

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 12TH DAY OF JANUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CR/284/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ---- COMPLAINANT

AND

EWELIKE SAMUEL ----- DEFENDANT

JUDGMENT

In this case the Defendant, Samuel Ewelike was charged with an eight (8) Count Charge bordering on allegation of theft, criminal breach of trust, abetment to commit theft, making of false document and abetment to personate a public servant. He pleaded NOT GUILTY to all the Counts.

Before the arraignment, the Defendant and 5 others were initially arraigned before a Magistrate Court at Karu in Charge No: CR/136/13. The other persons/Defendants were Adofu O. Innocent, Kolawole Olayinka, Peter Otor, Emmanuel Adejor and Matthew Jonathan. The Charge was via FIR by the Police. It was later amended and Adofu O.

Innocent, Emmanuel Adejor and Matthew Jonathan were dropped and they later jumped bail. The matter was transferred to Magistrate Court Wuse, the Defendant in this Suit, Peter Otor and Kolawole Olayinka were charged in the second FIR. Because of lack of diligent prosecution the Defendants were discharged on 4th March, 2016. The Defendant, Samuel Ewelike, was about to resume his duty at Federal Fire Service (FFS) when the present Charge was filed on 17th March, 2017. He was charged alone. On 21st February, 2019 the Prosecution filed Amended Information.

In the Amended Information the Defendant was allegedly accused of stealing a Nissan Urvan Bus and a Hilux Pickup belonging to the FFS which is the Nominal Complainant in this case.

The story is that Adofu O. Innocent was caught with a stolen Hilux FFS 19. He said that it was the Defendant that asked him to steal the vehicle. The Defendant was then arrested by SARS and gruesomely tortured and wounded. He tendered picture of the evidence of torture. But he maintained his innocence till date. He had stated both in his Statement made to Police and in Examination in Chief and under Cross-examination that he is innocent of the allegation. That the said Adofu who was a subordinate and trainee under him wanted to settle score. That the said Adofu was punished by him (Defendant) for being truant when he was at the FFS Training Academy Shed Abuja.

The Prosecution called several Witnesses – PW1 to PW3. They tendered documents one of which was their

Statement to Police, the key of the vehicle in issue, ID Card of Peter Otor, Plate Number of Lokoja, Kogi State, Uniform, Dark Blue Barrette with FFS official logo. The uniform was rejected because the person was not standing trial in the Court.

The Prosecution further amended the Charge after the PW1 – PW2 had first testified and PW3 had started his testimony. The Prosecution tendered 12 documents and material evidence which include but not limited to a Hilux Jeep, pictures, Number Plate – AH 844 LKJ.

On his part, the Defendant tendered some documents – Statements of Atsu Isaac, Eceide Thomas, Ugala Prince, Adetoyi Ismail and Tolu Fade. A total of 36 documents and materials were tendered.

In their Final Written Address the Prosecution raised 2 Issues for determination which are:

- (1) Whether it has proved the case against the Defendant beyond reasonable doubt.*
- (2) Whether documents relied upon by the Defendant is admissible in law.*

On Issue No. 1, the Prosecution submitted that they have proved the case against the Defendant beyond reasonable doubt. That it has proved the ingredients of the offence. They referred to **S. 135 of the Evidence Act** and the cases of:

Akinyemi V. The State
(1999) 6 NWLR PT. 1

Emeka V. State
(2001) FWLR (PT. 66) 682

That they have proved the case by circumstantial evidence and eye-witness account.

That the Defendant works with Federal Fire Service (FFS) and Inspectorate Unit of FFS as a Sectional Head when the FFS 19 got missing – stolen by Adofu O. Innocent, a new recruit in FFS. They referred to **EXH 5 & 9**. That prior to the incidence, the Defendant used the vehicle officially. That Adofu Innocent and Peter Otor confessed to the crime. *But it is imperative to note that the duo were never charged for the crime in this case.* That by their evidence, it was established that the Defendant conspired with Adofu O. Innocent and Peter Otor to commit the crime.

That by circumstantial evidence it has clearly established that the Defendant knew the duo and held the key of the vehicle for more than 3 days, a fact the Defendant denied. That there is every likelihood that the Defendant duplicated the keys.

That they proved that the Defendant communicated with the duo before the incidence. That the Defendant and the duo connived to forge FFS ID Card – **EXH 8 A & B**. That they proved that the offence was committed by the Defendant who connived with the duo who are at large. They urged Court to convict the Defendant and hold the Prosecution have established the case against the Defendant beyond reasonable doubt.

On the issue of evidence of eye-witness account, the evidence of PW1 – PW3, they submitted that PW1 said that sometime in 2012 the Defendant took out the vehicle in issue for 3 days – **EXH 19**. That he warned the Defendant then for his action. That PW3 proved that their investigation shows that the Defendant masterminded the theft/incident and conspired with the duo who they claimed are at large. That eye-witness account of PW1 – PW3 shows and established the conspiracy and has satisfied their stand and proof of the case as required by law. They urged Court to so hold and convict the Defendant. They relied on the case of:

Oluwatoyin V State
(2018) LPELR – 44441 (CA)

On Issue No. 2 – whether the evidence of Defendant and documents tendered can be relied on and are admissible in law. They submitted that the documents are not admissible in law. They referred to pictures which were rejected in evidence and urged Court to admit the documents at this stage. They referred to the cases of:

Ogunfeola V. Adelayi
(2009) FWLR (PT. 485) 1626

Sura Katu V. Adekunle
(2019) LPELR – 4641 (CA)

That **EXH 27 – 30, 34 – 37** are not admissible in law. That they are photocopies of public documents and were not certified. They urged Court to expunge the documents from its record in this case, having not been certified. That the

documents were made while the Suit is already pending before this Court. They referred to the case of:

**Onwuzurike V. Edoziem & Ors
(2016) LPELR – 26056 (SC)**

That the Defendant's testimony was contradictory. That the Defendant's allegation that the bus brought as Exhibit was not same bus is a hearsay and Court should not reject that fact, **EXH 36 – FFS 19**. They referred to **S. 83 of the Evidence Act**.

On the picture showing the Defendant's wounded arms allegedly inflicted on him by the Police, they submitted that Court should reject same as the DW1 who tendered that document was not the maker. They referred to **S. 83 of the Evidence Act** as amended.

That the Defendant did not give any credible evidence at his defence of the Suit. That he gave contradictory evidence too in his testimony before this Court. That the Defendant has no fire report to corroborate with the evidence that the original FFS 19 actually was destroyed in a Road Traffic Accident and it got burnt and all the occupants were also burnt to ashes.

That the submission of the Defendant that the then Comptroller General – Karibo Samson, informed him that he is innocent of the allegation against him and that he initiated a Letter of Withdrawal of the case. They submitted that it was the Defendant who initiated a plan to settle out of Court. He referred to **EXH 38** dated 28th February, 2022. That the Defendant did not bring the said Comptroller

General to corroborate his testimony before he closed his case.

That the Defendant's testimony on Adofu Innocent is contradictory in that he stated that he never used him as a driver and in another breadth in **EXH 10** he said that he saw him on the steering of the vehicle on 17th January, 2013. That Court should discountenance the evidence and testimony of the Defendant and should be convicted as his proof of evidence already established by Prosecution is beyond doubt.

On the case referred to in defence of the Suit especially the cases of:

Oyegede V. State supra

State V. James Gwangwan supra

Osmond Onuoha V. State supra

On issue of confession of the Accused not to held against his Co-Defendant; they submitted that the Court should evaluate the cases cited by the Defendant Counsel along with the decision of the Supreme Court in the cases of:

**Ali Mohammed V. Federal Republic of Nigeria
(2021) Legal Pedia (CA) 14111**

**Chijioke Ugwu V. State
(2002) LPELR – 49375 (SC)**

They urged Court to discountenance the submission of the Defendant in evaluating and response to the Defendant's argument as it is the duty of Court to do so and hold that

there are legal admissible evidence against the Defendant in this case linking him to the offence in issue.

They urged Court to hold that the Prosecution has proved the case against the Defendant proving conspiracy, aiding and abetting making false documents and theft. They urged Court to convict him accordingly.

Upon receipt of the Final Written Address of the Prosecution the Defendant Counsel filed theirs. In it they raised 3 Issues for determination which are:

- (1) Whether from the totality of evidence of the Prosecution it can be said that they proved their case against the Defendant to warrant his conviction.
- (2) Whether the Defendant can be convicted of these offences on the strength of the extra-judicial statements made to the Police by Co-Defendants who were not charged along with the Defendant.
- (3) Whether mere suspicious can ground conviction in a criminal matter.

He answered the questions in the negative and submitted that from the totality of the evidence led by Prosecution that they have not proved the case to warrant the conviction of the Defendant as they have not proved the case beyond reasonable doubt. That they have not proved offence of theft or criminal breach of trust, abetment and conspiracy, forgery and impersonation. That the Prosecution did not meet the standard as set in the case of:

Onuchukwu & Ors V. State

(1998) 4 NWLR (PT. 547) 576

where it was held that cardinal principle of justice is that conviction should be where the Prosecution has proved the case beyond reasonable doubt.

That the evidence of the Prosecution Witnesses are full of conflicting evidence. That the Prosecution failed to prove the ingredients of the offences allegedly committed by the Defendant which is based on theft of Nissan Urvan Bus FFS IE. That the PW1 in his testimony did no link the Defendant with the stolen vehicle. That he said that he knew the Defendant as a colleague and fellow Instructor. That the PW1 used to drive the vehicle. That the Defendant was no longer working at the Fire Academy as at the time the second vehicle, FFS 19 got missing. Meanwhile, the first vehicle got missing in 2012 while the second vehicle in issue got missing in 2013.

That there was no Police Report or investigation on the first vehicle FFS 1. But that the PW1 was called to make Statement when the second vehicle was stolen. That all those were a way to rope the Defendant in. That the Statement of PW1 to Police shows that the Defendant never drove the said vehicle – FFS 19. That the testimony of the PW1 and **EXH 1 & 2**, Statement to Police, were contradictory. That in his he claimed that he contacted the hospital security, called Joint Task Force Kwali Unit and went to Police station to make report. That the Statement of the PW was never corroborated by PW2 & PW3.

That the evidence of PW3 was tainted and a hearsay as regard the issue of Urvan Bus. That there was conflict and contradiction on the date the Urvan Bus was stolen. That the PW1 said it was stolen on 31st October, 2012 while PW3 said it was in December 2012. But that the Defendant was consistent in his testimony that he never drove the Urvan Bus and that he has no reason to drive it as he is a Senior Officer and has his own driver.

That since there is serious contradiction in the evidence of the Prosecution in this regard, that Court should resolve the conflict in favour of the Defendant as held in the case of:

Augustine Onuchukwu & Ors V. State supra

He urged Court to hold that the Prosecution has failed to prove that the Defendant stole or aided and abetted anyone to steal the Nissan Urvan Bus FFS 1. They also referred to the case of:

Uwani V. State

(1988) 1 NWLR (PT. 70) 274

On the allegation of the theft of FFS 19, the Defendant Counsel submitted that the Defendant did not steal or aided and abetted in the stealing of the FFS 19. That the Prosecution also failed to prove that the Defendant stole the vehicle or that he conspired to steal the vehicle.

That the testimony of PW2 that the Defendant drove the vehicle sometime in 2012 December and kept the key for 3 days before submitting same on the fourth day is

contradicting. That the same PW2 had during Cross-examination stated that he could not remember the date he gave the Defendant the keys to the vehicle and said that he warned the Defendant in his office and not publicly as he had earlier stated. Bu in his Statement – **EXH 3**, he had said that the Defendant went out with the vehicle for inspection.

That going by **EXH 15** – Statement by Ugoala shows that the Defendant never went home with the vehicle’s keys. That Ugoala had stated that when the PW2 asked for the keys that the Defendant only went to his office to pick the key which he gave to the PW2. Hence, the Defendant never went home with the vehicle’s key and never kept same for 3 days as alleged by the PW2. Hence, there is contradiction in the testimony of the PW2.

That the Defendant had stated that no one goes home with the key because FFS 19 operational vehicle can be used if there is any emergency. Hence, he could not have taken the vehicle home for 4 days as the PW2 alleged. That all the PW2 contradictory evidence is in their plan to rope in the Defendant at all cost. That Court should not rely on the evidence of PW2 as his Statement made in December 2021 gave account of what happened in January 2013. He asked Court not to rely on his evidence and expunge same too. That the same PW2 Statement made in December 2012 which is undated gave account of an incident which happened in January 2013. That the same PW2 denied knowing Emmanuel Ahazi and denied that the same Fire Service Officer was asked to make Statement at FFS. But

EXH 19 which is the Magistrate Court Record of Proceeding confirmed that the same staff of FFS were asked to make Statement and the Chief Security Officer – Ighedose John obtained their Statement. He referred to the testimony of the PW2 under Cross-examination on 24th September, 2014 where the same PW2 listed the names of all those who made the Statement.

On the testimony of PW3, the Defendant Counsel submitted that though he denied asking the Chief Security Officer to obtain Statement of some staff of FFS, but the Chief Security Officer obtained the Statement of more than 3 members of the staff of FFS. He referred to **EXH 1, 2, 13, 14, 15 & 16** made on 21st February, 2013 and 5th February, 2013 at FFS office. That the testimony of PW1 confirmed that fact wherein the PW1 stated that he was called to come and make Statement from Kwali about the missing bus in 2012. That all the lies and contradictions in the Statement/testimony of PW2 and PW3 were to cover up the truth and wrongfully rope in the Defendant for reason best known to them. That PW3 – IPO allowing the Chief Security Officer to go to the Complainant’s office with the Statement sheet proves that they were out for no good and that he had compromised his responsibility. That the Chief Security Officer had agreed and confirmed under Cross-examination that there are security lapses at the FFS. That he sees this case as a way to exonerate himself by calling Emmanuel Ahazi to make statement about a missing bus in 2013 for a bus that got lost in 2012 in which the PW1

told Court that the matter was never reported to the Police. He referred to **EXH 19**.

That PW2 had in the course of his testimony told Court that he was at the office of the C-G FFS to listen to the confession made by Innocent Adofu and Peter who confessed to have committed the offence in issue. But that the same duo were never charged to this Court but were left to go scot-free by the Police and the Complainant. But they sent the Defendant to SARS to perish.

That the PW2 confirmed that there was a vehicle in his office that involved in Road Traffic Accident (**EXH 12**). He confirmed that 2 people died. But he alarmed that he does not work in the Logistic Department of Federal Fire Service. The PW3 also said that he was surprise to hear that Toyo Peter Adeoye – PW2 said that he said in his testimony that he was not the person in charge of vehicles at FFS. He referred to the case of:

Onuchukwu & Ors V. State

He urged the Court to discountenance the testimonies of the Prosecution Witnesses – PW2 & PW3 as they are full of inconsistencies and contradictions.

On allegation of Criminal Breach of Trust, the Defendant Counsel submitted that from **S. 311** the Prosecution were not able to establish the said offence against the Defendant. That PW1, the driver who drove the vehicle in issue to where it was stolen said that the Defendant was not in suede when the Urvan Bus was stolen/got missing, that he was going to Kwali Hospital and that the Defendant

did not go with him to the hospital that day. Again, that the Prosecution did not prove that the 2 vehicles – Urvan Bus & FFS 19 were entrusted and in the custody and care of the Defendant or that he converted them to his personal use. Hence, the Prosecution failed to prove the said offence of Breach of Trust going by the testimonies of their Witnesses. Hence, Court cannot convict the Defendant for the said offence.

That the feeble allegation of PW1 that Defendant used to drive the said Bus when he was at FFS Academy is an afterthought as that fact was not contained in his Statement **EXH 1 & 2.**

On the testimony of PW2 to link the Defendant to the lost FFS 19 Hilux, a vehicle stolen by Innocent Adofu & Peter Ofor, there was no eye-witness account to corroborate that evidence that the Defendant took the vehicle more than 3 days as alleged by PW2. The Defendant Counsel submitted that mere circumstances of suspicious cannot amount to cogent circumstantial evidence to justify conviction. That mere suspicion cannot take place of evidence and legal proof.

That the Prosecution could not prove that the Defendant stole the vehicle in issue. They referred to the case of:

Abike V. State
(1975) 9 SC 60

Abacha V. State
(2002) 11 NWLR (PT. 779) 437

That the testimony of PW2 was based on information of PW2 and collaborator who were not charged in this Court but who stood trial at the Magistrate Court with the Defendant in the case that was dropped by Prosecution for lack of evidence. That the evidence of PW3 contradicted the evidence of PW2 on who the FFS 19 was entrusted with. That PW3 said that PW2 was in charge of logistics including vehicles, FFS 19 inclusive and PW2 denied that fact. That PW2 who works under PW3 had unrestricted access to the vehicle. He urged Court to hold that the Prosecution failed to establish the offence of Criminal Breach of Trust and therefore dismiss the allegation against the Defendant.

On the offence of Theft of the Urvan Bus and Hilux FFS 19, the Defendant Counsel submitted that the Prosecution failed to prove offence of theft against the Defendant in this case. They also failed to prove that the Defendant abetted Innocent Adofu, Peter Otor or any other person to steal the vehicles. That on 31st October, 2012 when the Urvan Bus got missing that the Defendant was not working at the FFS Academy. That PW1 confirmed that the Defendant did not follow him to the hospital the day the vehicle was stolen. That the Statement of Innocent Adofu taken by Police which PW3 relied on shows that Adofu confessed to have committed the crime, a statement “tainted” and without any credibility. That the other suspects mentioned in the so-called tainted confessional statement were never charged before this Court and never acquitted or convicted of the offence by any other Court. That going by **EXH 9** –

Statement of Innocent Adofu, Peter Otor and Olayinka Kolawole, Matthew and Jonathan, that there is conflicting dates in the testimony of PW1 and PW2 on the date the Urvan Bus got missing.

The Defendant Counsel urged Court to discountenance their Statement and not admit or attach any weight to the said evidence and testimonies. He relied on the cases of:

Ojede V. State
(1988) 1 NWLR (PT. 71) 44

State V. James Gwangwan
(2015) LPELR – 24837 (SC)

Where it was held that a statement made to the Police by an Accused person against another Accused person is not admissible against the other Accused person. He urged Court to hold that **EXH 9** cannot be relied on to prosecute or convict the Defendant. That the said Accused persons jumped Bail and were never re-arrested by Police neither were their Sureties ever bench warranted for failure to present them to the Police.

That Innocent Adofu and Peter Otor committed another offence after Bail was granted to them as confirmed by PW2 and DW1. That it was PW3 that was the IPO in that case. They referred to Record of Proceeding of the Magistrate Court in Karu – **EXH 19**. That Court should rely on the testimony of the DW1/Defendant – **EXH 10** which was cogent and uncontradictory as the evidence of Prosecution Witnesses. That in the said Exhibit there was serious contradictions as to the date Peter and Innocent met each

other. That Innocent said he met Peter on 7th March, 2013 while Peter said it was 6th March, 2013. That Peter said that they went from Area 10 to Kwali while Innocent said that they moved from the Garden to the FFS College at Sheda to see Chimaroke in order to arrest Peter. Innocent also said that Peter called to ask that they leave the driver that he might have a gun.

Again, that Innocent said that Friday Abba is his brother who was in charge of the workshop where the vehicle was repainted at Lokoja. He referred to **EXH 11**. He submitted that the Defendant told Court that the vehicle brought FFS 19 – **EXH 12** was not the vehicle in issue as the real FFS 19 was gutted by fire and claimed the life of the staff of the FFS. That the Prosecution did not challenge that fact. That the Prosecution only shielded that fact and brought another vehicle to Court as FFS 19 which was painted Red but has evidence that the colour white was placed to sooth the story of the Prisection. That by tampering with the colour and bringing another vehicle in place of the original FFS 19 is tampering with proof of evidence which is criminal. That the Nominal Complainant has no justifiable reason to repaint the vehicle. That the PW3 could not give reason why the vehicle was released unbound to Complainant when it was still subject matter of a crime allegedly committed. The reason given by the PW3 on why the vehicle was repainted was indecorous too after he had told Court that he heard it was repainted.

That the testimony of PW2 is equally shabby on the issue of the recovery and repainting of the vehicle. That there

was no bound to a standard presented before this Court for the release of the vehicle – FFS 19. No application to release the vehicle was tendered too. He urged Court to discountenance the evidence/testimony of the Prosecution Witnesses as regards the painting of the vehicle as the vehicle brought before this Court is not the original FFS 19 as claimed by the Prosecution. He referred to **EXH 36** – Pictures of FFS 19 – Hilux painted white. That the said Exhibit rendered the testimony of the PW2 as untrue and unbelievable. He urged Court to believe the testimony of DW1 as the truth about what happened to the FFS 19.

That the PW3, Prosecution and Complainant deliberately and intentionally withheld the vehicle particulars of FFS 19 by not presenting same to the Court as evidence in proof of the actual FFS 19 as it will spoil their case as regards **EXH 12** – the vehicle tendered in Court as it will reveal the real FFS 19. He referred to the cases of:

**Aroyewim V. Commissioner of Police Ogun State
(2004) 16 NWLR (PT. 898) 414**

**Okolo V. Commissioner of Police
(1977) NMLR 1**

The Defendant Counsel submitted that having removed the subject matter of this case from its custody as the Prosecution did without giving proper account of its whereabouts, there is therefore no stolen item and as such the allegations of Breach of Trust, Abetment and making of false document cannot be sustained. He relied on the case of:

Ishola V. State
(1969) 2 NMLR 259

Where the Court held that it is the duty of Prosecution to prove proper keeping of Exhibit without tampering with it. They also relied on the case of:

Ejoba V. State
(1989) 1 CLRN 194 @ 205

That the Police has power to retain an item recovered for the purpose of prosecution. That failure of the Prosecution especially the Police to retain the vehicle and to tender it in the Court before releasing the vehicle to Complainant violates the law. They referred to the case of:

Ladan V. Zaira Nature Authority
(1962) All NWLR (PT. 2) 797

He urged Court to hold that Prosecution failed to establish allegation of Abetment in this case.

On allegation of making false document – **S. 364**, he submitted that Prosecution also failed to establish that the Defendant was the person who produced the said ID Card for Peter Otor. That the Defendant told Court in his Examination in chief and under Cross-examination that he never met Peter Otor and never knew him or the other suspects. That he only knows Innocent Adofu who was a new recruit student brought to FFS Academy. That DW1 had vividly described how PW3 brother the said Peter and other suspects pointing to him. That it was then he saw the other suspects arrested with the Hilux as Lokoja. That

DW1 also told Court how the PW3 brought the photographer of the FFS and asked him to snap pictures and video the Defendant and how a Senior officer cautioned the PW3 and they stopped further snapping of photo and video coverage.

That DW1 also told Court how PW2 gave huge amount of money to Innocent which he handed over to the IPO in the presence of Defendant/DW1 and the Defendant asked the IPO what the money was for. That the PW3 asked the Defendant to do something to set himself free or else he will die in the Police custody. That Defendant met the said Peter at Police station during parade. That PW3 had said he did not know the Joint where Peter took them to where he said they normally meet to discuss about the plan to steal the vehicle. And at the same time he said that it was there that the Defendant took the picture of the Peter with which he produced the ID Card for Peter – **EXH 4**. That the same PW3 confirmed that he did not take the Defendant to the said Joint till date in the cause of the investigation. At the same time the PW3 also stated that he took the Statement of the staff of the Joint but it was never tendered in Court. He urged Court to hold that the testimony of PW1 is full of contradiction. Not tendering the document – Statement of the staff of the Joint or calling them as Witness fundamentally shows that the Prosecution case is not established and their Witnesses are not Witnesses of truth. He urged Court to hold that the Prosecution failed to establish the case against the Defendant.

On Issue No. 2 – whether the Court can convict the Defendant on these offences on the strength of the extra-judicial statements made to the Police by the Co-Defendants who were never charged along the Defendant before this Court, the Defendant Counsel answered in the negative. He relied on the cases of:

Emeka V. State Sipra

**Ojegede V. State
(1988) 1 NWLR (PT. 71) 414**

State V. James Gwangwan Supra

The Defendant Counsel urged Court to hold that the Defendant cannot be convicted on the said extra-judicial statements of the said Co-Accused who were never charged before this Court. That **EXH 9** should be expunged. That the Prosecution not charging the real thieves of the vehicle in this case shows that there is more to the prosecution of the Defendant.

That going by the contradictory testimony of the PW3, Adofu was arrested, arraigned and bail granted to him, but that he jumped bail and was never rearrested. But that he committed another crime with Peter Otor and the same PW3 also investigated too. He referred to Record of Proceeding of Magistrate Court of 15th July, 2013 – **EXH 19**. That the Counsel for the 3rd Defendant in the case at Magistrate Court saw the same Innocent at SARS and bench warrant was later issued on 19th August, 2013 and that the PW3 was in Court. But the PW3 did not ensure that the said Adofu Innocent, the main thief was charged to

this Court. That the PW3 did not say that Innocent Adofu was late. They referred to **EXH 18**. And that PW3 confirmed that the persons mentioned in the said **EXH** were Innocent and Peter, confirming that they were in custody as at 19th August, 2013. That from the testimony of PW3 it is clear that the Prosecution and Complainant never wanted to prosecute any of the persons charged together with the Defendant just because they want to destroy the Defendant and his career. That while the other Co-Accused were treated with kids gloves, the Defendant was tortured at SARS and was deformed as a result of that torture as seen in **EXH 37**. That the Defendant was also admitted in hospital at Maitama and Asokoro District Hospital after Police Hospital administered first aids to the Defendant as seen in **EXH 22 - 24**. That the Defendant lost his mother as a result of the torture and false allegation against the Defendant as established by **EXH 31**.

That the Prosecution shot the younger brother of the Defendant on mistaken identity as established by **EXH 25**. That by **EXH 26** the PW3 is not supposed to be in the force and is equally unfit to roam freely in a civilized society like ours going by the way and manner he acted in this case.

That the Defendant was posted to FFS Academy on 15th January, 2008 and posted out of the same Academy on 25th July, 2012 long before the theft of the Urvan FFS 1 in October or December 2012 as established by **EXH 28 & 29** respectively.

That the ordeal of the Defendant started long before the theft incident as mere officers of the FFS – especially CG Okebirun, Toyo Adeoye (PW2), John Igedoz – the Chief Security Officer and Abel Adofu – Chie Accountant, the Uncle of Innocent Adofu, all saw the Defendant as a threat to them all. That they all saw an opportunity to deal with the Defendant in the issue of loss of the vehicle which were clearly orchestrated as Innocent was asked to say that it was the Defendant that sent him to steal the vehicle. These actions were glaringly clear as the Defendant’s file was removed at the Board meeting when he was due for conversion.

Again the PW3 who conducted search in the house of the Defendant never returned some of the items – the phone and walkie talkie till date. That the call log from the phone shows that the PW3 uses the phone to make call around the Defendant’s former place of abode at Nyanya not knowing that the Defendant had since left the place as shown in **EXH 32**.

That the PW3 and the Prosecution refused to provide search warrant which would have shown that the said Samsung Phone 322 for MTN 08035974994 and the Motorola Walkie-Talkie – **EXH 36** were yet to be released to the Defendant. That the items released to the Defendant is only those circled in **EXH 21**.

That the Defendant was photographed without any word of caution as required by law. He referred to the case of:

Ugama V. Queen

(1959) 4 FSC 218 @ 219

That prosecution of Defendant with **EXH 9** – Statement of the Accused persons in the Magistrate Court case who were never charged or convicted or acquitted by any Court of law and never charged before this Court with the Defendant.

That the Defendant was not cautioned and was not told he is not obliged to pose before the pictures were taken. That the said **EXH 9** cannot be used to prosecute the Defendant just like the picture should not be used too. He referred to the cases of:

Hassan V. The State
(2002) SCNJ 643

Esangbado V. The State
(1989) 7 SCNJ 10

That notwithstanding that the Defendant has been standing trial in this case since 2018, his name has featured in the list of staff of the FFS for promotional examination since he was stopped from coming to the office and since his salary was stopped. That the Nominal Complainant has also removed the Defendant's PE Card from the Account section while, through his Pension Fund Admin, the Defendant realized that the Nominal Complainant kept the Defendant's salary all these while.

That the Nominal Complainant through their former Comptroller General proposed an out of Court settlement as he know that the Defendant is innocent of the offence and allegation levied against him. But that the same cabal

doctored the letter, backdated same by changing the date the letter was signed by the Comptroller General. That the Nominal Complainant refused to serve the Defendant the acknowledgment copy of the letter sent to the Attorney General of the Federation. Rather they tendered **EXH 38** – Letter in which the Comptroller General asked the Defendant to write to enable the Nominal Complainant pursue the reinstatement and payment of all the Defendant’s salary arrears and for the Defendant to be placed in the same rank with his squad mates. That the same cabal abandoned the proposals and insisted that the Defendant must forfeit all his salary arrears. But that the Defendant refused that term as condition to settle and the Plea Bargain settlement Agreement failed.

That throughout the Examination in chief and Cross-examination of the case the Defendant maintained and remained resolute that he did not commit any crime or any of the allegation leveled against him. That his testimony before the Court was very consistent and was not contradicted during Cross-examination unlike the testimony of the PW1, PW2 and PW3 which were contradictory, inconsistent and froth with hearsay.

That from all indication **EXH 9** is inadmissible and that the statement of Prince Ugoala – **EXH 15** shows that the Defendant and Innocent Udofu fell out because the Defendant reported the said Innocent truancy to his Uncle, the Chief Accountant of the FFS. That made Innocent Udofu to vow to deal with the Defendant and put Defendant into trouble for daring to report him to his

Uncle. That is why he planned and orchestrated these allegations against the Defendant but failed to prove same with his collaborators and the cabal in FFS.

He finally submitted that the Prosecution has failed to prove the case against the Defendant and he urged the Court to discharge and acquit the Defendant.

The Defendant Counsel also filed a Reply to the Final Written Address of the Prosecution on Points of Law.

He submitted that by paragraph 1.1 of the Final Written Address by the Prosecution they relied on Charge/Information dated 16th August, 2017 and not on the Amended Charge of 21st February, 2019 which means that the Amended Charge was abandoned and should therefore be struck out.

That the count 8 of the Charge of paragraph 1.1 shows a different Charge from the one the Prosecution elected to rely on which is dated 16th August, 2017 filed on 17th August, 2017. That in count 4 the date of commission of the offence was different. That in count 5 date of commission of the offence is equally different. That in count 6 the date of commission of offence is different and the colour of vehicle mentioned in the Charge relied upon was absent in the charge in the Charge contained in the Final Written Address.

That count 7, date is not same also. That in the Charge relied upon by the Prosecution there is the count 8 which is Abetment to personate a public servant; while count 7 and 8 of the Prosecution's Final Written Address are the

same – on offence of making false documents. That by the above the Prosecution has contradicted the already inconsistent evidence of the PW1 – PW3 as well as every Exhibit introduced though abandoned in the Information filed on 12th February, 2019.

That the Exhibits and Testimonies and contradictory testimonies of PW1 – PW3 should be expunged and the Defendant be discharged and acquitted. He urged the Court to so hold and to so act. Or that Court can alternatively expunge count 4 – 8 of the Charge which conflicted with paragraph 1.1 of the Final Written Address.

The Defendant Counsel also adopted the 2 Issues raised by the Prosecution in their Final Written Address in his reaction on Points of Law and submitted that the Prosecution has not proved his case beyond reasonable doubt and that the documents relied upon by the Defendant in this Suit is admissible.

On Issue No. 1, the Defendant Counsel replied and answered in the negative as already stated above and submitted that, relying on their argument in their Final Written Address, urging Court to discountenance the argument of the Prosecution and authorities cited in support. He referred to the case of:

**Emeka V. State
(2001) FWLR (PT. 66) 682**

That there is no credible and reliable confessional statement admissible in evidence in this case that could be relied upon by this Court. No circumstantial evidence and

eye-witness account placed before this Court to point that the Defendant committed the offence charged. That **EXH 9** heavily relied on by the Prosecution is not admissible and can only be used against the maker. They referred to the case of:

**State V. James Gwangwan
(2015) LPELR – 24837 (SC)**

He urged Court to hold that the Prosecution failed to prove the guilt of the Defendant and as such the Court ought to discharge and acquit the Defendant.

On Issue No. 2, he submitted that all the documents relied upon by the Defendant in this case are admissible in law and Court was right to have admitted them. That the documents mostly emanated from the Nominal Complainant, gotten by the Defendant in the course of his duty as a staff/officer of the Nominal Complainant. That the documents were mostly on his service as officer of the Nominal Complainant. That the pictures offended S. 84 (j) of the Evidence Act as PW2 was not the maker of the document.

On issue of lack of fair hearing as alleged by the Prosecution concerning the hearing of 8th December, 2022 when **EXH 21 – 32** were tendered and admitted in evidence, the Defendant Counsel submitted that the Prosecution decided not to come to Court in their bid to stall the Proceeding of that day as they had usually done. They cited the case of:

Mil. Admin of Lagos State V. Adeyiga

(2001) FWLR (PT. 83) 2137

They referred to Proceeding of 21st November, 2022 showing that the Prosecution Counsel was in Court when the matter was adjourned to 29th & 30th November, 2022 and 1st December, 2022. That the Prosecution Counsel wrote to Court to vacate the dates and suggested 10th December, 2022 which was a Saturday. That Adamu Hamisu – representative of the Nominal Complainant was in Court and the Court adjourned to 7th to 9th December, 2022 which were working days and asked the said Adamu Hamisu to notify the Prosecution Counsel. That the Prosecution Counsel did not come to Court and no reason given. That Adamu Hamisu was in Court. That the matter was adjourned to 8th December, 2022 after the Prosecution was foreclosed. The Defendant opened its Defence on the same 8th December, 2022 and tendered **EXH 21 – 32**. That Adamu Hamisu was there. That there are more than one Counsel in the office of the Prosecution too.

That going by the case of **Mil. Admin of Lagos State V. Adeyiga**, the Prosecution was not denied its right to fair hearing because they decide to sleep on their right. That a closer look at the Record of Proceeding in this case shows that their hands are not clean. They referred to the cases of:

Jonason Ltd V. Charles Mohammed Ltd
(2002) 12 NSCQR P.1 R.1

where the Court held “that there can be no better notification to a party than the one communicated to them in the open Court.”

That the Nominal Complainant was always in Court represented by the said DSP Adamu Hamisu who is also a lawyer and who was in Court on all the said days and through whom the dates were communicated to the Nominal Complainant and the Prosecution. He also confirmed to have communicated same to the Prosecution Counsel. The Prosecution was not denied fair hearing. Besides, all the documents tendered were frontloaded and served on the Prosecution/Prosecution Counsel and proper foundations were laid too before they were admitted.

That **EXH 36** was equally admissible and relevant and is in compliance with **S. 84 of the Evidence Act**. That **S. 36** proved that the vehicle of FFS can be painted white or red. Hence, the PW2 lied that the FFS vehicle can only be painted red. Hence, the Nominal Complainant has no reason to tamper with the subject matter of this case – the said Hilux.

He urged Court to discountenance the evidence of the PW1 – PW3 and all submission of the Prosecution and resolve the 2 Issues in favour of the Defendant and discharge and acquit him too since the Prosecution has failed woefully to prove their case or any of the offences against the Defendant beyond reasonable doubt.

COURT

No matter how long it takes, the long arm of law will stretch until it gets to justice of the case. Justice will patiently wait until it gets to its destination no matter how turbulent the journey may be.

It is a known fact that in every criminal matter it is for the Prosecution to use all its arsenals to prove the case beyond reasonable doubt. That it can do by and through watertight evidence of the Prosecution's Witness(s) and the material and documentary evidence. The Prosecution must start by establishing every ingredients of each offence brought against the Defendant to which he must have pleaded NOT GUILTY to. Once that is done the Court will hold so and the Defendant will still be given chance to defend same. Once the Defendant is able to shift the onus to the Prosecution, the pendulum will shift and title against the Prosecution who must also take the step further to establish the case using all regular and circumstantial evidence – Confessional Statement of the Accused/Defendant if any and eye-witness account to corroborate the evidence as the case may warrant. Once the Prosecution has really shifted or placed the load on the Defendant, the Defendant must carry same and Court will rule that the case has been established against the Defendant and there will be conviction and sentencing. Otherwise the Defendant shall be discharged and acquitted.

To prove a case against a Defendant is a herculean task which the Prosecution must establish and perform. To get an acquittal is no mean feat too. Proving a criminal case is

not a mere allegation based on innate hatred, envy or get-him-off-over-track syndrome.

In this case a total of 4 Witnesses were called; 3 Witnesses by the Prosecution and a lone Witness by the Defendant who is the Defendant – Ewelike Samuel, in this Suit.

The Defendant, Ewelike Samuel is a staff of the Nominal Complainant – FFS. He also worked at the Academy of the FFS as an Instructor, a task both the Prosecution Witnesses and himself said he performed credibly. In-between the work, he saw himself through school doing “okada” business as an Okada rider and trained himself in the University of Abuja. Had a first and second degree while still doing the work as Instructor. Most new recruits from the FFS Academy know him. One of the Prosecution Witness, a fellow Instructor like the Defendant and confirmed this fact in the course of his testimony. The Defendant was transferred or posted to the headquarter of the FFS in Abuja office. He initiated the conversion to reflect his new academic record and was waiting for the anticipated good news that follows such approval of such conversion. But it never was. His file was removed from the Board documents. But not only that, where he was at the FFS Academy, one of the new recruits was a nephew of the Chief Accountant of FFS. His name is Innocent Adofu. In the course of the instruction at the Academy, the Defendant noted the truant behavior of the said Innocent Adofu and reported it to his Uncle, the Chief Accountant. He had equally warned the said Innocent before making the report to his Uncle. Naturally the said Uncle was cross with

the Innocent and reprimanded him. This angered Innocent and he vowed as it were to deal with the Defendant for making the report to his Uncle. That is the fact of the story in this Suit.

The Defendant did not know that there are as he claims some cabals in the FFS who feels, how can their peer now come with degree certificate to be above them also heard the heat from the people he called the cabal. In the course of his testimony he had named them as already captured in this Judgment. They waited for an opportunity to strike the Defendant. That opportunity came when there was a missing Hilux FFS 19 which was eventually found and tracked in a Mechanic workshop at Lokoja, Kogi State where it was undergoing repainting work before the Police arrested the mechanic/car painter and the other cohorts chief of which was Innocent Adofu and Peter Otor, a person who is described as a motor painter and who it was alleged was given an identity card of the FFS made allegedly by the Defendant who the Prosecution claimed took picture of the said Peter Otor, a fact which the Defendant denied throughout his testimony in chief and under Cross-examination. Defendant claimed that he only saw Peter Otor for the first time in his life at the Police/SARS station when the persons directly involved in the theft of the missing Hilux were paraded at the Police station.

Meanwhile, the Prosecution had filed a Suit on which this Judgment is premised – 8 Count Charge which was later amended. They had alleged that the Defendant orchestrated the stealing of the FFS 19. That he made false

document – ID Card for Peter Otor. That he was the one that asked the said Innocent Adofu to plan and remove the said Hilux from the office in Abuja for the purpose of stealing and probably selling same before it was tracked at Lokoja and all the persons involved were arrested and the Defendant was eventually arrested. The Defendant was charged with Criminal Breach of Trust and Abetment too in that the Hilux entrusted to him was the Hilux which it was alleged he planned to steal hence, committing the allegation of theft also as claimed by the Prosecution. The Defendant pleaded NOT GUILTY to all the Count charge.

In order to establish the case the Prosecution tendered **EXH 1 – 20** while the Defendant tendered **EXH 21 – 38** in Defence.

The main Exhibit relied on by the Prosecution in proof of the case against the Defendant was **EXH 9** – Confessional Statement of Innocent Adofu which he made to Police and in which he indicted the Defendant. Meanwhile, the Defendant never made any Confessional Statement himself. Besides, the said Innocent Adofu was never called as a Witness or charged to Court. He was never charged as a Defendant in this Suit by the Prosecution. The purported death of the said Innocent Adofu was never established with any documentary evidence. The oral testimony of his purported death was a mere hearsay as there was no eye-witness account by anyone who witnessed his death. There is also no mortuary document or death certificate showing that he is dead or Police Report. Also no picture of burial ceremony or anything as such to corroborate the purported

death of Innocent Adofu. The said death and the Confessional Statement are mere hearsay evidence and has no value. So this Court holds. Most importantly, the Prosecution did not make the said Confessor of crime/offence in issue a Defendant in this Suit. No Court can convict a person based on Confessional Statement made by a person who was never charged in a Suit. This Court therefore SHALL NOT convict the Defendant – Ewelike Samuel based on the so-called Confessional Statement of Innocent Adofu. So this Court holds. Meanwhile, he was a party to the case at the Magistrate Court/District Court as a Defendant and the matter was dismissed for want of diligent prosecution on behalf of the Prosecution.

In the said District Court the present lone Defendant, Ewelike Samuel was charged along with the other persons including Innocent Adofu, Peter Otor and 2 others all of whom were arrested and the persons who stole the vehicle and took it to Kogi State where it was been repainted before they were caught. But very strangely they were all dropped as Defendants when the matter came up before this Court. It is only the Defendant – Ewelike Samuel who never made any Confessional Statement and was not caught together with the other 3 persons – Innocent Adofu and Co and who was never near the vehicle as at the time it was found at Kogi State – Lokoja to be precise, that was now singled out to be prosecuted before this Court. Meanwhile, he was among the Defendants at the District Court where the matter was dismissed for want of diligent prosecution. Also

strange is the fact that it was several years after the matter was dismissed at the Magistrate Court that the Nominal Complainant who it was clear, were hell-bent to destroy the career of the Defendant, decided to reinstitute this action against the Defendant leaving out the other Defendants and claiming that they are dead without any evidence but relying and still anchoring on the so-called Confessional Statement purportedly made by the main culprit on the issue of stealing of the vehicle, Innocent Adofu who had sworn to ensure that he deal with the Defendant for reporting his atrocities and truancy to his Uncle, the Chief Accountant of the Nominal Complainant. Meanwhile, the matter was instituted first on 12th April, 2013 – CR/36/13 and 3 years after, on 4th March, 2016 the Defendants who were initially 6 in number: Ewelike Samuel, Innocent Adofu, Kolawole Olayinka, Peter Otor, Emmanuel Adejor and Matthew Jonathan. But there were subsequently reduced to 3 remaining Innocent Adofu, his brother Emmanuel Adejor and Matthew Jonathan who the Prosecution claimed jumped Bail at the District Court. what is even more strange is that after the matter was dismissed the remaining 3 Defendants were discharged and the present Defendant was about to resume duty that the present Suit was filed and the present Defendant was singled out as the only Defendant. Meanwhile, the Prosecution never gave any reason why the other Co-Defendants were dropped as Defendants in this Suit. But the same Prosecution anchored on the same facts and evidence as before in instituting the present action against the said Ewelike Samuel who from all indication was most

remotely linked with unproven allegation of the theft/stealing of the said FFS 19. The Prosecution only relied as they unprovingly claimed on the so-called Confessional Statement of Innocent Adofu who was “caught” as it were with the said FFS 19.

The Statement of PW1 was made in the FFS office in a Police Statement Sheet. A closer look and analysis of the evidence of PW1 shows that it was froth with inconsistencies and contradictions in proving the allegation against the Defendant. To start with, the Statement of PW1 – Emmanuel Ahaz to the Police shows that he was involved with the missing bus which the Defendant is not involved with in any form. Besides, the missing bus is not an issue before me and has nothing to do or any nexus with the case of the missing Hilux FFS 19 which is the Res in this case. The said PW1, an Instructor and the driver of the bus on the day it got missing at Kwali. As at then the Defendant was no longer working at Kwali but at the Headquarters of the Nominal Complainant. The Bus got missing on 31st October, 2012. The Pw1 made a report first to the security of the Kwali General Hospital and subsequently called the Joint Task Force Kwali Unit and then proceeded to Kwali Police Station to make an official report of the incident that day. The vehicle involved was FFS 1E. That was exactly what the PW1 said in his Statement made on 30th January, 2013 and on the 12th February, 2013.

It is very strange that the PW1 never made any report as it were to the office – headquarters and never made any

formal Statement to the Police on the day of the incident. Again, it is strange that the Police – Prosecution never presented before this Court the Statement made by the PW1 on the day of the incident – 31st October, 2012 since they were interested in presenting **EXH 1 & 2** which has no nexus as it were with the present case of missing FFS 19.

The PW1 had in one breadth said that he made Statements at FFS Headquarters but the Prosecution did not present that Statement before this Court. From his response he said in Examination in Chief that he rushed to office to make report about the Bus not the FFS 19 at the Headquarters of FFS. Meanwhile, he made Statement about the missing Bus at the period when the FFS 19 was already missing and investigation and interrogation going on and not on the missing FFS 1E that got missing since 31st October, 2012. The first Statement was made 90 days after the Bus got missing. He had under Cross-examination confirmed the fact that the Defendant was no longer working at Kwali as at the time the said Bus got missing. The only link of the Defendant to the Bus is that according to PW1, the Defendant used to drive the Bus that got missing under the PW1 care and use. Under Cross-examination he stated that he never reported about the missing Bus to the Police. But in his Statement he said he did. That he only reported to the office. He confirmed that he was not working at the Headquarter when the FFS 19 got missing but was asked to come to the Headquarters. He said that he was not aware that the SARS were

investigating about the missing vehicle – Hilux, but in his Statement he said/referred to the FFS 19. He confirmed that the Defendant did not go with him to Hospital as Kwali on the day the Bus was stolen. From all the contradictions in the Statement of the PW1 and his testimony in Court it is evidently clear that he is not a Witness of truth and his testimonies should not be credible and has not proven any of the allegations against the Defendant. This Court cannot attach any weight to his evidence in this Suit. The said evidence of PW1 is hereby **dismissed**. The Statement has no nexus with the FFS 19. It is only brought in as a mere watch against the Defendant.

On the evidence of PW2 – his Statement purportedly made to the Police and admitted as **EXH 3**. To start with, the said Statement was not dated. So the Court cannot determine when it was written. Again, it shows that there are 2 different handwritings in the same Statement Sheet. It was not counter-signed by any. Just like the Statement of the PW1, it has no time of start and time of completion. Even the way the purported signature was affixed is strange. Also strange and worrisome is the difference in character of writing or font. It did not show the place, station where it was taken. From all indications it is very obvious that the said Statement was not written in any Police Station. It has no phone number, marital status. From the upper body of the Statement, it narrated how he used the vehicle on 23rd January, 2013 and what happened on 28th January, 2013 when he wanted to use the vehicle and how he contacted the JML Tracking company who

informed him that the vehicle is 0.8km North-West of Lokoja in Kogi State. That he reported the case to SARS who he claimed helped them to recover the vehicle and who he also claimed continued their investigation. But the second half of the PW2 Statement came out of the blues as it were – reporting about the uncorroborated incidence of the Defendant using the vehicle for 3 days in which he claimed that he reprimanded the Defendant sternly in the public. But in his testimony in chief he said that the reprimand was in his office. He had also stated that he used FFS 19 and FFS 23 in his testimony in Court. But in his Statement purportedly made to Police he used FFS 19 and FFS 27. The later part of the Statement is there just to ensure that the Defendant is roped into the allegation of a vehicle which the PW2 used last before it got missing. Yet the same PW2 who ordinarily should be held and thoroughly interrogated was left to be parading around becoming suspicious of the Defendant who was nowhere around the vehicle, FFS 19 on the day it was stolen.

From all indication the Statement of the PW2 – **EXH 3** has no evidential weight because of its inconsistencies. It is well known that Statement of any person shall be dated, the biodata of the maker clearly stated and his address, phone number and marital status written. The Statement of PW2 – **EXH 3** did not comply with that requirement. The PW2 who is the boss of the Defendant is well educated and letter enough to ensure that such requirements are complied with. Not doing so makes the Statement to be incredible evidence and with no evidential weight attached to it. That

evidence is **dismissed** as it failed to establish the crime against the Defendant. So this Court holds.

On this testimony of the PW2 before this Court, this Court holds that it is froth with inconsistencies too. He said he used FFS 19 and FFS 23 on 23rd January, 2012 which is different from what he wrote in his Statement tendered in this Suit. He stated that he reported to the Comptroller General but that was not in his Statement. He said that he reported to SARS who gave the 2 Policemen and he set out with the driver to recover the vehicle. In the same breadth he said that his driver after he said:

“We set out to recover the vehicle.”

He told Court that about 1 am on 29th January, 2013 his driver called him and informed him that they have found the vehicle which was tampered with/repainted with another plate number. He did not remember the date in December but remembered that it was 3 – 4 days before the key was returned. The inconsistency in the testimony of the PW2 is glaringly obvious in his Cross-examination. The PW2 was evasive when he answered question thrown at him, when he was asked about drivers using the vehicle when the heads go on inspection or other official duties, he initially stated that the keys are kept by him and released to the HODs. But in another breadth he said that they were released to the drivers when he wants to send them on errand. He said that because of shortage of vehicles they use one vehicle each but on the said 23rd January, 2013 he used the two (2) Hilux. He confirmed that the Defendant as

Unit Head can use the vehicle for more than one day and that it is not compulsory that the Defendant must see him, yet he stated in his Statement that he was suspicious. So also his testimony about shortage of drivers and use of any other unit staff to drive a vehicle not worthy too. He agreed he does that but cannot remember any day he did so.

In the PW2 Cross-examination he said that his Statement was made before the FFS 19 was declared missing which from all indication is a blatant lie. From the report it was made after the vehicle was declared missing. This is a huge contradiction in the testimony of the PW2 when he was asked:

“Is it right to say that it was because of your suspicion that you wrote a complain and not that the Defendant took away the vehicle?”

The PW2 answered thus:

“The Statement I wrote was made before the vehicle was declared missing. That Statement was made in December 2012 before the Hilux was declared missing.”

Contrary to the above answer, by the content of the Statement, it was made after the Hilux was already declared missing and the PW1 made the purported report to SARS going by the content of the said Statement. Meanwhile, the same PW2 had in the later part of the Statement said that the 3 days key incident happened sometime in December 2012. Hence, making it more obvious that the **EXH 3** was made in 2013 not in 2012 as

the PW2 inconsistently, contradictorily and lyingly stated/claimed. So his testimony in that regard has no evidential weight or value and has not nailed the Defendant to the offence charged. This Court holds that his testimony is hereby **dismissed** as it is worthless. The PW2 even stated that he went to Lokoja and later changed his story that it was his driver that went.

On the evidence of PW3 – Nelson Otasowie, the Police Sergeant IPO, it is imperative to state that after the PW1 and PW2 had testified since 12th December, 2018 the Prosecution filed an Amended Charge of 8 Count to which the Defendant pleaded NOT GUILTY to all the 8 count charge. Meanwhile, the PW3 had started his testimony in chief based on the previous charge. After the new Charge was read the Prosecution continued the Examination in chief of PW3 based on the new Amended Charge. It is very strange that 2 years after the Prosecution opened its case and called 2 Witnesses who testified fully in chief and tendered documents – (4 documents), that the Prosecution suddenly realized that they have new evidence against the Defendant. The so-called evidence and the new charge were tendered through the PW3 – Nelson Otasowie. The count now included the Urvan Nissan Bus which the PW2 had stated was never reported to the Police and that the Defendant was no longer in Sheda as at the time the incident happened. It is strange that the Prosecution decided to bring in the allegation of the said Urvan Nissan Bus in which the officer involved the day the vehicle was stolen had stated that in Examination in chief and under

Cross-examination that the Defendant was no longer in Sheda. Also strange is that no one was prosecuted for the missing Urvan Nissan Bus and no report was made to Police by FFS or the officer whose custody the vehicle was the day it was stolen until the Hilux got missing and eventually found at Lokoja. Bringing the allegation and charging the Defendant for the loss of the Urvan Nissan Bus is pure raw unhidden malice and envy.

The Prosecution were not able to nail the Defendant to the offence because the contradictory evidence of their 2 Witnesses – PW1 & PW2 failed to robe the Defendant in and rather exposed the malice of the Prosecution. This Court holds that the Prosecution failed to establish Count 1 – 4. Even count 4 is ridiculous because the FFS was never moved from General Hospital Kwali as the Charge shows. Again in the length and breadth of the evidence before this Court, the said FFS 19 was never in Kwali General Hospital on the day it got lost and was eventually found at Lokoja, Kogi State. The Prosecution put the said count because they were hell-bent to get the Defendant linked with the said Urvan Nissan Bus and the FFS 19. The Prosecution could not establish any of the ingredients as required by law. That is why in that regard this Court holds that their case in that regard is DISMISSED.

It is clear that the count 1 – 4 were framed after it was obvious to the Prosecution and Nominal Complainant that the full testimony of PW1 and PW2 failed to establish the case of the Prosecution and even the part examination in chief of PW3 failed to establish same ad link the Defendant

to the case, they decided to amend the Charge, hence further exposing the weakness of the Prosecution case in this Suit.

Back to the evidence and testimony of the PW3, he tendered Exhibits in this case. The Statement of Emmanuel Ahaz of 30th January, 2013 on the missing FFS 1E. It was to the said Emmanuel that the Bus was released. He packed it at the Hospital premises. He contacted the Hospital security and later the Police. He made official report but the Prosecution did not attach the Statement to show and establish the link of the Defendant to the incident.

A look at the Statement of Edede Thomas, it shows that the person who interpreted the Statement was also a person who signed same. hence, casting big doubt about the veracity of the Statement. Also the Statement of Atsu Isaac, even the opening paragraph of the Statements shows that it was made based on the advice that security personnel of FFS who were on duty on the 26th January, 2013 should make Statement. The interesting thing is that both Statements shows that the keys of the vehicles are given to even new recruits and not only to their “Ogas” as the PW1 had stated in his evidence. So the Defendant and people higher up are not the only ones who have access to the keys of the vehicles in FFS as keys are given to drivers and other staff as the situation demands In both Statements the Defendant was never implicated.

It is also evidently clear that the Defendant only heard of the missing vehicle on 28th day of January, 2013 while other staff members have heard of it days before him.

Also in the Statement of Ugoala Prince and Tolu Oludare – **EXH 15 & 16** respectively, Ugoala in his statement – **EXH 15** maintained how the Defendant stopped the attempt of Innocent Adofu to drive him in the FFS 19. The reason because the said Innocent was not in the Unit headed by the Defendant. He confirmed that the Defendant used the vehicle last on 17th January, 2013 on the visit to Kings Ville School, Jabi. That was the last day the said Ugoala used the key of FFS 19 and the key was handed over to the Comptroller. Meanwhile, the Defendant had collected from Innocent and handed it over to Ugoala. Tolu Oludare's Statement confirmed and corroborated the incident of attempt by Innocent Adofu to drive the Defendant and his teams and that Defendant drove him away as he is not from the Unit of the Defendant. He confirmed that they went to the said King Ville School in FFS 19 and come back to the office.

As I had stated earlier, it is evidently clear that the Prosecution anchored its prove of this case against the Defendant on the Confessional Statement of Innocent Adofu. But the same Prosecution did not charge Innocent Adofu as a Defendant in this Suit. They did not give any reason. The lone reason that Innocent Adofu is late was contradicted during Cross-examination of PW3. Besides, there was no document to show that he was actually dead. This Court does not believe that he died. The Court does

not also believe that he could not be found by the Prosecution/Police. It is strange that a man who openly confessed to committing the offence was granted Bail in the first place. He had confessed to being involved in the theft of the Urvan Nissan Bus, yet the Nominal Complainant – FFS and the Prosecution allow him and set him free to be walking the street but held the Defendant who obviously had nothing to do with the theft of the Hilux as can be seen in this case.

In the Statement of Innocent Adofu which the Prosecution made heavy weather about, he narrated how he had previously done a deal – stealing a Nissan vehicle and he had alleged that the Defendant asked him to steal the vehicle. The story though in glances looked palatable for those who are hell-bent on nailing the Defendant. But the question is, where is Innocent Adofu, the Confessor – thief? Why was he not made a Defendant in a case where he had confessed to have stolen the vehicle is issue? Why was he not made a Co-Defendant or a Witness? The simple reason is that the Prosecution and particularly the Nominal Complainant had used him as instrument in their plan to get at an innocent man, the Defendant who it is very obvious they hated and wanted to get him out of the system in FFS for reason best known to them.

The Statement of Innocent – **EXH 9** was not corroborated by any other person, even the PW1 and PW2 whose Statements were grossly inconsistent and unreliable. Even the Statement of Kolawole Olayinka which was recorded by PW3 did not establish the case against the Defendant. The

first Statement was made on 29th January, 2013 and they started recording at 18:00 hours and ended at 18:00 hours. There was even visible evidence that it was recorded with 2 different biro. The last part of page 2 of the Statement was obviously added after the said Kolawole, the Painter had said all he knew ending at the point he was paid **₦10, 000.00 (Ten Thousand Naira)** by Innocent Adofu for the painting job. It is evidently clear that Innocent Adofu had taken/stolen vehicle(s) to the said Kolawole in the past as far back as 2011. Each vehicle he brought, like the Nissan Bus and FFS 19, it was painted white. The Statement of Kolawole did not indict the Defendant at all. It is even strange to find that the “added” Statement by the PW3 which was recorded on 29th January, 2013 was purportedly signed by Kolawole on 30th January, 2013 and the date is even mutilated. The Statement of Kolawole dated 8th February, 2013 was not signed by the purported maker. That is also strange. The language which it was recorded in was not stated. All were never counter signed by any superior Police Officer as required by law. The one made on 29th January, 2013 was equally never counter signed too.

This Court attaches no evidential value and weight to the Statement of Innocent Adofu who it is obviously clear committed the crime to which the Defendant is been tortured and standing trial. The Prosecution and Nominal Complainant exonerated the Innocent Adofu and he was granted Bail and they allowed him to walk freely in the society while they brought an innocent man to stand trial

for a crime he did not commit. Meanwhile, the said Innocent Adofu and Kolawole were all Defendants when the matter was charged and tried at Magistrate Court Karu. And upon the filing of the matter in High Court the Prosecution dropped the other Defendants but came to Court to anchor on their uncorroborated evidence to nail the Defendant – Ewelike Samuel. Meanwhile, the District Court/Magistrate Court dismissed the case.

Peter Otor, one of the Defendants at Karu Magistrate Court and the driver of the vehicle was never called to testify or to be joined as a Witness. There was no corroboration of his story. Meanwhile, the story was recorded by PW3. It is obvious going by his inconsistent testimony full of Hearsay, that he was the hired-hand to do the “Hatchet Job” and perfect the grand plan to get the Defendant out of the system.

It is strange that the Statement of Peter Otor, the driver, part of **EXH 9** is a photocopy recorded in a totally different Statement Sheet. This Court shall not attach any evidential value to the Statement as there was no corroboration and the said Peter Otor was allowed to move about freely and no evidence to show that he is no longer alive.

The Prosecution through PW3 could not present before this Court good reason why the said Peter Otor like Innocent Adofu and Kolawole could not be charged to this Court for offences they purported agreed they committed. Yet the same Prosecution has kept the Defendant in Court for close to Ten (10) years on a crime he obviously did not commit.

The said Statements of Peter, Innocent, Kolawole and others like them are hereby **dismissed** as they have no value, most of them having been written by PW3 who had no eye-witness account in this case and who could not tell Court the whereabouts of the fellows.

The other Defendant at Magistrate Court – Emmanuel Adejor, did not indict the Defendant in his own Statement undated though at the end of the Statement a date was fixed as 8th February, 2013. He referred to boss of the said Innocent Adofu. But he never mentioned the name of the boss. It is imperative to state that almost all the Statements in **EXH 9** that they talked about the boss of Innocent. Meanwhile, it is on record that the said Innocent Adofu does not even work in the same Unit with the Defendant in this Suit. Again, he refused to allow Innocent Adofu to drive him on the day he, Defendant wanted to go to Kings Ville School. Even one of the supposed Co-Defendants at Magistrate Court who made Statement even talked about the Defendant going. All the Statements made were all fabricated out of malice just to incriminate the Defendant. None of them was counter signed. Even Emmanuel's signature was his full name as can be seen in the full Statement. But in the last Statement (Additional) it was signed in a totally different handwriting. The inconsistency in the Statement makes this Court not to attach any evidential value to it. It is therefore **dismissed**.

The Statement of Matthew Jonathan did not in any way indict the Defendant. It mentioned severally how he had repainted vehicles for Innocent Adofu and how he has given

him update on the work. The Statement was undated and unsigned by the recorder. There is evidence of thumbprint on it. The recorder was not bold enough to pen down his name. The document has no evidential weight. Like others in **EXH 9**, it is hereby **dismissed**. So also the testimony of the PW3 as it was inconsistent and contradictory is also **dismissed**.

On the vehicle in issue which is parked at the premises of the High Court, it is strange that the Prosecution could not tender before this Court the vehicle license and particulars especially the Chasis Number for this Court to determine whether or not the vehicle parked at the premises of the Court is actually the vehicle in issue which was purportedly recovered from Lokoja. Again, it is equally strange that while investigation was still going on, the FFS demanded that the vehicle be released to it. The Prosecution did not tender any document, Application for the Release or any bond entered for showing the request for the release and the release proper. Failure of the Prosecution to tender these 2 vital documents made this Court not to believe their story as it were and it is with big blow to the case of the Prosecution. Hence, making it clear that the Prosecution was not able to establish that aspect of the case as to the theft and allegation thereof.

As for the Key and the Plate Number, the Police and Prosecution throughout their testimony especially the PW3 did not tell Court who has the Plate Number they recovered from the vehicle in issue. They were also not able to controvert the fact that Innocent Adofu and Peter Otor, the

2 who masterminded the alleged theft were in Court for another crime while the matter was pending at Magistrate Court in Karu. They did not give good reason for not joining them as Defendants in this case. All that in actions makes this Court to boldly hold that the Prosecution has not established the case against the Defendant – Ewelike Samuel. It is an onus placed on them and they woefully failed to discharge it. Conviction is not based on mere unsubstantiated allegation of crime. It must be proved.

On his own part the Defendant – Ewelike Samuel never confessed to committing any of the offences/crime charged against him. He was not part of the team that was caught with the vehicle in issue. He was the last person to be notified about the missing vehicle while others had made Statements concerning the said missing vehicle. In his Statement to the Police tendered in evidence and under Examination in Chief and Cross-examination, he maintained that he was never part of the plan to steal the vehicle. He narrated before the Court the gory details of how he was treated, tortured at the Police Station. He tendered the picture evidencing the torture, showing the wounds in his body. That picture evidencing the raw wound inflicted on the body of the Defendant by the Law Enforcement Agents was tendered by Defendant as **EXH 37**. The picture speaks for itself. The Defendant also tendered the Judgment of my senior brother Bukar J (Rtd) in which Judgment was given in favour of the Defendant against the Police which is the Prosecution in this case for violating the right of the Defendant. That is **EXH 26** and

EXH 20. Defendant also tendered the Medical Papers Card etc from the Maitama District Hospital where he was admitted as in-patient and received treatment as an out-patient for several months. That document was marked as **EXH 23 & 24.**

As I have already stated, the Statement of Ugoala Prince **EXH 15**, Egede Thomas **EXH 13**, Atsu Isaac **EXH 14**, Tolu Oludare **EXH 16**, all supported the Defence of the Defendant. That also includes the Statement of Adetoyi Ismaila **EXH 18**. He never indicted the Defendant. The Defendant was not among the 2 persons that attacked him on 7th March, 2013.

By 7th March, 2013 the incident in issue had happened. The Defendant was already arrested. He was already receiving treatment at Maitama Hospital going by **EXH 23 and 24**. The said **EXH 18** supported Defendant's Defence and further proved the Prosecution wrong. So this Court holds.

Also **EXH 19** which is the Record of Proceeding in the Suit filed at Magistrate Court Karu before Hadiza Dodo – Chief Magistrate 1 presently the Chief Registrar of FCT High Court in Suit No: CR/36/13. In that case the Defendant – Ewelike Samuel was charged alongside others – Innocent Adofu, Kolawole Olayinka, Emmanuel Adejor, Otor Peter and Matthew Jonathan. The Defendant had stated that the information raised against him in that Court was not true. The same way he had consistently stated that he is NOT guilty of the Charge against him in this Court. That

Suit/Charge at the Magistrate Court was dismissed. The other Defendants were never charged to this Court or any other Court. Even those who confessed to committing the crime in issue and those who were caught red-handed with the vehicle were never charged. That is why this Court holds that there was a detailed plan, set-up to get rid of the Defendant from his service at the Nominal Complainant where he had a promising career and has a bright future to reach the echelon of the FFS. The said Record of Proceeding was tendered as **EXH 19**. That Suit was dismissed by the Magistrate. The Defendant was discharged and acquitted. Meanwhile, the 2nd Defendant in that Suit was re-arrested for a different crime. The Prosecution did not deny that fact.

The Magistrate Court issued a Bench Warrant for the arrest of Innocent Adofu in that case. The Prosecution who claimed that Innocent Adofu was dead did not produce any Death Certificate or Mortuary document to establish that he is actually dead. The Death Certificate they produced at the Magistrate Court according to the Defendant was rejected by the Magistrate Court because it was fake and had no date and not signed by anyone. All these were confirmed by Otasowvie in his testimony. He confirmed that Toyo gave the original key of the vehicle in issue to the SP. Strangely, the Prosecution never called the said Innocent as a Witness. He was never charged along with the Defendant in this Court, notwithstanding that he, Innocent Adofu is the mastermind and lunch-pin who planned and executed the stealing of the vehicle which was

found in his brother's mechanic garage at Lokoja, Kogi State. The said Peter was never charged in this case too. This Court rejected the tendering of the uniform and Barrette because the person who wanted to tender them was not the said Peter and he has no Locus to do so. Besides, the Prosecution did not call him as Witness or charged them in this Suit. So all facts/Statements purportedly stated by them are hearsay. If the Prosecution had wanted to rely on them as they claimed, they should have charged them to Court as Defendants or called them as Witnesses. So failure to do so is fatal to the case of the Prosecution and makes their case froth with hearsay evidence. So this Court holds that no Court relies on Hearsay evidence to determine a case and its proof thereof.

The Defendant had tendered several documents to prove his innocence to the crime. He had also tendered documents to show and prove that he was not suspended but was only asked to stop work. The Prosecution did not also tender any document to show that the FFS suspended the Defendant. He tendered documents – **EXH 38** as well as **EXH 27, 28, 29, 30, 34 & 35**. These documents show that his name still reflected in the list of those who were due for promotional exam and test. Of utmost importance is the document dated 25th July, 2019 from the Ministry of Interior to the Secretary Civil Defense, Fire Service, Immigration and Prison Services Board – Circular on 2019 Promotion of Senior Officers received by the FFS on 26th July, 2019. In the list the name of the Defendant was No. 6 out of the 16 persons listed in the list. So also the name of

the Defendant was listed in other documents in the said **EXH 34**.

By the content of the **EXH 34**, it further proved that the Defendant was still recognized and regarded as staff – part and parcel of the FFS irrespective of the unsubstantiated allegations leveled against him in this Suit.

Again from the totality of the evidence before this Court especially from the Prosecution whose duty it is to prove and establish the case against the Defendant, it is very clear that there was no due procedure followed by the Prosecution to follow internal mechanism to investigate and deliberate on the accusation made against the Defendant as required by Public Service Rules (PSR) – setting up a panel etc before handing over to the Police, that is why his name is still functional in the list – eligible for promotion and conversion etc as shown in **EXH 34, 35, 27, 26, 30, 29 and 28**.

The Defendant was able to establish and defend the allegation of stolen items especially the Walkie – Talkie. He stated how the Walkie – Talkie came into his possession. How it was given to his Department under NEMA – **Operation Eagle Eye** – an Inter-Agency Task Force. After the work he was not asked to retain the gadget. That explanation settled the allegation of the Defendant stealing the Walkie – Talkie; hence, making the Prosecution’s allegation false.

He had also by his explanation vividly distinguished using Department vehicle from official vehicle assigned to him.

Stating both in Examination in chief and under Cross-examination that he, as an officer, cannot drive a bus. That it is only the driver that drives such vehicle. Again, that the Department vehicle cannot be taken home as it is made use of by other Heads of Division. Also, that when they are on official trip, it is the driver that the key is assigned to and not to him or any officer who is of senior rank with him. That no person is allowed to go home with Departmental/operational vehicle. Besides, that it was only the driver who collects key from Toyo whenever the Defendant is going for team work with others. He also rebutted the allegation that FFS vehicle are only painted red. He proved that the vehicle parked at the Court premises as Exhibit is not the vehicle in issue – FFS 19. The Prosecution never tendered the original vehicle particulars of the FFS 19. They did not prove that the vehicle parked at the Court premises is FFS 19. There was no Chasis Number of the vehicle or other documents to prove that FFS 19 is really still in existence. That is why this Court believes the Defendant that actually the vehicle parked at the Court premises is not the vehicle in issue. Again, one wonders why the vehicle was rushingly released to the FFS office by the Police and they repainted same while the matter was still been investigated and prosecuted.

Again, by **EXH 21 and 22** – Application to Release Defendant's Listed Items Confiscated by Police, the Defendant established that his phone and other personal items – bank documents were confiscated by the

Prosecution – IPO Nelson. He proved that the phone was not returned to him till date. That while he was in the Police detention the phone was being used by the same Nelson. This he did by tendering the Application for his Phone Log written to MTN on 5th July, 2013 and the response by MTN on 12th July, 2013. The call log released by MTN shows that several calls were made with the said phone. To prove ownership of the phone the Defendant attached evidence of purchase of the phone. He also exhibited the carton of the Walkie-Talkie and all other documents and packing of the phone and the Motorola Walkie-Talkie – **EXH 21 & 22, EXH 36**. Hence, once again proving his innocence on the allegation of the said theft of official property.

By all these Defence and evidence of the Defendant, this Court holds that the Prosecution did not establish the case of stealing against the Defendant as he did NOT steal the official gadgets, both the vehicle and all other items – Walkie-Talkie etc. He has proven that he only take home his official vehicle and never took home the Departmental vehicle. Also he was able to rebut successfully the allegation by Toyo that he took an operational vehicle home for 4 days. The Prosecution was not able to establish that he did. The whole story about the Defendant keeping the vehicle for 4 days were all made up just to humiliate the Defendant and to give weight to the Prosecution’s false and unsubstantiated allegation and to portray the Defendant as a bad person. But this Court does not believe the

Prosecution. Moreso, the Defendant shifted the onus on the Prosecution by his watertight evidence and Defence.

The Defendant had stated both under Examination in chief and Cross-examination that he, by his rank, cannot drive a Bus. Besides, that he did not move the Urvan Nissan Bus – FFS 1E. Again, that the Bus was even brought to Sheda after he had left there. He presented a document of Lateral Conversion – **EXH 35**. He vehemently rebutted and clearly denied the allegation of selling the Urvan Nissan Bus. The Prosecution could not establish that fact. They have no evidence to prove that the Defendant sold the vehicle and gave Innocent and Peter **₦200, 000.00 (Two Hundred Thousand Naira)**. That allegation and Statement of Nelson was a pure hearsay. The Prosecution never presented Peter or Innocent to prove the allegation. This Court does not believe in Hearsay evidence and has not attached any value to the story of the selling of the Urvan Nissan Bus and giving of **₦200, 000.00 (Two Hundred Thousand Naira)**. The Defendant had stated that he saw Peter Otor for the first time on 12th April, 2013; the day the Prosecution took the Defendant to Court. That Peter Otor was introduced to his at SARS office before they took him to Court where they told Peter that he, the Defendant was their Boss.

On the Urvan Nissan Bus – FFS 1E, the Defendant stated that he was posted out of Sheda in July 2012 because a new Department was created and that FFS 1E was stolen on 30th October, 2012. That he did not know what happened at Sheda when he was posted out. That besides, it was the driver that drove the Urvan Nissan Bus as he is

not a driver and that as a Senior Officer of FFS he cannot drive a Bus.

On allegation of going home with the FFS 19 for 3 days, the Defendant submitted and rebutted the allegation saying that it is not true. Again that they were 5 Sectional Heads who the vehicle is attached to all and/or Toyo. That before he can use the vehicle, all the other Sectional Heads must be aware and confirm that they are not using the vehicle. Again, that after the use of the vehicle, they drops the key for their Boss in the usual place or they leave it in the Control Room for their Boss. That he only drives home his official vehicle and had no need to go home with the Departmental vehicle. That on 17th January, 2013 he had come back with the driver at about 4 pm. He dropped the key at the usual place for his Boss. But his Boss emerged and said he was waiting for the vehicle key. He told he had kept it in the usual place. But since his Boss said he cannot climb upstairs, that he (Defendant) went upstairs to pick the key for his Boss out of respect.

By Defendant's explanation, it is glaringly clear that he is not guilty of count 1, 2 and 3 of the Charge. So this Court holds that the Prosecution was not able to establish those Charges against the Defendant.

The Prosecution was not able to establish that the Defendant was within the vicinity of the Kwali General Hospital on 30th October, 2012 or that he dishonestly moved a Red Toyotal Hilux Jeep – FFS 19. The driver who drove the vehicle on the day it was stolen at Kwali General

Hospital had in his Statement said that the Defendant was not among the staff/occupier of the vehicle on that fateful day. The other staff in the vehicle confirmed that fact. Besides, the Prosecution did not call any of the personnel in the vehicle to testify. Again, there is no Police Report to show that the Defendant was indicted in any way. The persons who testified to the whereabouts of the vehicle were never called up as Witnesses or Co-Defendants by the Prosecution for reason best known to Prosecution. The failure of the Prosecution to charge them to Court or present them as Witnesses further shows that the Prosecution were really out to punish and the Defendant in a very bad light. It also clearly shows that the Prosecution and their cohorts – Nominal Complainants were all hell-bent to destroy the Defendant.

The Prosecution was also not able to prove the fourth Charge against the Defendant. So this Court holds. So also the Prosecution did not prove the allegation of conversion of the vehicle against the Defendant. The vehicle was not found within the vicinity of the Defendant's abode. It was found at Lokoja, Kogi State. The Statement tendered by the Defendant says it all. The vehicle was painted. The Painter in his Statement said it was Innocent Adofu that brought the vehicle. Innocent Adofu in his Statement did not deny that fact. In his Statement – **EXH 9**, he claimed to have said that the Defendant asked him to drive the vehicle. He never came to Court to prove same. Nelson who became the spokesman of Adofu Innocent has no locus to be so. His evidence which is froth with hearsay is not credible enough

to prove the allegation of conversion. For a person to be guilty of conversion of property, he must have been so involved with the property and must have put in such a condition for his personal use. In this case, the Defendant – Ewelike Samuel did not in any way do so. **EXH 1 – 9 refers.** In his own Statement he never admitted to converting the vehicle or instructing anyone to convert same for him. He did not also move any of the vehicles – FFS 1E and FFS 19. He never disposed any of the vehicles too. He did not abet Innocent Adofu or Peter Otor or both or engaged them to move the 2 vehicle too. The Prosecution was not able to prove that Charge too. See the case of:

**A-G Rivers State V. A-G Bayelsa State
(2013) 3 NWLR (PT. 1340) 123**

The Prosecution could not establish against the Defendant, Ewelike Samuel that he made the so-called forge document – ID Card for Peter Otor. The Defendant never gave access to the said Peter Otor. He had stated that he met Peter Otor at the SARS for the first time in his life on the day they introduced him – Ewelike Samuel as their Boss. Neither Peter Otor no Innocent Adofu was presented before this Court as Witness by the Prosecution or as Co-Defendants. They were initially sued as Co-Defendants at the Magistrate Court. They were all dropped and the matter was dismissed for want of diligent prosecution and the Defendant was discharged and acquitted. The Prosecution who are hell-bent to achieve their plan came to this Court. after some years they amended their Charge in 2017 and brought the Defendant, Ewelike Samuel as the sole Defendant, leaving

the real culprits who have all confessed to have committed the crime. That is absurd.

It is one thing to raise allegation against someone and it is a very herculean task to prove and establish such allegation. He who alleges must prove same with credible evidence – oral and documentary and materially as the circumstance warrants. That is a duty which the Prosecution must perform with watertight credible evidence. It is not a matter of mere hearsay evidence. It must be backed by eye-witness account or Confessional Statement. The Prosecution must discharge that burden placed on it by law, otherwise it will be held that it has not proved the case against the Defendant. Where that is the case, the Court has no reason not to discharge and acquit the Defendant and hold that the case of the Prosecution failed and hold that the Prosecution have alleged but has failed to prove their allegation.

In this case, from the totality of the evidence of the Prosecution' Witnesses and documents tendered, it is glaringly clear and there is no iota of doubt that the Prosecution has failed woefully to prove the Charges against the Defendant – Ewelike Samuel. The evidence of the Prosecution does not support the fact as held in the case of:

Adesina V. Ojo
(2012) 10 NWLR P 552

The balance of justice in the imaginary scale of the case tilt in favour of the Defendant against the Prosecution. See the cases of:

Borishade V. Federal Republic of Nigeria Supra

Martins V. State

(1997) 1 NWLR (PT. 418) 355

Omola V. State

(1989) 2 NWLR (PT. 101) 23

The evidence of the PW1 – PW3 were pure hearsay and therefore inadmissible in proof of all the offences against the Defendant. So this Court holds. See the case of:

Osho V. Osho

(2012) 8 NWLR (PT. 1302) 243

Their evidence is full of what they were told and what they heard someone else say. They are all inadmissible to prove a fact.

The discrepancies in the evidence of PW1 – PW3 are so substantial and material and irreconcilable. See the cases of:

Federal Republic of Nigeria V. Usman

(2012) 8 NWLR (PT. 1301) 141

Okoro V. State

(1998) 14 NWLR (PT. 584) 181

In my conclusion, the Prosecution was not able to prove the guilt of the Defendant and was not able to rebut the

presumption of his innocence. They did not prove the case beyond reasonable doubt as required by law, as held in the cases of:

Oseni V. State
(2012) 5 NWLR (PT. 1293) 351

Igbele V. State
(2006) 6 NWLR (PT. 975) 100

Agbo V. State
(2006) 6 NWLR 545

Federal Republic of Nigeria V. Iweka
(2013) 3 NWLR (PT. 1347) 285

Aigbadion V. State
(2000) 7 NWLR 686

Bakare V. State
(1987) 1 NWLR (PT. 52) 579

Shande V. State
(2005) 12 NWLR (PT. 939) 301

This Court cannot convict the Defendant of this crime because the Prosecution has not proved the case against the Defendant beyond reasonable doubt. The Prosecution has asserted and alleged but failed to prove. **S. 135 of the Evidence Act 2011** (as amended).

The commission of the crime is in doubt in issue in this case and must be proved by the Prosecution beyond reasonable doubt. But they failed to do so. They failed to shift the burden to the Defendant or prove the ingredients

of the offence. There are elements of doubt in the evidence of the Prosecution's Witnesses and this Court resolves that in favour of the Defendant – Ewelike Samuel in accordance with the decision of Court in the cases of:

Bello V. State
(2013) 8 NWLR 207

Tanko V. State
(2008) 16 NWLR (PT. 1114) 597

Hassan V. State
(2001) 6 NWLR (PT. 709) 286

This Court therefore has extensively considered this case, the evidence of all the Witnesses for the Prosecution and that of the Defendant.

The so-called plan to settle out of Court was the last evidence scheme of the Prosecution to get the Defendant into their hook. But God was on his side.

It is the very humble view of this Court that the Prosecution failed to establish and prove the offence against the Defendant.

The said Defendant, Ewelike Samuel is therefore hereby DISCHARGED and ACQUITTED in this case which from all indication is a pure well orchestrated calculated plan/scheme to get the said Ewelike Samuel out of his job and out of the service by “hook” and “crook.”

This Court hereby Order the Prosecution/Nominal Complainant – Federal Fire Service to IMMEDIATELY recall

the Defendant – Ewelike Samuel to resume duty and to pay him all his salary from 2018 January till date and the allowances.

The Court hereby Order that all his promotion for the period from 2013 till date be restored. That is, he should be placed in the rank where his peer – mates in the service are as of today. That means that the Defendant should be restored to the said position and decorated accordingly up to date with immediate effect.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

PROSECUTION: BAGUDU SANI

DEFENDANT: HELEN I. IWUANYANWU holding the brief of C.N. OKONTA.