whose alter ego was Chief Joshua Dariye.

Now, upon analysing the Oral and Documentary Evidence, none of the Prosecution Witnesses led any Oral Evidence in relation to this Count. Yet again, the **ONLY** Documentary Evidence put forward by the Prosecution were captured in the EFCC Statements of the 2nd and 3rd Defendants, which were admitted into Evidence as **Exhibits L and S** respectively. The 1st and 4th Defendants were presumably not confronted with this allegation, as they made no remark of it in their EFCC Statements.

The 1st, 3rd and 4th Defendants denied this allegation during their Examination-in-Chief and they were not specifically questioned under Cross-Examination by the Prosecution in regard to this Sum captured in this Count.

The 2nd Defendant, Shem Damisa, equally in his Examination-in-Chief, denied diverting the Sum of Twenty-One Million. It was his testimony that the Prosecution did not tendered any evidence in proof of this allegation and he played no role in regard to this Count.

According to him, **Count 10** was also featured in **Counts 21 and 22** of **Exhibit W** and in all the Twenty-Three (23) Count Charge preferred against Chief Dariye, the other Defendants and himself were never charged alongside Chief Dariye, but faced separate Trials. Similarly, Chief Dariye, who was never declared to be "at large", did not feature in this Ten (10) Count Charge preferred against them.

Further, all payments from the Government Accounts that were under his control, were made through Cross Cheques, which were only labelled Non-Negotiable and Account Payee Only.

Under Cross-Examination, the 2nd Defendant did not deny the fact that the Ten (10) Counts, took place before he vacated Office, however, he claimed to have upheld the

financial integrity of Plateau State to the best of his ability and knowledge and was never negligent.

In addition, the allegations in **Counts 2, 4, 5, 6, 7, 8, 9 and 10**, which alleged that he failed in his duty and compromise the trust invested on him by conspiring with others to defraud Plateau State, was untrue and the allegation was only made because of his personal and sentiment relationship with Chief Dariye.

As with the other Counts so far analyzed, the Prosecution ought to have done more to ground this Count of Offence but failed to do so and this Count was totally bereft of positive evidence linking the Actions and Thoughts of the Defendants to the actual commission.

Without further ado, the Court finds that the Prosecution failed to demonstrate the involvement and/or complicity of the Defendants to this Crime and they are ALL accordingly found **NOT GUILTY AS CHARGED** and **ALL** are accordingly **DISCHARGED AND ACQUITTED** in respect of this **Count 10**.

Now, the Bulk of the Oral and Documentary Evidence featured particularly in regard to Ecological Funds as contained in **COUNTS 2, 5 AND 8** and the Evidence led in their regard, would be set out extensively. As earlier stated **COUNTS 2 AND 8** relate to Ecological Funds in General whilst **COUNT 5** relate to the Last inflow of Ecological Funds in the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand and Nine Hundred Naira (1, 161, 162, 900) only.

It is important to state that though the Evidence led in respect of the **COUNTS 2 AND 8** are the same, having arisen from a Common Transaction or Set of Circumstances, the Prosecution had elected in **Count 2** to charge **ALL** the Defendants in respect of the Sum of **Two Hundred and Four Million Naira (N204, 000, 000)** under **Section 315 of the Penal Code** for Criminal Breach of Trust. He then decided to charge only the 2nd Defendant and Chief Joshua Dariye in **Count 8** in respect of the Sum of **Two Hundred and Seventy-Three Million (N273, 000, 000)** under **Section 309 of the Penal Code** for Criminal Misappropriation.

Chief Joshua Dariye, in a Separate Charge had earlier been tried and convicted for this Offence, as seen in **Exhibit X** and so, this **Count 8** relates solely to Shem Yaute Damisa.

A very close look at the Ecological Fund for the Sum of N1, 161, 162, 900 Cheque in **Exhibit H**, would show that it was issued out on the 12th of July 2001 and the related Count of Offence for this circumstance is in **Count 5** of the Charge.

The Receipt of these Funds was a period **after** the Instruction of the Accountant General to Diamond Bank Plc., to issue a Bank Draft for the Sum of N204 Million from their Short Term Deposit Account designated for Ecological Funds.

Even though the Funds in **Count 2** related to Ecological Funds, it was **not related** to the Sum of N1, 161, 162, 900 because it was a period of time well before this Sum was received. It had to refer to earlier Ecological Funds.

To prove these Counts, **PW1**, Detective Musa Sunday, stated that his Team discovered that the Plateau State Government had its Statutory Allocation Account with Lion Bank and from this Account; Funds were transferred into the Diamond Bank Account belonging to the Accountant General of Plateau State. These Funds were later transferred into a Diamond Bank Fixed Deposit Account, from which the Sum of Two Hundred Four Million Naira (N204, 000, 000.00) was further transferred through a Cheque dated the 3rd of May 2001 by Signatories to the Account. The Destination of the Cheque was traced to an AllStates Trust Bank Account, where it was cleared but subsequently transferred into another Account belonging to Ebenezer Retnan Ventures.

A Letter was then written to Diamond Bank Plc. requesting for the Statement of Account of the Accountant General of Plateau State and other Relevant Documents. Diamond Bank in its Reply, forwarded Photocopied Certified True Copies of Cheques and Statements of Account of Plateau State, which were tendered and admitted into evidence without any Objection as **Exhibits B1** and **B2** respectively.

PW1 identified **Page 2 of Exhibit B1**, to be the Certified True Copy of the Lion Bank Cheque written in the name of the Accountant General of Plateau State, evidencing the Transfer of Money from Lion Bank Plateau State Government Account to the Accountant General's Account with Diamond Bank.

On **Page 3 of Exhibit B1**, was the Diamond Bank Draft issued in favour of the AllStates Trust Bank in the Sum of Two Hundred and Four Million Naira (N204, 000, 000.00), which was eventually cleared into the Account of Ebenezer Retnan Ventures.

It had been discovered that before this Two Hundred and Four Million Naira (N204, 000, 000.00) Draft was raised, a Written Instruction had initially been issued. He personally went to Diamond Bank's Head Office in Lagos, where he recovered a File. From the Documents in the File, there was a Written Instruction on the Letterhead of "Office of the Accountant General of Plateau State", signed by Mr. Shem Damisa and Mr. Nuhu Madaki, authorizing the Payment.

He identified a Photocopy of a Certified True Copy of the Written Instruction, which was tendered and admitted into evidence as **Exhibit C**.

Under Cross-Examination by Learned Silk representing the 1st and 2nd Defendants, PW1 could not say whether the AllStates Trust Bank was obligated to carry out Instructions of either the Executive Governor or the Account Signatories but it was clear that only the 1st, 2nd and 4th Defendants were Signatories to the Account of Plateau State Government and not the Executive Governor.

According to him, all Monetary Transactions relating to the issuing of Instructions were not carried out in Plateau State but in Abuja.

Under Cross-Examination by Learned Counsel representing the 3rd and 4th Defendants, PW1 stated that aside of the Ecological Funds in **Exhibit H**, other Monies were investigated, one of which was the Sum of Two Hundred and Four Million Naira (N204, 000, 000.00). He could not say whether an Official Instruction was given by the Office of the Accountant General, but could only say that Public Officers occupying Public Offices wrote the Instruction to Diamond Bank to pay these Sums of Money into the Account of Ebenezer Retnan Ventures. It was noted that this particular Instruction did not feature in **Exhibit C**.

PW1 further stated that the Plateau State Government Accountant General's Account in Diamond Bank as well as the Plateau State Government's Statutory Allocation Account in Lion Bank were both domiciled in their Jos Branches.

PW2, Mr. Nosa Osemwekha, the Branch Manager of Diamond Bank Plc., Jos testified on Oath that the Accountant General of Plateau State had an Account with Diamond Bank, opened in the name of, "**Accountant General of Plateau State Government**", which was operated by Plateau State Government.

On the Question of how a Statement of Account was Generated and Certified, PW2 stated that a Statement of Account was generated through inflows and outflows. For every transaction made by a Customer either by way of lodgements or withdrawals, these transactions were reflected in the Account Statement. Upon printing the Statement from the Bank's System, the Statement is then transferred to the Inspectorate Unit of the Bank for comparison. When compared with that obtained from the Bank's System and it is found to be the same, the Unit then certifies it.

To obtain a Certified True Copy of a Statement, the Company Secretary was also involved in the Process Mechanism, to certify the Statement in order to show the Statement's Genuineness.

The Statement of Account of the Accountant General of Plateau State Government was tendered with Ruling reserved in view of the Defence's Objection. On the 15th of June 2006, the Statement of Account of the Accountant General of Plateau State Government was admitted into Evidence as **Exhibit K**.

Shown Two Entries made on the 6th of April 2001 in **Exhibit B1**, the Diamond Bank Statement of Account, evidencing a Lion Bank Cheque in the Sum of Two Hundred and Four Million Naira (N204, 000, 000.00) with another Lion Bank Cheque in the Sum of Sixty-Nine Million Naira (N69, 000, 000.00), PW2 stated that these Two Sums totalling Two Hundred and Seventy-Three Million Naira (N273, 000, 000.00) upon Clearance, was credited into the Accountant General's Account with Diamond Bank.

Based on the Customer's Instruction, the Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000.00) was placed into a Fixed Deposit, and was operated until another Instruction was received from the Customer to Terminate. Upon receipt of this Termination Request, which his Bank obliged, a Draft was issued in favour of the AllStates Trust Bank, which Draft the Customer collected.

PW2 identified **Exhibit C**, to be the Letter through which the Instruction was conveyed to his Bank, for which his Bank complied with, after the Signatories were confirmed and verified. Upon Verification, the Bank affixed its Stamp.

Referred to the **Bottom of Exhibit C**, PW2 stated that as Branch Manager, he authored and signed the Instruction, wherein he instructed the Account Officer to process the Customer's Request. Underneath his Instruction, the Account Officer minuted another Instruction to the Head of Operations to do a detailed processing of the Customer's Request.

PW2 testified further that he issued the Draft in **Page 2 of Exhibit B1**, after debiting the Account. Upon issuance, the Customer collected the Draft and then presented it for Clearing in favour of the AllStates Trust Bank at Abuja.

Under Cross-Examination by Learned Silk representing the 1st and 2nd Defendants, PW2 stated that he was familiar with Clearing and Banking Activities. Shown the Bottom **Pages 3 and 4 of Exhibit B1**, the Diamond Bank Draft issued through him, particularly where the name of the AllStates Trust Bank- Lagos featured, PW2 agreed seeing Ink Marks and a Clearing Stamp and he stated that the Clearing was effected in Lagos, as per the Clearing Stamp. When asked, he, however, disagreed with the point that a Cheque's Value Sum needed to be credited after Clearing.

As regards the Draft issued by him in **Exhibit B1**, he stated that once the Draft gets to the AllStates Trust Bank, this Bank had the liberty to credit any other Account. However, much depended on the Customer's Instruction and the Bank who presented it for Clearing at the Central Bank.

Shown **Exhibit C**, PW2 stated he had not received any Further Instruction from the Defendants and added that the Defendants were not Staff of the AllStates Trust Bank.

Under Cross-Examination by Learned Silk representing the 3rd and 4th Defendants, PW2 stated that he signed the Draft because the Manager was on Leave. Further, throughout his Career in Diamond Bank, he was never instructed to issue a Cheque in the Sum of Two Hundred and Four Million Naira (N204, 000, 000.00) to Ebenezer Retnan Ventures.

According to him, the Company Secretary and the Inspectorate Division were stationed in the Headquarters of Diamond Bank, but the Inspectorate had Internal Representative Officers at the Branch Level of the Bank. Further, the Company Secretary did not prepare the Accountant General's Statement of Account in **Exhibit K**.

PW2 testified that a Team of Police Investigators brought Letters to his Bank and in the process, Principal Officers of the Bank were approached and he was taken to the EFCC Office in Abuja, where he made a Statement.

PW2 identified Instruments in **Pages 3 and 4 of Exhibit B1**, stating that the Instruments, were Crossed Cheques and by implication, could not be paid Over the Counter. Depending on the Bank, such Cheques could be cleared under fraudulent circumstances, and it was a departure from Best Practice for a 3rd Party to clear such Cheques. However, when cleared on a Customer's Instruction, it was considered legal, allowable and not a departure from Best Practice.

Referred again to **Pages 3 and 4 of Exhibit B1**, PW2 stated there was no Instruction, expressly or impliedly, to raise the Banker's Draft in favour of anyone.

He agreed that the Accountant General's Account was an Official Account and any Instruction that emanated therefrom was given in an Official Capacity. All the events that took place in regard to the Draft commenced and were completed in Jos.

When asked, PW2 stated that it was unnecessary for the Accountant General to explain to the Bank, the Use of the Money, as this was not within the Bank's purview. Sometimes, the Bank could ask a Customer what the Money would be used for but the Customer was not obliged to disclose.

Shown **Exhibit K**, PW2 agreed that the Exhibit was in respect of a Closed Account.

As at March 2006, the Accountant General's Account with Diamond Bank remained active and the Cheques under reference indicated a bearing with the then Lion Bank. However, the Funds did not originate from Diamond Bank but from the then Lion Bank, who issued Cheques that, were subsequently cleared into the Diamond Bank's Account.

On the Question of whether the Accountant General's Account with Lion Bank was not required to be resuscitated after Diamond Bank had inherited Lion Bank, PW2 stated that as long as the Diamond Bank Account was active and running without any abnormality, resuscitation would not arise, as the Customer was personally briefed.

PW2 agreed that a Bank would first clear a Cheque before carrying out a Customer's Instruction. The Draft issued by Diamond Bank, was cleared into another Bank, and he would not know the practice of that other Bank.

Shown **Page 3 of Exhibit B1**, he stated that the AllStates Trust Bank was the Beneficiary, it was expected that the Cheque would clear into the Customer's Account to satisfy the Customer's Instruction. Further, he did not know whether the Cheque was countermanded by the AllStates Trust Bank but certainly, Diamond Bank did not do so.

Under Re-Examination, PW2 stated that the Draft was cleared into the Central Bank's Clearing House in Lagos and the Printed Statement of Account was exact same with that fed into the Bank's System.

PW3, Mr. Adamu Garba, through whom the Extra-Judicial Statements of the 2nd Defendant were admitted as **Exhibit L**, stated under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, that he did not witness the taking of any other Statements wherein the 2nd Defendant denied committing any Offence. The Team only recovered a Copy of the Original Cheque of Two Hundred and Four Million Naira (N204, 000, 000.00), which the Bank, as Custodian, was summoned to produce in Court.

Shown **Exhibit B**, the Two Hundred and Four Million Naira (N204, 000, 000.00) Draft, PW3 stated that the Name of Mr. Shem Damisa was not expected to feature in it. He was not a beneficiary of the Draft, and he did not collect the Cheque. All the transactions that birthed the Draft, took place in Jos, Plateau State. Further, his Name did not feature on any Cheque or Teller but had featured only on the Signed Withdrawal Instruction to the Bank.

According to PW3, the 2nd Defendant was responsible for Maintaining the Accounts and Funds of the Plateau State and he did not act in his Official Capacity when he gave his Withdrawal Instruction. Confronted with **Exhibit C**, PW3 agreed it was an Official

Request for Transfer, issued from a Public Office in furtherance of a Public Function. However, these Funds were supposed to have been paid into the Plateau State Government's AllStates Trust Bank Account and not into a Private Account.

When questioned, PW3 stated that the Entire **Exhibit B**, was not made in the Name of an Unregistered Company and none of the Cheques from Lion Bank to the AllStates Trust Bank, featured the Name Ebenezer Retnan Ventures. Further, none of the Staff of Lion Bank and Diamond Bank was detained but were all invited to explain the Movement of Funds, because a Case of Money Laundering was being investigated. He, however, stated that it was only one Staff of the Abuja Branch of the AllStates Trust Bank that was arrested, detained and charged in Kaduna.

According to PW3, when a Draft/Instrument is drawn in a Person's Name, only that Person could take advantage of it. Shown **Page 2 of Exhibit B2**, PW3 stated that the Draft contained in this Page, was issued in the Name of the AllStates Trust Bank, and the Issuer was the Plateau State, with an Account domiciled in Jos.

Further, PW3 stated that no Cheque was issued in Abuja and could not say where the Cheque of Two Hundred and Four Million Naira (N204, 000, 000.00) was issued. According to him, the 2nd Defendant, did not maintain an Account with the AllStates Trust Bank in Abuja but had only instructed the Draft to be payable in Abuja.

PW3 denied being the Maker of **Exhibit K**, the Statement of Account of the Accountant General of Plateau State, and when referred to **Page 7 of this Exhibit**, he stated that the Names of the 2nd Defendant and that of Chief Dariye were not mentioned in the Exhibit. He had however seen where the Names of the 1st and 2nd Defendants were mentioned as Signatories to the Account of the Accountant General. When referred again to **Page 7** particularly the Dates, 6th of April and 3rd of May 2001, PW3 agreed that the transactions emanated from Diamond Bank but added that no Diamond Bank Statement emanating from the Abuja Branch was obtained.

Further, there was no Account bearing the name, Chief Joshua Dariye or Ebenezer Retnan Ventures. However, Chief Dariye's Signatures featured in the Signature Cards as well as in his Instructions to the Bank, which were contained in the Account Opening Package.

There was also no required Passport Photographs as well as the Mandate Signature Card, found in the Account Opening Package.

When asked, PW3 agreed there was nowhere the Sum of Two Hundred and Four Million Naira (N204, 000, 000.00) was the subject-matter of **Exhibits A1 to A3**, the Petition, adding that he had never met the Author of the Petition, Mr. S. Aliyu, D.N. Williams or Mr. Olujimi, the then Attorney General of the Federation.

In their **DEFENCE, DW1**, Mr. Amisu Abdullahi, a Staff from the Banking and Payment Systems Department of the Central Bank of Nigeria (CBN) was acquainted with the Status of each of the Defendants and thereafter was shown **Exhibit C**. This Exhibit was a Written Instruction from the Office of the Accountant General of Plateau State to Diamond Bank to raise a Draft in the Sum of Two Hundred and Four Million Naira (N204, 000, 000). He identified the 1st and 2nd Defendants as Signatories that could validly send instructions to its Banker.

On a Comparative Analysis between **Exhibit C**, the Mandate/Instruction and **Exhibit B1**, a Banker's Draft, DW1 stated that **Exhibit B1** was a Crossed Cheque bearing the words "Not Negotiable" and "A/C Payee Only", and it was issued in compliance with the Mandate/Instruction in **Exhibit C**, with its Beneficiary/Payee being the AllStates Trust Bank. The name of Ebenezer Retnan Ventures did not feature on **Exhibits B and C**, and where value has been paid into Ebenezer Retnan Ventures' Account with the AllStates Trust Bank; this Bank violated the Banking Practice. This was because the Cheque was issued in favour of a Bank, and there was nowhere the name Ebenezer Retnan Ventures was mentioned unless there was a follow-up instruction.

DW1 further stated the proceeds of the Cheque could only end-up in Ebenezer Retnan Ventures' Account, where the Payee used or transferred the proceeds from its own Account and it was impossible for the proceeds to go into any other Account without first going into the Payee's Account. DW1 added that the Issuers of the Cheque could not be held responsible for the proceeds that ended up in the Ebenezer Retnan Ventures' Account.

Under Cross-Examination, he stated that when funds under his control were missing, he would investigate. In the instance of an Accountant General of a State, the Accountant General was supposed to investigate missing funds because he was to reconcile Accounts on a daily basis to discover any anomaly in the Statement and ought to have taken appropriate steps to investigate.

However, instances could arise where investigations cannot be raised, especially where it is assumed the Issuer had knowledge of the missing Funds. When asked whether as a matter of course, Manager's Cheque can be raised in the name of a Bank, DW1 ascribed the word "Payee" to include Individual or Corporate Accounts, including Banks.

Turning to the Draft of N204 Million raised in favour of The AllStates Trust Bank but which ended up in Ebenezer Retnan Ventures, DW1 proposed his opinion that he

would write to his Accounting Officer to find out why the Bank conducted this state of affairs without his instruction.

When asked, DW1 stated he would be not surprised to know that Ebenezer Retnan Ventures was a Company owned by then Executive Governor of Plateau State. It was wrong for a Bank, knowing a Cheque was crossed, to have gone ahead to pay the funds into the Account of Ebenezer Retnan Ventures.

For funds wrongly paid, the Owner of such funds had recourse by writing to his Bank, querying noncompliance with his instruction. Shown **Exhibits B1 and B2**, he confirmed the Sources of the Funds to have emanated from the Account of the Accountant General of Plateau State in Lion Bank.

Under Re-Examination, DW1 was asked who authored the instruction for the Payment of N204Million to The AllStates Trust Bank as Payee, DW1 replied that the AllStates Trust Bank had an Account with the Central Bank of Nigeria and the Draft was credited into that Account. There was no further instruction that the Monies should be credited into a Fixed Account and assuming there was such an instruction, it would emanate from the Signatories that demanded for the Draft.

DW2, Mr. Silas Vongbut denied the allegation that he had anything to do with the Draft in the Sum of N204Million. He first sighted this Draft in 2006, when the EFCC detained and confronted him with it. He had told the EFCC that he had no idea nor had he seen the Draft, which fact he narrated in his EFCC Statements in **Exhibits M and N**. He identified the Draft in **Exhibit B1 at Pages 2, 3 and 4** adding that he did not sign or authorize the raising of the said Draft in **Exhibit C**.

He was aware Ecological Funds were paid on a Monthly basis but could not say when these Funds were received by Plateau State because he was not in charge of such Funds.

He also agreed being a Signatory to Account of the Accountant General for payment instructions for funds as seen in **Exhibit B Page 2 and Exhibit C** respectively. However, he played no role nor knew of the transaction that led to the issuance of **Exhibit C**. He also did not know how much was left in the Plateau State Accountant General's Account. He was only an Alternate Signatory for transactions that passed through him and had no idea of other transactions.

According to him, he was not bound to have knowledge of all the activities that took place unless his attention was drawn to it. The Auditor General, whose responsibility was to audit all Account Statements never drew his attention to any irregularity. This

witness stated that it was not within his schedule of duty to see or secure Bank Statements, even though being a Civil Servant he had a duty to protect Plateau State Funds and to raise an alarm when Plateau State Monies were inappropriately used.

Finally, DW2 stated that the Inspectorate was responsible for inspecting Accounts linked to the Accountant General but he was in charge of only coordinating Staff in the Office of the Accountant General.

DW3, Mr. Emmanuel Agati, testified that sometime in 2006, he and the other Defendants were invited to the EFCC Office in Ikoyi, Lagos State where they were detained for over One Month to offer explanations pertaining to transactions that took place in that year. He was refused the opportunity to verify documents but had offered some explanations in his EFCC Statements in **Exhibits Q, R and S**, and he stood by those Statements.

Referred to **Count 2** of the Amended Charge pertaining to the Cheque of N204Million, he aware of this Sum, stating that it was made payable to The AllStates Trust Bank, in order to reduce the State's Overdraft Exposure, which was made periodically, that is, on Monthly basis, to enable the State meet up with its Salary Shortfalls. This Cheque was never raised in favour of Ebenezer Retnan Ventures.

He identified the Cheque in **Exhibit C**, stating that it was issued in accordance with the laid down procedures and the Two Signatories, were Signatories to the Plateau State Government Mandate.

Shown **Exhibit B1**, he stated this Exhibit was a continuation of the instruction in **Exhibit C** and there was no mention of Ebenezer Retnan Ventures in the Draft. Further, there was no violation of procedure on the faces of both **Page 3 of Exhibit B1 and Exhibit C**.

On the strength of **Pages 3 and 4 of Exhibit B1 and Exhibit C**, there was no reason why the Funds should be paid into any other Bank except to The AllStates Trust Bank, as the Draft was Specially Crossed, Not Negotiable and was for Account Payee only adding further that these writings controlled where the Draft was to go.

He would not know who collected the Draft from the Bank but believed the Signatory that gave the instruction could have collected the Draft. However, the Draft was cleared as evidenced by Diamond Bank's Clearing House in favour of The AllStates Trust Bank, Lagos whose Stamp was affixed on the Draft and The AllStates made no complaint to the Plateau State Government.

According to him, he had no reason to believe the Draft ended anywhere else and his attention was never drawn to the fact that the Draft ended-up elsewhere. He had long forgotten about the transaction till 2006, when the EFCC confronted him with the said transaction. He did not know who caused the movement from one Account to another especially to Ebenezer Retnan Ventures.

Shown **Exhibits B1 and B2**, Cheques payable to the Accountant General, and **Exhibit S at Page 2**, he stated that both Accounts belonged to the State Government Accountant General and the Funds as informed by **Page 2 of Exhibit B1**, were the same and were issued by Lion Bank to Diamond Bank and then to The AllStates Trust Bank as informed by **Page 3 of Exhibit B1**.

According to him, latent anomaly could be noticed on this Draft especially by the endorsements on the Reverse Side of the Draft.

Under Cross-Examination, he agreed he was Commissioner from 1999 to 2007 and all Funds of the State were under his Control. He also agreed he was getting Statements of Account of Plateau State Government and since his tenure, he had raised queries on some transactions, which had nothing to do with Ebenezer Retnan Ventures, because its name did not feature in any of Plateau State's Account and no Cheque or Draft had been issued in its favour. According to him, he only knew Ebenezer to be one of the names of Chief Dariye' sons but did not know the name Retnan or Ebenezer Retnan Ventures.

According to DW3, **Exhibit C**, the Cheque of N204Million, emanated from Plateau State Government AllStates Trust Bank Account, and the Government had access to it in Jos. The Cheque represented a Loan Repayment to cover the State's indebtedness of over and above N205Million. No Payment Instruction in **Exhibit C** emanated from the State instructing that the Sum therein should be paid to Ebenezer Retnan Ventures, and the Bank, certainly would not be in the custody of such Payment Instruction. The Negotiation of the Facility came through an Instruction from the Executive Governor and not him.

When asked, DW3 stated that he did not have any proof that Plateau State was indebted to the AllStates Trust Bank but the Bank was furnishing Statements of Accounts for Loans, Salaries etc. He only noticed the Sum of N204Million from the Statement of Account, and there was nothing more to be done, since the Sum was meant to reduce a debt. There was also no Narration from the Statement of Account, as what was raised was a Draft from Diamond Bank to The AllStates Trust Bank and therefore, he could not see the Draft going into another Account.

The Auditor General audited yearly the Plateau State Account and the audit did not notice the N204Million.

When asked, DW3 stated that the Salary Account moved from Lion Bank to The AllStates Trust Bank but could not remember the exact period this movement occurred and was confronted with **Exhibits Q, R and S**.

Finally, he confirmed the Signature in **Exhibit H** belonged to Chief Dariye.

DW4, Nuhu Ali Madaki, was shown **Exhibit C**, the Written Instruction to Diamond Bank for the Sum of N204Million and he identified his Signature as well as that of Mr. Shem Damisa, the 2nd Defendant. He also identified the Diamond Bank Draft in **Exhibit B1 at Pages 3 and 4** stating that the Bank honoured their request but did not see the Original Draft when the Bank issued it.

He denied the allegation of diverting the Sum of N204Million in **Count 2**, stating that the procedure was proper. He did not benefit from the Draft, he did not know Ebenezer Retnan Ventures or whether the alleged Sum was paid to it. He only heard of Ebenezer Retnan Ventures from the EFCC in 2005.

According to him, in all the Ten Counts, he only knew Chief Dariye as the Executive Governor of Plateau State. DW4 stated he was not responsible for any impropriety as he only signed Written Cheques and not blank Cheques. At no time, was Ebenezer Retnan Ventures a Payee and he never derived any benefit from this Company.

Under Cross-Examination, the 1st Defendant stated that for the period of over 5 years, working in the Ministry of Finance, he knew the dos and don'ts of Public Finance, and knew of the need to preserve its financial integrity, and this obligation was a binding responsibility on all Government Officials. He did his best to prevent financial losses to the State and there were lots of procedures put in place to prevent fraudulent behaviours. All the State's Drafts were Crossed, Account Payee Only and Non-Negotiable and when the procedures were properly followed, there would be no room for fraud.

Further, no money could leave Plateau State Government's Account without his Signature and that of the then Substantive Accountant General.

He was Deputy Director Treasury when the State's Account moved from Diamond Bank to The AllStates Trust Bank, because the State started experiencing salary payment

difficulties. However, he could not say in what year the Movement of Account from Diamond Bank to the AllStates Trust Bank occurred.

When confronted with **Page 2 of Exhibit B1**, the Instruction by the Accountant General to Lion Bank and a Cheque dated 5th April 2001, DW4 could only say that he signed the Cheque as Signatory to Plateau State Account.

DW4 pointed, however, that the Cheque earlier referred to him, was not the Cheque addressed by **Exhibit C**. He explained that as at 5th April 2001, Plateau State Government Account was maintaining a Fixed Term Deposit of Three (3) Months with Lion Bank alongside a Deposit Account with Diamond Bank. He signed a Cheque for the favour of Diamond Bank and a follow-up Instruction was given to Diamond Bank to make available to The AllStates Trust Bank the Sum of N250Million.

DW4 denied any involvement in the taking of any Loan or repayment of any Loan, stating that the Draft of N204Million was meant for Restructuring of the Government's Commitment drawn in form of a Loan Overdraft. The AllStates Trust Bank continued restructuring of the Account by extending further facility through a continuous arrangement with the State Government.

DW4, Mr. Nuhu Madaki, considered it unfortunate that Plateau State Government had lost the Sum of N774Million to Ebenezer Retnan Ventures under their watch but added that, as Defendants, they had followed due process.

According to DW4, he did not betray any Trust with regard to the Sum of N204Million. When signing the N204Million Cheque, he was not informed of the purpose and for whom, the Cheque was meant for. All he knew was that it would be used to negotiate Salary Payments and at that time, the State experienced incessant salary crisis or backlogs of salaries, which needed to be cleared in order to avert Staff Strike.

When asked, DW4 could not backup the aforesaid assertion with any Documentary Evidence, but stated that from the normal operation with the Bank, the Money was intended for salaries. DW4 answered in the negative that he did not mention the fact that the Sum N204Million was meant for payment of salaries in his EFCC Statements in **Exhibits O, U and J**.

When asked, DW4 stated that a Cashier was responsible for cashing the Cheque and he supervised the lodging of the cash in his Office but he, personally, never made any cash withdrawals.

According to him, it was from the EFCC he got to know that the Cheque of N204Million was diverted into the Account of Ebenezer Retnan Ventures. They as Officials had no reason to complain to the Bank, as salaries were being paid.

DW4 maintained that he did not neglect his duties or commit theft or fraud in regard to these diversions and after the discovery that funds of the State were diverted; he had no reason to take steps, since investigations were ongoing.

When confronted, DW4 disagreed leading any evidence pertaining to being forced to append his Signature or to reporting any such occurrence.

Under Re-Examination, he stated that was a connection between Chief Dariye and Ebenezer Retnan Ventures over the Sum of N204Million. Chief Dariye was this Company's alter ego and was convicted in regard to that Sum.

DW5, Mr. Shem Damisa, testified that Chief Dariye was the personality behind that Ebenezer Retnan Ventures, into whose Account the Sum of N204Million was paid into as contained in **Count 2**.

It was his testimony that Plateau State, at that time had serious issues with Payments of Salaries as well as with its Banker, Lion Bank. All Statutory Allocations and VAT of the State were paid into Lion Bank, but the Account was overdrawn above limit.

Unfortunately, it was also around that time that Civil Servants embarked on a Strike over non-payment of Salaries and in the process, a Director was killed. Therefore, the Payment of Salaries became a priority whereby Chief Dariye, negotiated credit lines on behalf of the State.

Through the Executive Governor's overtures to the AllStates Trust Bank, another Account was opened into which Internally Generated Revenue and other Revenues were paid into. The AllStates Trust Bank supplied the State with an Above Limit Credit Lines and from there, salaries were paid.

According to DW5, the AllStates Trust Bank had its Branch in Jos whilst the Regional Office was situated in Abuja. Even though the credit line in Jos Branch was above limit, the State exhausted that Limit leading to further discussions being channelled to the Regional Office in Abuja, who in turn, liaised with its Headquarters in Lagos.

According to him, he issued out Instructions for the Sum of N204Million to be brought to the Regional Office of the AllStates Trust Bank in Abuja in order to negotiate more lines and to demonstrate the State's willingness to service the Account.

This fact explained the reason why the Cheque was raised in favour of the AllStates Trust Bank, Abuja. He further explained that the Cheque was written in favour of Diamond Bank, Jos with an instruction to raise a Certified Cheque/Draft to the AllStates Trust Bank, Abuja. His Instructions were that the Cheque must be "Crossed", marked

“Account Payee Only” and it must not be negotiated. In compliance with his Instruction, the Account was subsequently debited.

DW5 identified his Instruction as well as his Signature and that of the 2nd Defendant in **Exhibit C**, and the Beneficiary was the AllStates Trust Bank. According to him, the State kept on receiving lines of credit up and until he left Office in 2003 and he could not recall any one time, the Bank returned their Cheques based on any deficiency.

DW5 again identified the Draft, in **Page 2 of Exhibit C**, acknowledging it to be Draft raised as per his instruction and highlighted the Controls, i.e. Crossed, Account Payee Only and Non- Negotiable that were reflected on it.

He played no role in the making of the Draft or in rendering the Controls ineffective. It was only Diamond Bank, now Owners of Lion Bank, that could negate the consequence of these Controls/Protections and after the Cheque was issued, his Office had no access to it again.

As at 2001, he did not know Ebenezer Retnan Ventures nor know that the Cheque of N204Million was paid into that Company’s Account, until the EFCC invited and confronted him with the Cheque.

Upon examining the reverse side of the Cheque, he discovered that the Cheque did not authenticate EFCC’s allegation that the Cheque was paid into Ebenezer Retnan Ventures’ Account, as Ebenezer Retnan Ventures’ Name was not reflected therein. What he saw on the reverse side of the Cheque was the Executive Governor’s Directive and Signature that the money be paid into Chief Dariye’s Account. According to him, even though Chief Dariye was the Executive Governor, he was not a Signatory to any Treasury Account and he was amazed at the fact the Executive Governor, not being a Signatory, negated Diamond Bank’s Cheque Instruction.

The AllStates Trust Bank did not pay this Cheque but must have returned it back to Diamond Bank, who upon sighting the endorsements, still went ahead to pay. As a Banker, this ought not to have been done otherwise it was fraud. He had told the EFCC that the Bankers and their Agents were involved in the decision process of this Cheque. He had also told the EFCC that Diamond Bank should have been made to pay back the Money because it issued out the Instruction but turn round to breach the agreement. It was contrary to the Controls and evidenced the fact that the Two Banks colluded and the EFCC should have made them pay back the Money.

Further, the AllStates Trust Bank was not an Individual, for which one would expect it to endorse a Name and then pay it into that named Account.

DW5 stated that his responsibility and those of his Colleagues ended with the Instruction and the Draft, upon issuance, became an Instrument of the Bank. Not even the Managing Director of Diamond Bank could have endorsed the Cheque to anybody. The best the Banks could have done was to return the Cheque back to the State but they never did nor told them that the Cheque had been endorsed. To his amazement, the Bank Manager, Mr. Nosa, who had testified that there was nothing wrong with the Payment of the Crossed Cheque, was a Suspect, because he paid the Cheque into Ebenezer Retnan Ventures' Account but the Prosecution decided to call him as a Witness instead of charging him.

According to him, Chief Joshua Dariye from his training in Accountancy knew monetary diversions were improper and therefore was at fault, as the Banks assisted him and both of them knew what they were doing.

DW5 stated he was not privy to any diversion of the Cheque nor did he benefit from it, as the entire act of diversion was executed in a surreptitious manner. Had he benefitted, it would have been discovered. Further, Chief Dariye never briefed them on it and they knew nothing about the diversion of the Funds in the Cheque until five (5) years later after they had left Office.

Learned Silk, G.S. Pwul tendered the Certified True Copy of the Amended Charge preferred against Chief Joshua Dariye, which was admitted into evidence as **Exhibit W**.

With specific reference to **Count 8**, which pertains to the 2nd Defendant, who was alleged to have Converted to his own Use the Sum of **Two Hundred and Seventy-Three Million Naira (N273, 000, 000)**, the 2nd Defendant stated that he did not know where this Charge emanated from, adding that he only signed on the behalf of Government, a Cheque of Two Hundred and Four Million Naira (N204, 000, 000). According to him, Chief Dariye was not a Signatory for which his Signature would then be required in order to transfer the Cheque to Ebenezer Retnan Ventures.

On the question of the relationship between the Two Cheques in the Sum of N204Million and N273Million, DW5 stated that when the Sum of N204Million and N69Million are added up, it would total N273Million but it was not a Single Transaction.

He explained his Office initially moved the Sum of N204Million from Lion Bank to Diamond Bank, because Diamond Bank offered an Attractive Interest Rate for Fixed Deposits. But upon further discovery that Sums above N250Million had a much higher Interest Rate, another Sum of N69Million, was moved into that Account, totalling N273Million.

According to him, the Plateau State Accountant General's Diamond Bank Statement in **Page 12 of Exhibit B** evidenced the crediting of the Sums of N204Million and N69Million into the Diamond Bank on the 6th of April 2001.

On the 2nd of May 2001, a decision was taken, to instruct Diamond Bank to transfer to the AllStates Trust Bank, the Sum of N204 from its N273Million Fixed Deposit. **Page 10 of Exhibit B** evidenced the Instruction to Diamond Bank to issue in favour of the AllStates Trust Bank's Regional Office in Abuja, a Draft in the Sum of N204Million. Diamond Bank carried out the Instruction on the 3rd of May, as also evidenced in **Page 12 of Exhibit B**.

Upon the happening of this Movement, the Fixed Deposit was terminated, the Residual Balance of N69Million was rolled-over into another Diamond Bank Residual Account and thereafter, he had nothing to do with the Sum of N204Million.

DW5 stated that the Sums of N273Million and N204Million in **Counts 17 and 18 in Exhibit W**- Chief Dariye's Amended Charge, had the same source, but he denied being Chief Dariye's ally in converting these Amounts.

Learned Silk tendered Certified True Copies of Cheques, which featured in Chief Dariye's Case and was admitted into evidence without any Objection as **Exhibit W4**. DW5 was then shown **Exhibits B and C** and asked to compare the Cheques. It was his testimony that the Exhibits, Cheques and Dates were all the same.

DW5 stated that all payments from the Government Accounts that were under his control were made through Cross Cheques only, which were also labelled "Not Negotiable and Account Payee Only".

He ceased to be Accountant General of Plateau State on the 31st of October 2003, shortly after Chief Dariye's Second Tenure commenced, and since then, he had nothing to do with Government Cheques.

Under Cross-Examination, DW5 denied stating that the Ten (10) Counts of the Charge took place after he had vacated Office. He upheld the financial integrity of Plateau State to the best of his ability and knowledge and was never negligent.

When the Charge against them was filed, Chief Dariye was still Executive Governor of Plateau State.

According to him, he was not a Signatory to all Government Accounts but to Treasury Accounts into which Central Revenue, Taxes, VATs etc., were paid into. The Accounts into which these funds were paid into included the AllStates Trust Bank, Lion Bank and Diamond Bank and he was a Signatory. As for Agencies, Departments, and Boards, his permission or authorization were never required to open an Account.

For a Beneficiary to collect a Draft, that Draft needed to pass through the Owner's Account and the Owner would have been aware of it. He was not aware that Cheques were issued to Companies that did not have Accounts.

He agreed the AllStates Trust Bank gave the Plateau State a credit line and an Account was opened.

It was at his behest the Sum of N204Million was moved from Lion Bank to Diamond Bank. The purpose was to deposit this Sum into a Fixed Account for a Period, which Fixed Account was later terminated and he was acting under Instruction. The subsequent movement of the Draft of N204Million from Diamond Bank to the AllStates Trust Bank was a precondition for negotiation of Salary Payments through Overdrafts and not for Repayment of Loans. According to him, the Executive Governor was in a better position to answer the diversion of the N204Million.

When asked, he stated efforts were made towards obtaining the Bank Statements, his colleagues had even made similar request but by the time Bank Statements arrived, the Books were carted away.

DW5 reiterated his evidence of Riots ensuing with a Director being killed in the Secretariat, adding that he did not have any proof nor could produce any evidence to substantiate this evidence, as it was not his responsibility to do. Further, the EFCC should have gone to the Police to find out the cause and consequence of the Riot.

He was then confronted again with **Exhibit L at Page 6 Lines 20-23**, and he explained that the withdrawal was for Treasury Use and not for Individual Use.

According to him, all the allegations including **Counts 2and 8** were untrue but only based on his sentimental relationship with Chief Dariye.

Learned Silk G.S. Pwul, tendered from the Bar, a Certified True Copy of the Judgment delivered against Chief Dariye, which was admitted as **Exhibit X**.

Now, the Court observes that **EXHIBIT B2**- the Reply Letter from Diamond Bank, confirmed that the Two Lion Bank Cheques in the Sum of N204Million and N69Million drawn on the Account of the Accountant General of Plateau State *were the Source of the Funds that funded the Account belonging to the same Accountant General Plateau State in Diamond Bank Plc.*

In the Two Cheques, Lion Bank was ordered by the Accountant General Plateau State Jos to pay Two Distinct Sums, which from **Exhibit B2** showed they were processed. It can be deduced from **Page 3 of this Exhibit** that the Sum of N204Million was made out

in favour of AllStates Trust Bank in the form of a Draft that was Crossed and marked Not Negotiable and Account Payee Only.

It can also be seen from the Reverse Side of this Draft that it was duly cleared on the 9th of May 2001. The Eventual Destination of the Funds in the Draft was an AllStates Trust Bank Account. This factual position is vastly different from the testimony rendered by the 2nd Defendant, Mr. Shem Damisa, who stated that the AllStates Trust Bank returned the Draft to Diamond Bank, as per the endorsement in the Draft and it was Diamond Bank that paid out the funds.

Mr. Shem Damisa made this statement without proof. The Court is only concerned with Factual Documentary Evidence and therefore, recourse has to be had to **Exhibit C**.

Exhibit C is a Letter written to the Branch Manager of Diamond Bank Mr. Shem Damisa and Nuhu Madaki on the Letterhead Paper of the Office of the Accountant General Plateau State bearing Reference Number **S/AG/PLS/820/X** dated the 2nd May 2001.

The Content of the Letter was a **“REQUEST FOR BANK DRAFT FOR N204, 000, 000.00”** and it is expedient to set with precision this Letter thus: -

“Please issue Bank Draft in favour of All States Trust Bank Plc. payable at Abuja for the Sum of N204, 000, 000.00 (Two Hundred and Four Million Naira) only from our Short Term Deposit Account meant for Ecological Fund.

2. Please treat as urgent.

3. Thank you for your usual co-operation.”

In this Exhibit and by the Endorsements thereon, the Diamond Bank processed the instruction on the 3rd of May 2001 and honoured same by issuing out Two Sets of Instructions as follows: -

“As per Customer’s Instructions kindly process.”

The Second Set of Instruction then reads thus: -

“HOPs

Please terminate their deposit of N273 million. Transfer the Principal plus the Accrued Interest to their Current a/c no 015- 2130000105. Kindly rollover the balance as per attached dealslip.”

Exhibit B2 also known as **Exhibit K**, that is, the Statement of Account belonging to the Accountant General of Plateau State evidenced the performance of these Sets of Instructions authored by the 1st and 2nd Defendants.

At **Pages 6 to 14 of Exhibit B2**, it captures the fact that the Diamond Bank Current Account NO. 0152130000105 belonged to the Accountant General Plateau State Jos, with a Start and End Date being the 1st of August 2000 and 9th of March 2006 respectively.

In this Statement of Account as seen from the Column captioned “**Description**”, the name “**Madaki**” featured therein and as per the Transaction Narration, he deposited into Diamond Bank Two Lion Bank Cheque Numbers *00001031* and *00001032* encasing the Sums of Two Hundred and Four Million Naira (N204, 000, 000) and Sixty-Nine Million Naira (N69, 000, 000) on the 6th of April 2001.

Six Days Later, as stated in the Account Statement, on the 12th of April 2001, the Two Sums were credited into a Fixed Deposit, totalling the Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000).

The next line of Transaction occurred Twenty-Seven (27) Days after, precisely on the 3rd of May 2001, when the AllStates Trust Bank Abuja, took the benefit of the Sum of Two Hundred and Four Million Naira (N204, 000, 000), whilst the balance of Sixty-Nine Million Naira (N69, 000, 000) was rolled over into the Fixed Deposit Account.

The 1st Defendant, Mr. Madaki tried to dissociate himself from the Consequence of this Cheque, because he stated that he did not see the Original Draft when the Diamond Bank acted on his instruction to issue the Draft in favour of the AllStates Trust Bank. The Question then becomes, how he then knew that the Bank honoured his request, as this was not stated.

Further, Nuhu Ali Madaki, in his Extra-Judicial Statement in **Exhibits O, P, T and U**, made no mention of any Amount in connection with the Charge in **Counts 2 and 8**. Aside of being a Signatory to the Account, which the Prosecution tendered as an **Exhibit B**, and aside of **Exhibit C**, the Prosecution did not tender any other Document.

As regards, the 2nd Defendant, Shem Damisa, in his Extra-Judicial Statement dated the 25th of January 2006 admitted as **Exhibit L**, he had requested from the Investigators, additional information either from Diamond Bank or from his Office to enable him shed more light on this Transaction. He acknowledged this Sum involved a Debit Transaction in favour of the AllStates Trust Bank, which also appeared to have been an Instruction from his Office that was effected either through a Cheque or a Written Instruction.

According to him, the Bank ought not to debit the State Governments’ Account without the Signatures as per the Mandate File. This was absolute and brooked no exception, which included the Executive Governor. Any unauthorized debit would elicit a Query to

the Bank, and a reversal would be effected or if execution were subsequently regularized, then that would be deemed satisfactory.

In essence, the 2nd Defendant did not comment on the N204Million and N273Million emanating from the General Ecological Funds. All that can be seen is that he requested for more information from the EFCC Investigators, but was not obliged. Had he been obliged with his Requests or confronted with proper investigations through tracking and tracing, more information would have been elicited from him. But as it stands, the investigation hit a dead end!!!

The Court notes that there were no Further Statements elicited from him, no further investigations through the Banks, his Office, Files, Interviews with Staff, no inspection of Cheques, no further inquiries and also, no search into his actual activities or participation into these withdrawals and any of his own personal Bank Statements.

The Prosecution needed desperately to have proved a Dishonest Intention on his part to misuse or divert funds of the State Government or even to show his willingness to obey unlawful instructions. The Offence of Criminal Breach of Trust at the very least, requires malice aforethought.

The 2nd Defendant, Mr. Shem Damisa, was the Golden Goose Candidate for the Prosecution. By that I mean, he was the Prime Goose that ought to have laid the Golden Egg. No transaction of the State could have been done in his absence or without his Knowledge and Consent. He, as one of the Prime Custodian of Plateau State Government Funds, had the Financial Affairs of his State at his fingertips and he would have responded further, had he been obliged with the Documentation he requested for. But clearly, the Prosecution did not supply him and went to sleep failing to carry out further investigations and probe into the 2nd Defendant's particular involvement.

In any event, even if all the Funds were withdrawn, as they were in this Case, mere withdrawal from Plateau State Government's Account does not connote an Illegal Activity and the Intention to Divert, Misappropriate or Misuse, Dispose off, Convert, which must all be proved, to have been carried out **DISHONESTLY**.

Apart from the above, the Prosecution had to also show that the 2nd Defendant either unilaterally, acted or was knowingly under an Illegal Instruction. It was needful for the Prosecution to weave him inextricably into the Plot to divert State Funds. This is because the 2nd Defendant was not into any Transaction but was firmly into all Payments. The paying out of Funds was a regular business and the order of the day for the 2nd Defendant, and the Prosecution ought to have shown Dishonest Intention and most importantly, shown wrongful loss to Plateau State. There was no proof of

dereliction of duty and negligence in regards to the 2nd Defendant, as the Funds could have been Legally Withdrawn but used for Unlawful Purposes.

The 3rd Defendant, Emmanuel Agati, in his Extra-Judicial Statement dated the 25th of January 2006 in regard to **Count 2**, had promised to provide the Investigators with more details and revert.

He denied knowledge of Ebenezer Retnan Ventures. Stating further that at certain times the State had issues and differences with Lion Bank that warranted moving Salary Transactions to the AllStates Trust Bank. Sometimes, shortfalls were experienced that necessitated moving any balances from other Banks to enable the AllStates Trust accommodate Salary Cheques drawn on them.

Now, clearly as Commissioner of Finance, the 3rd Defendant had the responsibility to monitor and ensure probity in the Financial Sector of his State. He promised to revert to the investigators with more details and if he had done so, this was not evident on Record.

Even though his duties involved that of approving the Release of Funds, the Prosecution needed to have shown Beyond Reasonable Doubt that these Releases were done with the Intent to divert State Funds for an Unlawful Purpose.

The evidence adduced from the 3rd Defendant's Statements is that he was the Chairman of the State's Tender Board with an Approval Threshold/Limit of Two Million, Five Hundred Thousand Naira (N2, 500, 000). Therefore, if the Prosecution seeks to indict him for these varied Sums of Monies, clearly over his Approval Limit, then they needed to do more.

The Prosecution could have positively linked his activities concerning those releases to Criminal Activities. The Prosecution could even at the barest minimum have linked his activities to incompetence and gross dereliction of duty. There was so much more the investigators could have done in relation to each Specific Count.

The Statement of Accounts furnished in **Exhibits B2 (as well as in Exhibit K)** was virtually dumped on the Court and it is important to state that, it is not the duty of this Court to begin to demonstrate how the Offence was committed. The Prosecution Witness may point out the specifics but the buck does not stop there, as questioning the Witness is one thing whereas ascertaining Criminality is another.

The Prosecution ought to have discounted or rebutted the 3rd Defendant's defence on the Movements of State Funds that was ordered within the Banks and from one Account to another in order to accommodate Salary Transactions. This, the Prosecution failed to do and also failed to pursue the 3rd Defendant's request to revert back to the investigators in regard to the Sum of N204Million and N69Million. That part of the investigation faded away and nothing more was done.

It is worth noting that this Defendant had even assumed taking responsibility for any of his Staff's lapses in reconciling Accounts and this ought to have given the Prosecution the impetus to dig further.

The 4th Defendant, Silas Vongbut, in his Extra-Judicial in **Exhibit M** dated the 24th of January 2006 with regards to Various Sums of Monies in **Counts 2** through to **10**, had stated that he could not remember any payment in respect of a Project that he personally signed for. He also could not recall the Payment Details of these Cheques from Plateau State Government and maintained assertively that he never signed for the Transfer of Funds from Plateau State Government Accounts to any Private Account.

Further, whilst being a Signatory, he never observed or reported any irregularity of payments.

In his Second Extra-Judicial Statement in **Exhibit N** dated the 27th of January 2006, when presented with the Cheque of N204Million, he noted that none of the Signatures in this Cheque belonged to him and he could not recall instructing the Bank to pay this Sum into a Private Company's Account named Ebenezer Retnan Ventures.

Even though he was part of the Designated Signatory, he did not sign every Cheque. He only signed duly authorized and processed payments. All details of Plateau State Government Accounts were maintained by the Expenditure Controls, which monitors and keeps Records. He had no authority whatsoever to direct the change of destination of a Cheque from One Account to another.

Now, as regards the 4th Defendant, the only thing that brought him into the Charge was the fact that he was just an Alternate Signatory and nothing else.

There was no Cheque or Instrument that showed that he signed instead of any other Signatory in the Sums of Monies contained in the Charge.

There is absolutely nothing to link this Defendant with the Commission of any Offence in the Charge. Nothing!!!

In conclusion and flowing from above analysis, the Prosecution had the duty to show Criminal Breach of Trust through Diversion, Conversion, Use and Unlawful Disposal and Misappropriation of the Funds with Malice Aforethought, and with active participation or complicity or condoning or conniving of the Criminal Act by each of the Defendants.

The Prosecution also had the duty to harness all the Elements, as set out above, necessary to ground a charge of Criminal Misappropriation in respect of Shem Yaute Damisa, the 2nd Defendant but aside of showing the Movement of the Money, failed to show the Illegal Purpose for the Movement. Once the Defendants had raised the flag of Overdraft Debt Settlement and once they had explained that the Draft written in the name of AllStates Trust Bank was actually meant as a Final Destination, being payment of a Salary Loan Overdraft of over N205Million, the Prosecution then had a job to do, if they were serious. From their Collective Accounts, it appears that they were not expecting any further and future accountability for this Sum of N204Million, because it was to offset, bring down their Debt Portfolio. By this assertion, it cannot reasonably be expected that they monitor perceived settled debts. There was no comeback to this Money from their renditions.

Investigations, therefore, could have been conducted at the Salary Accounts Department and Expenditure Controls Department to confirm this Debt Portfolio owed. The Prosecution should have explained the outcome of the balance in the Sum of N69Million that was not transferred to the AllStates Trust Bank.

Further, the Account of AllStates Trust Bank itself was not tendered and neither was there Documentations obtained from the Bank itself indicating Instructions to move the Funds into Ebenezer Retnan Ventures Account. It is clear that the Bank would not have acted unilaterally in this regard.

All the Defendants claimed not to know anything about Ebenezer Retnan Ventures until their investigation interviews in Lagos and so, the Prosecution had the added duty to disprove this denial. The Prosecution could either have produced the Register of Contractors or Payment Vouchers or even adduced Deep Personal Relationships between these Sets of Defendants and the Erstwhile Governor.

As a matter of fact, the Sum of N273Million in **Count 8** was not entirely proved to have been diverted. This is bulk sum from which the Sum of N204Million set out in **Count 2** was transferred. The Balance of this Sum, N69Million was not proved to be diverted. As a matter of fact, the Money is said to still remain in the Diamond Bank Account belonging to the State.

As it stands, the Monies in **Count 2** diverted into the Account of Ebenezer Retnan Ventures was not proved to be diverted by the Defendants on Record. Mere Instructions to transfer cannot be equated with Misappropriation.

Even though the State Accounting Officers in the persons of the 1st, 2nd and 3rd Defendants may be accused of Gross Negligence and Incompetence in failing to monitor their own State Bank Account Statements, which ought to show that the Salary Overdraft Facility had not been discharged and the Auditor General of the State failed to detect the disappearance of the Sum of N204Million, their negligence and incompetence, is found not to graduate into a Criminal Activity on their part. It can be said that they were expected to monitor past paid debts but the fact still remains that that Sum of N204Million still had to reflect on their Debt Portfolio and that should have rang a warning bell to their ears.

In conclusion, the Prosecution failed to establish the Culpability of all the Defendants in regard to **Count 2** for Criminal Breach of Trust and as against the 2nd Defendant in **Count 8** for Criminal Misappropriation.

They are accordingly found **NOT GUILTY AS CHARGED** and **ALL** are accordingly **DISCHARGED AND ACQUITTED** in respect of this **Count 2** and the 2nd Defendant is found **NOT GUILTY AS CHARGED** and **is** accordingly **DISCHARGED AND ACQUITTED** in respect of **Count 8**.

As regards **COUNT 5**, all the Defendants were alleged on the **19th of July 2001** to have diverted Funds belonging to the Plateau State Government Ecological Funds in the Sum of One Hundred and Seventy-Six Million Naira (N176, 000, 000) into the Private Account of Ebenezer Retnan Ventures.

It is noteworthy that this particular Count is the only Count in this Charge that specifically relates to the N1, 161, 162, 900 Billion CBN Cheque meant for Ecological Purposes issued for the Year 2001.

The Oral Evidence and Exhibits led by the Prosecution centred heavily on the Facts and Circumstances of this particular transaction in the Cheque. The Circumstances under which the Investigation arose, the Processes involved, the Steps taken by the Investigators and the Exhibits tendered are all well set out in the Narrative above and there is no need for any repetition here.

All that the Court is interested in at this point, is whether the Sum of One Hundred and Seventy-Six Million Naira (N176, 000, 000), which is clearly part of the CBN Cheque of N1, 161, 162, 900 as seen in **Exhibits, F1, F2, H and J** was diverted by these Particular

Set of Defendants. It is also important to carefully peruse the Account Opening Details to see whether they were Owners, Part Owners or Beneficiaries of the Account belonging to Ebenezer Retnan Ventures.

Therefore, for their culpability to be determined Beyond Reasonable Doubt, the Court must of necessity examine their Criminal Contributions, Inputs and Activities as proved by the Prosecution.

It is clear that from **Exhibits F1 and F2**, this Specific Sum was under Chief Joshua Chibi Dariye's Express and Unequivocal Instruction to the AllStates Trust Bank to be paid into the Private Account of Ebenezer Retnan Ventures.

The Prosecution now has the burden to establish that the Designated Signatories or Alternate Signatory to the Plateau State Government Account with the AllStates Trust Bank, whether from the Jos or Abuja Branch, specifically mandated or condoned the diversion from this Legitimate Account into an Illegitimate Account and that is the Crux.

Therefore, the evidence as adduced by the Prosecution must be scrutinized thoroughly.

In proof of this, PW1, Detective Musa Sunday, in his Examination-in-Chief, identified Two Sets of Instructions in **Exhibit E**, containing (a) A Handwritten Instruction; and (b) A Typed Instruction both signed by Chief Joshua Dariye for the disbursement of the Sum of N1, 161, 162, 900.00.

After a Considered Ruling, both the Handwritten and Typed Instructions were admitted into evidence as **Exhibit F1 and F2** respectively.

A Request was then sent to the Federal Ministry of Finance, who supplied Certified True Copies of Documents, including a Central Bank of Nigeria Cheque from the custody of Mr. James Adewusi. Another Request was also sent to the Central Bank to supply the Cheque, which the Central Bank honoured by sending a Certified True Copy of the Cheque. The Certified True Copies of the CBN Cheque and other Documents were admitted into evidence, after a Considered Ruling, as **Exhibits H and J**.

Shown **Item 4** of **Exhibit F1**, PW1 stated that the AllStates Trust Bank complied with the Instruction by disbursing into the Account of Ebenezer Retnan Ventures the Sum listed in **Item 4**.

According to him the Investigation Team discovered that following a Written Request by the Executive Governor of Plateau State, Chief Joshua Dariye, the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) was approved from the Ecological Funds Office and sent to the Ministry of Finance, where a Payment Voucher was prepared, and a Cheque

raised in favour of Plateau State Government. The purpose of the Approval was to control the ecological problems experienced in the State. The Cheque was then placed into AllStates Trust Bank.

The Investigation Team further discovered that the Sum of One Hundred and Seventy-Six Million Naira (176, 000, 000.00) from the Ecological Fund Cheque issued by the Central Bank of Nigeria, was paid into the Account of Ebenezer Retnan Ventures with the AllStates Trust Bank.

Page 2 of Exhibit H evidenced a Clearing Stamp of the AllStates Trust Bank Abuja Branch, which showed that the Cheque was presented by the AllStates Trust Bank and after Clearing the Cheque, the Bank then disbursed the Monies as instructed by the Executive Governor in his Handwritten and Typed Instructions.

According to PW1, as at the date this CBN Cheque was issued, Mr. Shem Damisa, Mr. Nuhu Madaki and Mr. Silas Vongbut, were Signatories to Plateau State Government Accounts and more particularly, Mr. Shem Damisa was the Accountant General, who doubled as Signatory A for Plateau State Government Accounts.

Under Cross-Examination by Learned Silk representing the 1st and 2nd Defendants, PW1 agreed that **Exhibit H**, the CBN Cheque, was not cleared into an Existing Plateau State Account on the instruction of the Executive Governor of Plateau State, adding that only the Sum of Five Hundred and Fifty Million Naira (N550, 000, 000.00) from the Ecological Fund was cleared into the Account of Plateau State Government. PW1 was asked to show where the AllStates Trust Bank was the Banker of Plateau State, as seen from the Stamp affixed in the Central Bank Cheque, PW1 made no response.

According to him, the Clearing of Cheques had no Limitations and in this particular instance, value was given to the Cheque following the crediting of the Sum of Five Hundred and Fifty Million Naira (N550, 000, 000) into the Account of Plateau State Government.

When asked, PW1 could not say whether the AllStates Trust Bank was obligated to carry out Instructions of either the Executive Governor or the Account Signatories but it was clear that only the 1st, 2nd and 4th Defendants were Signatories to the Account of Plateau State Government and not the Executive Governor.

Shown **Exhibit E**, the Account Opening Package for Ebenezer Retnan, PW1 confirmed that none of the Signatures of the Defendants were contained in the Exhibit. Apart from **Exhibit C**, he did not discover any Instruction that linked the Defendants to any of the Banks or any evidence that they operated the Ebenezer Retnan Ventures Account.

According to him, the CBN Cheque was presented in the Abuja Branch of the AllStates Trust Bank and one of the Instructions was written on the Letterhead Paper of the Plateau State Executive Governor. The AllStates Trust Bank in the usual course of banking business carried out the Two Sets of Instructions addressed to them by His Excellency, Chief Joshua Dariye, the Signatory of that Account.

Apart from the above, PW1 could not say whether the disasters complained of in the Former Governor's Plea Letter to the Vice President requesting for Ecological Funds, occurred in Plateau State. Further, **Exhibit H** represented Federal Governments' Assistance to Plateau State but he did not know how much the Former Governor expended for the purposes of managing disaster areas.

Under Cross-Examination by Learned Silk representing the 1st and 2nd Defendants, PW1 could not say when the Account of Ebenezer Retnan Ventures was opened and neither did he know whether the CBN Cheque was used to open the Account. All he knew was that the money being investigated was found in Ebenezer Retnan Ventures' Account belonging to Chief Joshua Dariye.

Under Cross-Examination by Learned Counsel representing the 3rd and 4th Defendants, PW1 was shown **Exhibit H**, the CBN Cheque and acknowledged that the Cheque was written in the name of Plateau State Government. However, the Value in the Cheque did not go to Plateau State by reason of Diversion of Funds. There was no Complaint made by Officials Plateau State Government such as the Auditor-General, Accountant General and Director of Treasury concerning the Diversion of the CBN Cheque.

According to PW1, when investigation commenced sometime in 2004, a File was retrieved from the AllStates Trust Bank, which he knew to be the Subject of Litigation before the Kaduna Federal High Court. However, he was not aware that the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) was the Subject of Litigation in the Trial before that Court and was also not aware that the Trial had collapsed. But he noted that some of the Exhibits in that Action had a direct bearing with this Present Trial.

Under Re-Examination, as seen from **Exhibits D1, D2 and E**, PW1 stated that this CBN Cheque for the Sum of over One Billion One Hundred Million Naira (N1, 100, 000, 000), was cleared by the AllStates Trust Bank.

It is worthy of note, that PW3; PW4; PW5 and PW6, through whom the EFCC Statements of the Defendants were tendered and admitted as **Exhibits L to S**, led no

Corroborative Oral Evidence relating to this Sum of One Hundred and Seventy-Six Million Naira (N176, 000, 000).

Further, none of the Defendants were confronted with either the CBN Cheque or specifically confronted with the Sum of One Hundred and Seventy-Six Million Naira (N176, 000, 000) before their Statements were respectively obtained by PW3 to PW6.

These above Oral and Documentary Evidence were the ONLY Evidence placed on the proverbial scale against the Defendants.

The Defendants on their own part in their Defence called **DW1**, Mr. Amisu Abdullahi, a Staff of the Central Bank of Nigeria. He identified in **Exhibit H**, the Central Bank of Nigeria (CBN) Cheque of N1, 161, 162, 900 issued to the Plateau State Government in Year 2001. According to him, the CBN Cheque was a Crossed Cheque with no other features manifest on it and the Payee was the Plateau State Government.

Further, **Exhibit H** could not be cashed Over-the-Counter but must be paid only into the Account of Plateau State Government and not into any other Account. Further, only the Issuer and Signatory of the Cheque could alter the Mandate and in their absence, a 3rd Party could not do so.

Shown **Exhibits F1 and F2**, Disbursement Instructions from the Office of the Executive Governor of Plateau State, DW1 stated that where the Signatory for these Exhibits was not a Signatory to the Plateau State Government Account with the AllStates Trust Bank, that Signatory had no right to issue the instructions and the Bank should not have honoured his instructions. Further, the funds in the Cheque should have been paid into Plateau State Government's Account.

Shown **Item 4** in **Exhibit F1**, payment instruction to The AllStates Trust Bank to issue N176 Million Bank Draft in favour of Ebenezer Retnan Ventures, he stated it was improper for the Bank to have complied with that instruction and the Bank ought to bear responsibility. This is because the 1st and 2nd Defendants did not give any instruction in **Exhibit H**, the CBN Cheque, for the payment of the Sum of N176 Million to Ebenezer Retnan Ventures.

Under Cross-Examination by Learned Counsel representing the Prosecution, DW1 was again shown **Exhibit H**, the CBN Cheque. According to him, Plateau State Government was not an Individual and the Written Instruction could not be classified as an Order. The Signatories were not Signatories to Plateau State Government Account, and so the Cheque could not be classified as an Order. Further, the Signatories of Plateau State Government's Account were not written on this Exhibit, which would have indicated

whether the Cheque emanated from the Plateau State Government or from the Defendants.

DW2, Mr. Silas Vongbut, denied the allegations contained in **Count 5**, when shown a CBN Cheque from Ecological Funds, in **Exhibit H**, stating that the EFCC never drew his attention to this Cheque. He played no role in the Disbursement Instructions set out in **Exhibit F1**, as the Exhibit emanated from the Office of the Executive Governor of Plateau State.

Under Cross-Examination, he was shown the CBN Cheque in **Exhibit H**, and he stated that the Cheque ought to have gone into the Account of Plateau State Government. In the event it was not paid into that Account, and he knew about it, he would have notified the Accountant General.

He was aware Ecological Funds were paid on Monthly basis but could not say when these Funds were received by Plateau State because he was not in charge of such Funds.

DW3, Mr. Emmanuel Agati, the then Substantive Commissioner of Finance, was shown **Item 4** in **Exhibit F1**, an instruction to raise a Draft of N176Million in favour of Ebenezer Retnan Ventures, and he stated that they were unaware of this disbursement or appropriation, reiterating his knowledge of only the Sum of N550Million. The Executive Governor did not inform them of the Total Sum the Ecological Funds Office had disbursed to the State. Further, the Signature on **Exhibit F1** belonged to the Chief Executive Officer of Ebenezer Retnan Ventures, Chief Dariye, whose Signature, he was familiar with and moreover, the Letterhead Paper gave away the identity.

According to him, he and the Accountant General did not authorize this payment, because they never saw the Cheque at all. Plateau State did not have a Company bearing that name nor had Shares or Ownership in Ebenezer Retnan Ventures, or even had, any contractual relationship for the Eight (8) year period he was Commissioner and Chairman of the State Tenders Board. Ebenezer Retnan Ventures never executed any contracts or rendered any Service to Plateau State. Had Ebenezer Retnan Ventures been a Contractor and had derived any benefit, he would have had knowledge of it.

DW3 found it strange the procedure adopted for disbursing the Sum in the Cheque stating that the appropriate procedure was that the Cheque dropped into the Account of Plateau State and thereafter, an appropriate request and justification for payments would have been processed with Vouchers prepared accordingly.

In addition, according to Banking Practice, since the Cheque was a Crossed Cheque meant for Plateau State Government, it should have been paid into the Account of Plateau State and not into any other Account. Perusing the Cheque, DW3 stated that the

Cheque was cleared by the AllStates Trust Bank Abuja meanwhile the Plateau State Government maintained an Account in their Jos Branch only.

Further, the Disbursement Instructions written by the Executive Governor in **Exhibit F1** was not addressed to the AllStates Bank Manager in **Jos** but to the Bank Manager in **Abuja**, which was improper and not the right thing to do.

He denied any association with this CBN Cheque or knowledge of it and as a Public Officer, had he been aware of it, he would have only confronted the Executive Governor on the propriety of his Instruction but not go beyond his bounds.

Under Cross-Examination, DW3 reiterated his earlier evidence that Chief Dariye only informed him to expect the Sum of N550Million from Ecological Funds, which Sum arrived in the form of an AllStates Trust Bank Draft and not from the Central Bank of Nigeria and the Account Narration, highlighted this fact. According to him, Ecological Funds were from the Federal Government, which is paid through the Central Bank of Nigeria. Further, Drafts from Central Bank of Nigeria Ecological Funds were not Regular Funds, and as the State never received such Funds before, he had no reason to query the payment.

Again DW3 reiterated his earlier statement that the Central Bank of Nigeria Cheque was a Crossed Cheque, which was not cleared into the Account of Plateau State Government, and was wrong practice.

DW4, Nuhu Ali Madaki, the then Substantive Deputy Director Treasury, when referred to **Count 5**, regarding diversion of the Sum of N176Million, he stated that a Central Bank of Nigeria Cheque as informed by **Exhibit H** was never shown to him during his EFCC detention and was not confronted with Monies pertaining to Ecological Funds. Further, he did not know such Monies in the Cheque were coming into the Coffers of Plateau State Government and he maintained that he did not divert the alleged Monies.

Under Cross-Examination, DW4 stated that he a Staff of the Treasury Department in the Ministry of Finance even before Chief Dariye became the Executive Governor of Plateau State and by virtue of his Office, he could recognize the Governor's Signature. However, he could not identify Chief Dariye's Signature in the Signature Column when confronted with **Exhibit F1**, a Letter written by Chief Dariye to the Managing Director of The AllStates Trust Bank.

According to DW4, he was still in Office when the Central Bank of Nigeria Cheque of N1.1Billion was issued on the 12th of July 2001 but never attended any FAAC Meeting in regard to this Cheque. He knew of the Cheque when EFCC commenced investigation but was not confronted with the Cheque during his detention.

When confronted with the diversion of the N176Million to Ebenezer Retnan Ventures, DW4 denied knowledge of this allegation stating that he never raised this Sum from any Account belonging to Plateau State Government. Whilst in Office, he did not know nor have any financial transaction or dealings with this Company and the Company was not a Contractor of the State. According to him, there was a Regulation that made all State Cheques, Account Payable only.

DW5, Mr. Shem Damisa, the then Substantive Accountant General of Plateau State Government, was referred to **Count 5**, which dealt with the payment of the Sum of N176Million into the Private Account of Ebenezer Retnan Ventures. According to him, he knew nothing of the Payment of the Sum of N176Million to Ebenezer Retnan Ventures.

When shown **Exhibit H**, the Central Bank of Nigeria Cheque of N1, 161, 162, 900. 00, he stated that this Cheque never came to him as Accountant General but saw it in January 2006, at the EFCC Office in Lagos. He was embarrassed and shocked because he did not know how the Cheque was cleared and the State did not maintain an Account in Abuja. Had the State been in custody of the Cheque, it would be reflected in its Account but this never happened.

DW5 assumed that Chief Dariye must have collected the Cheque and from gathered information, the Cheque must have either been paid Over-the-Counter or through the Bank's own Account.

Shown **Exhibits F1** and **F2**, particularly **F1**, he confirmed **Item 4** was for the Sum of N176Million and the Exhibit emanated from the Plateau State Government House. He had nothing to do with the Exhibit nor was he invited to be part of it as Signatory.

Shown Two Sets of Documents bearing Chief Joshua Dariye's Signatures in **Exhibits W2** and **W3** on the one hand and **Exhibits F1** and **F2**, the Handwritten and Typed Instructions on the other hand, DW5 stated these Exhibits were the same and the alleged Sum of N160Million corresponded with that of **Counts 2 and 3** in **Exhibit W**.

Under Cross-Examination, DW5 was referred to Reverse Side of **Exhibit H**, the Central Bank of Nigeria Cheque in the Sum of N1, 161, 162, 900 issued in favour of Plateau State Government. Upon examining this Cheque, he stated that the Cheque went through the AllStates Trust Bank for Clearance. He stated that the AllStates Trust Bank, like other Banks, had One Account with the Central Bank of Nigeria. In order to Clear Cheques, it was required that a Bank affixed its Stamp before presenting for Clearing in Central Bank of Nigeria, Lagos otherwise without the Bank's Stamp, the Cheque would not merit going to the Clearing House.

By the Rules of Banking and Accounting, he stated that **Exhibit H**, the Central Bank of Nigeria Cheque, was written in favour of Plateau State Government, which ought not to have been cleared into any Account except that of Plateau State Government, and in this instance, it never went through the State's Account.

According to him, **Exhibit H**, the Central Bank of Nigeria Cheque, existed during his Tenure, which he saw for the first time at the EFCC Office, Lagos in 2006 and there was nothing else he could have done in terms of making a Report, as it was overtaken by events.

When confronted with **Exhibits F1** and **F2**, the Typed and Handwritten Instructions, he stated that Plateau State Government was mentioned only once and that was in **Item 4**. He was not involved in the disbursement of the Sum of N176Million to Ebenezer Retnan Ventures' Account and he did not own that Account.

According to him, the Central Bank of Nigeria Cheque was not in the Category of Monies discussed at the FAAC. Further, **Exhibit F1**, the Typed Instruction was addressed to a 3rd Party and not to him. He was not the Governor of Plateau State and did not see the Cheque until 2006. Further, there was no evidence showing the Cheque/Money went into the Account of Plateau State Government. Chief Joshua Dariye was not a Signatory to the Plateau State Account and there was no reason for the Bank to act on any instruction from him.

DW5 acknowledged **Exhibit L**, was his EFCC Statement and he stood by it, adding that, he had never seen the alleged Central Bank of Nigeria Cheque and had remember stating this fact to the EFCC. When confronted with the fact that he never mentioned of this fact at the earliest opportunity in his Statement to the EFCC, DW5 stated that he was shown **Exhibit H**, the Central Bank of Nigeria Cheque, at the EFCC but had told the EFCC he had never seen this Cheque.

Now, it is clear that the Funds of N176Million was part of the Central Bank of Nigeria Cheque issued to Plateau State Government by the Ecological Funds Office as evidenced in **Exhibit J**, the Federal Government of Nigeria, Capital Expenditure Payment Voucher, Capital Budget Only and **Exhibit H**, the Frontal and Posterior Copy of the Cheque issued by the Federal Government.

In it, the Payee is the Plateau State Government and it was a Crossed Cheque. The Evidence as seen in **Exhibits F1 to F2** and **Exhibit W2**, demonstrates how the Funds in this Cheque was disbursed by no other than the then Executive Governor of Plateau State, Chief Joshua Chibi Dariye.

Item 2 of the Typed Instruction in **Exhibits F1** and **W2**, show that Plateau State Government directly benefitted only the Sum of N550 Million from the Funds. In **Item 4**, an Instruction was given by the same Governor to the Abuja Branch Manager, AllStates Trust Bank, for the Sum of One Hundred and Seventy-Six Million, Eight Hundred and Sixty-Two Thousand, Nine Hundred Naira (N176, 862, 900) to be paid in Draft in favour of Ebenezer Retnan Ventures.

The Prosecution did not clarify the disparity in the Figures, as the Count read One Hundred and Seventy-Six Million Naira (N176, 000, 000) in the Charge. These Two Figures could easily relate to Two Separate Transactions in Law but for the fact that the Date on **Exhibit F1** and **W2**, indicated the Date as reflected on the Charge Sheet.

There was also the fact that all Parties directed their Responses and Addresses to this Court, so the Court will assume that the Sum in the Count relates to the Actual Sum in the Letter of Instruction.

The issue here is this, had this Sum been said to arise out of the Five Hundred and Fifty Million Naira (N550, 000, 000) payable to Plateau State Government in Jos, the Court will understand why the Defendants are facing charges on it.

It is clear from **Exhibit X**, that the Plateau State Government never received this Additional Sum of One Hundred and Seventy-Six Million, Eight Hundred and Sixty-Two Thousand, Nine Hundred Naira (N176, 862, 900) for its Officials to be held accountable for.

From the Defendants' Extra-Judicial Statements, which incidentally the Prosecution relied on, they all individually and collectively denied being aware of the Bulk Sum in the Cheque. They only knew of the Five Hundred and Fifty Million Naira (N550, 000, 000) given to the State.

How they could possibly be charged with the Sum of N176, 862, 900 paid to Ebenezer Retnan Ventures is beyond the thinking of an Average Reasonable Man. The Defendants had during the investigation maintained that they only sighted the Cheque for the first time at the investigative interview. If the Prosecution did not believe that, the Prosecution only had the duty to disprove their denials, by showing that even when the Erstwhile Government misappropriated the Sum in the Cheque, they were in the know and condoned such act. Better still, the Prosecution could have shown Profit, by that the Court means, specific benefit to each of the Defendants before this Court and yet better still, that they were Wizards who with their Flying Brooms, knew about this Amount, and Mysterious performed actions that compromised the taking of this Amount from Plateau State Government Account.

The simple point here is this, the Prosecution by its produced Evidence in **Exhibits F1 and F2** and by the Successful Prosecution of the Erstwhile Governor as seen in **Exhibit X** belie the very foundation of these Exhibits. The Exhibits clearly show a Unilateral Act of the Erstwhile Governor and to rope the Defendants into this Offence, the Prosecution needed to do more. The Prosecution could have shown that they were the Propelling Force and Enablers behind the Governor's Actions. The Prosecution did not even demonstrate any diversion or entry from **Exhibits B and K** into Ebenezer Retnan Ventures Account, which was not even produced before the Court and so, the Prosecution had expected the Court to go through the vast Bank Statements to make out a Case for them.

An invitation the Court declines to engage in.

In the face of the profound denials by each of the Defendants and as long as the Monies is said to have emanated from the Ecological Funds Office in 2001 issued out in the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand and Nine Hundred Naira (1, 161, 162, 900), the Prosecution failed woefully to establish the Culpability of all of the Defendants to this Allegation.

Without further ado, the Court finds that the Allegation in **Count 5** is baseless and bereft of any Positive Evidence and fails accordingly.

To that end, ALL the Defendants are found **NOT GUILTY AS CHARGED** and **ALL** are accordingly **DISCHARGED AND ACQUITTED** in respect of this **Count 5**.

For ALL the Counts it was clear that PW1, Detective Musa Sunday, testified that none of the Defendants were Members/Directors of Ebenezer Retnan Ventures and neither were they Signatories to its Account. It is also established that this Unregistered Company was not registered as a Contractor with the Plateau State Government.

The Court holds that a Violation of Banking Practice indeed occurred **but** also holds that the Prosecution did not establish that the Defendants personally, directly or inadvertently, violated the Banking Practice and State Financial Regulations with the view to divert the Cheques/Drafts.

Finally, as regards **Criminal Conspiracy** under **Section 97 of the Penal Code** brought under **Count 1**, despite the fact that there was more than One Person involved, the Prosecution failed to prove an Unlawful Agreement or a Lawful Action by Unlawful Means by ALL of the Defendants on Record. The Prosecution also failed to prove that each of the Defendants individually participated in any Conspiracy and without further ado, ALL the Defendants are found **NOT GUILTY AS CHARGED** and **ALL** are accordingly **DISCHARGED AND ACQUITTED** in respect of this **Count 1**.

In conclusion, the Court finds as follows: -

COUNT ONE.....1ST DEFENDANT.....NOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

COUNT TWO.....1ST DEFENDANT.....NOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

COUNT THREE.....1ST DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

COUNT FOUR.....2ND DEFENDANT.....NOT GUILTY AS CHARGED

COUNT FIVE.....1ST DEFENDANT.....NOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

COUNT SIX.....1ST DEFENDANT.....NOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

COUNT SEVEN.....1ST DEFENDANT..... NOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

COUNT EIGHT2ND DEFENDANTNOT GUILTY AS CHARGED

COUNT NINE.....1ST DEFENDANT.....NOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

COUNT TEN.....1ST DEFENDANTNOT GUILTY AS CHARGED

2ND DEFENDANT.....NOT GUILTY AS CHARGED

3RD DEFENDANT.....NOT GUILTY AS CHARGED

4TH DEFENDANT.....NOT GUILTY AS CHARGED

Accordingly, **ALL** Four Defendants are **DISCHARGED** and **ACQUITTED** on **ALL** the **COUNTS** of this Charge.

HON. JUSTICE A.A.I. BANJOKO

JUDGE