IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON TUESDAY, THE 3RD DAY OF OCTOBER, 2017
BEFORE HIS LORDSHIP, THE HONOURABLE
JUSTICE N. AYO-EMMANUEL
JUDGE

CHARGE NO: FHC/IB/55C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

1. PROFESSOR BENJAMIN ADEFEMI OGUNBODEDE
2. ZACCHEAUS TEJUMOLA
3. ADENOSE CLEMENT

} DEFENDANTS

JUDGMENT

The 1st, 2nd and 3rd Defendants amongst other Defendants were arraigned on a charge dated 16th of June, 2014 by the Complainant represented by the Economic and Financial Crimes Commission (hereinafter referred to as EFCC). It is a 17 count charge. The 1st – 3rd Defendants featured in counts 1, 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16. I reproduce the charges hereunder:

COUNT 1

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola, Adenose Clement, Jalekun Omitowoju Yisau, Afribiz Viables Ventures, Allied Aquaforte Ventures, Manifield Mercies Ventures, Agbeloba Agrotech Ventures Ltd, Towsbury International Agency Ltd, Cradle Engineering Services Ltd, Momm Limited, Al-Tora Allied Business and Arieco Trading Ventures on or about the 6th day of June, 2011 within the jurisdiction of this Honourable Court conspired amongst yourselves to commit an offence to wit: conversion of the sum of ₦115,750,000 (One Hundred and Fifteen

Million, Seven Hundred and Fifty Thousand Naira) which sum was derived from theft and you thereby committed an offence contrary to Section 18(a) of the Money Laundering (Prohibition) Act 2011 No. 11 and punishable under section 15 (1)(a) of the same Act.

COUNT 2

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 4th day of July, 2011 within the jurisdiction of this Honourable Court did procure MOMM LIMITED to retain in its account and on your behalf the sum of ₦9,300,000 (Nine Million, Three Hundred Thousand Naira) being proceed of crime in its Account and you thereby committed an offence contrary to Section 18(c) of the Money Laundering (Prohibition) Act 2011 No. 11 and punishable under Section 17(a) of the Act.

COUNT 4

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 28th day of June, 2011 within the jurisdiction of this Honourable Court did procure Afribiz Viable Konsult to retain in its account and on your behalf the sum of ₦4,700,000 (Four Million, Seven Hundred Thousand Naira) being proceed of crime and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

COUNT 6

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the

7th day of July, 2011 within the jurisdiction of this Honourable Court did procure Agbeloba Agrotech Ventures Ltd to retain in its account the sum of ₦9,950,000 (Nine Million, Nine Hundred and Ninety Fifty Thousand Naira) being proceed of crime on your behalf and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

COUNT 7

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 6th day of July, 2011 within the jurisdiction of this Honourable Court did procure Cradle Engineering Services Ltd to retain in its account the sum of ₦9,700,000 (Nine Million, Seven Hundred Thousand Naira) being proceed of crime on your behalf and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

COUNT 9

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 6th day of July, 2011 within the jurisdiction of this Honourable Court did procure Towsbury International Agencies Ltd to retain in its account the sum of ₦9,700,000 (Nine Million, Seven Hundred Thousand Naira) being proceed of crime on your behalf and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering

(Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

COUNT 11

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 6th day of July, 2011 within the jurisdiction of this Honourable Court did procure Towsbury International Agencies Ltd to retain in its account on your behalf the sum of ₦4,500,000 (Four Million, Five Hundred Thousand Naira) being proceed of crime and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the same Act.

COUNT 12

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 19th day of July, 2011 within the jurisdiction of this Honourable Court did procure Agbeloba Agrotech Ventures Ltd to retain in its account on your behalf the sum of ₦9,300,000 (Nine Million, Three Hundred Thousand Naira) being proceed of crime and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the same Act.

COUNT 13

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 19th day of July, 2011 within the jurisdiction of this Honourable Court did procure Manifield Mercies Ventures to

retain in its account the sum of ₦8,400,000 (Eight Million, Four Hundred Thousand Naira) being proceed of crime on your behalf and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

COUNT 15

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 19th day of July, 2011 within the jurisdiction of this Honourable Court did procure Afribiz Viables Ventures to retain in its account the sum of ₦7,700,000 (Seven Million, Seven Hundred Thousand Naira) being proceed of crime on your behalf and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

COUNT 16

That you Professor Benjamin Adefemi Ogunbodede, Zaccheaus Tejumola and Adenose Clement, on or about the 29th day of June, 2011 within the jurisdiction of this Honourable Court did procure Allied Aqua-forte Ventures to retain in its account the sum of ₦6,400,000 (Six Million, Four Hundred Thousand Naira) being proceed of crime on your behalf and you thereby committed an offence contrary to Section 18 (c) of the Money Laundering (Prohibition) Act 2011 No.11 and punishable under Section 17(a) of the Act.

It is pertinent to note that the 4th – 13th Defendants were convicted by this court on the 17th June 2016 based on their plea and the plea bargaining agreement entered by them.

I intend to abide by the new mode of writing judgment as circulated by the National Judicial Council in their circular dated 4th of October, 2016. The circular makes the reproduction of the history of the case in the body of the Judgment unnecessary as this is tantamount to time wasting and repetition. The council therefore advised that such history of the case be made an appendix to the Judgment. In this regard, I will therefore not waste time in reproducing the testimonies of witnesses in the body of this judgment as same is hereby attached and marked as Appendix 1. Reference shall be made to the testimonies as and when necessary for proper evaluation.

The Defendants pleaded not guilty to all the charges as it affects them individually. Trial therefore commenced on the 5th of February, 2016 when the prosecution opened their case. The prosecution called five (5) witnesses i.e PW1 – PW5 and tendered Exhibits P1 – P12.

PW1, Olufunmilayo Titilayo Ande was the Academic Staff Union Chairperson of the Institute of Agricultural Research and Training (hereinafter referred to as the "Institute") when the incident leading to this charge happened. The petition to the EFCC by the Union dated 17th of December 2012 was tendered through her and same was marked as Exhibit P1. The witness's statement to the EFCC and a charge sheet dated 29th April 2013 were equally tendered through her and marked as Exhibits P2 and P3. Her evidence is as contained in Appendix 1.

PW2, Lateef Bamidele Taiwo is a Deputy Director of the Institute. Exhibit P4, his statement was tendered and admitted in evidence through him. His evidence is as contained in Appendix 1.

The PW3 is Elijah Kolawole Adegboye. He is the Head of Compliance Unit, Access Bank. He testified that in 2012, Intercontinental Bank had a business relationship with Access Bank whereby the Bank was merged with Access Bank. Exhibits P5, P6(a) and (b) were tendered and admitted in evidence through him. His evidence is further contained in Appendix 1.

PW4, Ojo Adekunle Olumide is a Higher Executive Officer (Accounts) with the Institute. He testified that he is a cashier with the Institute. He testified further that he is in charge of banking operations for the Institute and also in charge of Cash Advance for the running of the Institute. He identified and confirmed Exhibits P1, P6 (a) and (b) together with all the relevant pages. His statement to the EFCC was tendered but rejected and it was so marked. His further evidence is as contained in Appendix 1.

PW5, Tolulola Tola-Ukaba is an Investigator with the EFCC. She testified that Exhibit P1 i.e The Petition was assigned to her team for investigation. She said members of her team included the following officers of EFCC – Kanu Idagu, Osas Azeonabor, Femi Olukinni, Buhari Ibrahim, Obodo Azibabein and Usman Zakari. Exhibits P7, P8, P9 (a) (b) (c) and (d), P10, P11 and P12 were tendered and admitted in evidence through her. Her full testimony is also contained in Appendix 1.

Olukemi Segun-Orija even though took to the witness box and sworn did not testify based on the objection raised by learned defence counsel.

With the testimony of the 5th prosecution witness, the prosecution rested his case.

Upon being called to enter their defence, the 3rd Defendant made a no case submission. This was however overruled by the court in its considered ruling dated 2nd of March, 2017.

The 1st Defendant, Prof. Benjamin Adefemi Ogunbodede thereafter opened his defence by calling a subpoenaed witness Adekemisola Olufunmilayo Ashaya, an Assistant Registrar with Obafemi Awolowo University to tender some documents. Exhibit D13, D14 and D15 were thereafter tendered and admitted in evidence through her – See Appendix 1.

The 1st Defendant thereafter gave evidence in his defence as DW1. He testified that he is a Professor and the immediate past Director of the Institute. Exhibits D16, D17, D18, D19, D20 and D21 were tendered and admitted in evidence through him. His evidence in defence and cross-examination can be seen on Appendix 1.

The 2nd Defendant Zaccheaus Tejumola, is the Chief Accountant of the Institute. He testified as DW2. His evidence and cross-examination is as contained in Pp. 123 – 140 of Appendix 1.

The 3rd Defendant Adenose Clement, an Accountant 1 with the Institute testified as DW3. His testimony and cross-examination is as contained in Appendix 1.

At the close of the Defendants' case, written addresses were filed and exchanged by counsel and same were adopted on the 22nd of June, 2017.

The 1st Defendant counsels' written address is dated 5th of May, 2017. Learned counsel raised one substantive issue for the determination of the court to wit:

"Whether from the totality of the evidence adduced by the prosecution witnesses, the prosecution has not failed to prove the offence of money laundering brought against the 1st Defendant beyond reasonable doubt".

The 2nd Defendant counsel's written address is dated 10th of May, 2017. Learned counsel posited two issues for determination in the said written address to wit:

(a) Whether the 2nd Defendant has duty to investigate how money that came to the institute are spent or kept in a particular Account within the first two months of his assumption in the Institute.

(b) *Whether the 2nd Defendant can refuse to sign cheques assigned to him by the Chief Executive Director, whose signature is also appended.*

The 3rd Defendant's counsel also filed her written address on the 4th of May, 2017. Learned counsel formulated two (2) issues for the determination of the court to wit:

1. *Whether the prosecution has proved the essential ingredients of the offences of conspiracy, conversion and money laundering against the 3rd Defendant.*
2. *Whether the 3rd Defendant can be vicariously liable to the alleged offences committed by the 1st and 2nd Defendants.*

In response to the 1st Defendant's written address, the prosecution filed its written address dated 12th of June, 2017 on the 14th of June, 2017.

The learned prosecutor formulated one issue for the determination of the court to wit:

"Whether having regards to the evidence adduced by the prosecution in this case, it can be said that the prosecution has proved its case against the 1st, 2nd and 3rd Defendants beyond reasonable doubt to enable this Honourable Court convict them as charged".

The prosecution's written address against the 2nd Defendant's written address is dated 12th of June, 2017 but filed on the 14th of June, 2017.

Learned counsel formulated the same issue for determination as earlier reproduced above.

The prosecution's written address against the written address of the 3rd Defendant is dated 12th of June, 2017 but also filed on the 14th of June, 2017.

Learned prosecutor also formulated same issue for determination as done in respect of the 1st Defendant which is reproduced above.

In reacting to the prosecution's written address, learned defence counsel filed a written reply on June 20th, 2017 respectively.

I have considered the written addresses and the issues formulated therein. The issues formulated for determination by counsel are almost the same. However, for the purpose of this judgment, I will be guided by the issue formulated by the learned prosecuting counsel in respect of each of the Defendants as charged. For the purpose of clarity, I reproduce same again below:

"Whether having regards to the evidence adduced by the prosecution in this case, it can be said that the prosecution has proved its case against the 1st, 2nd and

3rd Defendants beyond reasonable doubt to enable this Honourable Court convict them as charged".

The innocence of a Defendant standing criminal trial is well secured under Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria which provides *that every person charged with a criminal offence shall be presumed innocent until he is proved guilty.* The effect is that a Defendant is regarded as not having committed the offence charged until the prosecution proves that the Defendant(s) committed the offence. The burden of proof is therefore constantly on the prosecution – See Section 135(2) of the Evidence Act 2011. This burden of proof can only be discharged beyond reasonable doubt - See *Ogundiyan v State (1991)3 NWLR (Pt. 181)519.* However, proof beyond reasonable doubt is not proof beyond any shadow of doubt that the Defendant(s) is guilty of the offence charged – See *Mufutau Bakare v The State (1987) LPELR – 714 (SC)*

Before I proceed any further, I need to address some preliminary issues as partly raised by the counsel to the 1st Defendant and as deemed proper by the court. These preliminary issues are:

(i) *Whether counts 1 – 7 of the charge should be quashed for failure to bring the charges under the punishment sections of the Money Laundering (Prohibition) Act 2011.*

(ii) *Whether the statement of the Defendants to the EFCC Exhibits P10, P11 and P12 can be regarded as a confessional statement upon which a conviction can be secured.*

(iii) *Whether Exhibits P5 and P6 (a) and (b) are admissible in evidence.*

(iv) *Whether failure to serve copies of Exhibit P5, P6 on the 1st Defendant contravenes Section 36(6) and (b) of the 1999 Constitution.*

(v) *Whether Exhibit P9(a) (d) being public document needs certification.*

On the 1st preliminary issue, learned counsel to the 1st Defendant contended that none of the prosecution's charge dated 16th June, 2014 is brought under the appropriate punishment sections of the law. However, counsel admitted that there are sections of the Money Laundering (Prohibition) Act 2011 which provided specifically and generally for the offences in the Act. Counsel submitted that this does not discharge the duty on the prosecution to comply with the law vis-a-vis stating the specific sections of the law which prescribe punishments for the offences alleged. Learned counsel cited and relied on the cases of :

i. *Bamaiyi v A.G Federation (2001)12 NWLR (Pt. 727) P. 468;*

ii. *Ifezue v Mbadugha (1984)1 SCNLR Pg. 427;*

iii. *Chukwuka v Ezulike (1986)5 NWLR (Pt. 45)892;*

iv. *Enahoro v The Queen (1965)1 All NLR 132;*

v. *A.G. Federation v Clement Isong (1986)1Q LRN 75.*

Learned counsel therefore urged me to quash the charge against the 1st Defendant for failing to comply with the law.

In response to the objection of counsel to the 1st Defendant, the learned prosecutor submitted that contrary to the submission of the 1st Defendant's counsel, the charge under reference has

stated the section that defined the offence and prescribed the punishment for same.

The prosecutor thereafter drew the attention of the court in his written address to each of the seventeen counts and the corresponding law under which they were brought.

I have considered the submissions of counsel in this respect. I have also considered each of the counts as contained in the charge sheet particularly the sections of the law under which they are grounded.

Contrary to the submission of the 1st Defendant, I do not think any of the seventeen (17) count charge can be faulted on grounds that the prosecution has charged the 1st Defendant under a wrong section of the law. The correct position is as stated by the Supreme Court in Akinola Olatunbosun v State (2013) LPELR – 20939 (SC) where Akaáhs, JSC stated thus:

> *"If the facts on which an appellant was convicted are known to law, the fact that the accused was charged under a wrong law or section of the law, will not lead to his acquittal. See Alhaji Musahid Dokubo-Asari v FRN (2007)5-c 150; Aminu Mohaamed v State (2007)7 NWLR (Pt. 1032)152".*

The objection of the 1st Defendant is therefore misconceived.

The second vexing preliminary issue is whether the extra judicial statements of the 1st – 3rd Defendants can go in for a confessional statement which could ground the conviction of the 1st – 3rd Defendants.

It is the submission of the prosecution that this court can on the strength of the confessional statement of the Defendants convict them as charged because the Defendants admitted the essential

ingredients of the alleged offence in their statements Exhibits P10, P11 and P12. The prosecutor cited and relied on the case of *Ikemson v State (1989) NWLR (Pt. 11)455 at 476.*

1st Defendant's counsel in reaction submitted that a statement made to the EFCC under caution is a voluntary statement under the law of evidence and for the statement to amount to a confession, it must be clear, positive, unqualified and must clearly show that the accused admits the offence alleged. Counsel further submitted that the statement of the 1st Defendant is not a confession but a clear explanation of what happened as regards the claim of diversion of the hazard allowances of the Union of the Institute. Counsel submitted further that the statements of the Defendants tendered by the prosecution are extra judicial statements which only prove that the statements were made and not proof of the truth of its contents. Counsel cited and relied on the cases of *Uwaekwghinya v The State (2005) all FWLR Pt. 259 P. 1930; Kasa State (1994) 5 NWLR (Pt. 344) P. 269.*

I have perused the content of Exhibit P10, the statement of the 1st Defendant to EFCC made on the 17th, 21st, 31st of May 2013 and the one dated 14th of June, 2013.

As rightly observed and submitted by counsel to the 1st Defendant, a statement can only amount to a confession if it is clear, positive and unqualified. Having read Exhibit P10 line by line, it is safe for me to come to the conclusion that Exhibit P10 is confessional in nature as the content thereof is very clear and leaves no room for any ambiguity. It is therefore not correct to say that Exhibit P10 is not confessional.

I have equally perused the content of Exhibit P11, the statement of the 2nd Defendant to EFCC made on the 17th, 22nd, 23rd, 30th of May, 2013 and 7th and 19th of June 2013 respectively. Applying the same principles as earlier on stated, I have no difficulties in arriving at the same conclusion that Exhibit P11 is confessional in nature vis-a-vis the charge against him.

I have also considered the statement of the 3rd Defendant, Exhibit P12 to the EFCC dated 17th of May, 2013 and 5th of June, 2013 respectively. The content of the said statement confirms to me that it is confessional in nature and I will treat it as such. On whether the court can ground a conviction solely on the confessional statement of a Defendant on trial, the Supreme Court *per Musdapher JSC in Henry Odeh v FRN SC/334/2001 (2008) 3-4 SC 147* said:

> *"The law is fairly settled that a free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction and generally without any need of other corroborative evidence so long as the court is satisfied with its truth".*

These statements were tendered in evidence unchallenged. See *Michael Oloye v The State (2014) LPELR 22545 CA*. This means that the statements were voluntarily made without any compulsion or threat. I therefore believe the content of Exhibits P10, P11 and P12 as the truth of what they contain. These exhibits will therefore be the pivot upon which a consideration of the alleged offences will be considered. I will therefore rely and quote extensively from them when and where necessary.

The third preliminary issue is whether Exhibits P5 and P6(a) and (b) are admissible in evidence.

Learned counsel to the 1st Defendant submitted that the exhibits under reference are inadmissible for want of certificate of compliance as provided by the Evidence Act, 2011. Responding the learned prosecutor submitted that the objection to the admissibility of Exhibits P5 and P6 is misconceived. He further submitted that Exhibits P5 and P6 were tendered with certificate of identification in line with Section 84(4) of the Evidence Act 2011. I have considered Exhibit P5 and P6(a). Both exhibits have certificates attached to them. The learned counsel to the 1st Defendant probably did not look at those documents properly before fielding his objection.

Exhibit P6 (b) on the other hand is a letter from Access Bank forwarding certified copies of bank instruments to the EFCC. The letter conveying the instruments is original and all the bank instruments were duly certified.

On the fourth preliminary issue, learned counsel to the 1st Defendant further contended that the failure to file and serve the 1st Defendant by the prosecution with copies of Exhibits P5 and P6 is in violation of the constitutional provision of Section 36 (6) (b) which amounts to breach of the 1st Defendant's right to fair hearing. Learned counsel cited and relied on the case of *Okoye v C.O.P (2015)6 SCM Pg. 180.* Responding to the objection, the prosecutor submitted that the prosecution filed a bulky proof of evidence along with the charge and equally filed an additional proof of evidence which was served on the 1st Defendant. Moreover, the prosecution submitted that Exhibits P5 and P6 were tendered by PW3 Elijah Kolawole Adebayo from Access Bank without any objection by the 1st Defendant. Furthermore the

prosecution submitted that as required by the decision in *Okoye v COP (supra)* the 1st Defendant did not request for the document. I have considered this leg of objection and the response thereof. Exhibits P5 and P6 were tendered without objection even though the 1st Defendant's counsel claimed he was seeing the exhibits for the first time. 1st Defendant counsel also cross-examined the PW3 on Exhibits P5 and P6.

Moreso, there is nothing in exhibits P5 and P6 that is alien to the 1st Defendant. Therefore the 1st Defendant was not taken by surprise by the tendering. There is nothing on record showing that the 1st Defendant requested for Exhibit P5 and P6 and was denied assuming he was not served. That is the purport of the decision in *Okoye v COP (supra).*

On the 5th preliminary issue, 1st Defendant counsel contends that Exhibits P9 (a) – (d) are inadmissible on the ground that they are uncertified public documents which is contrary to Sections 104 and 106 of the Evidence Act. I have considered the said exhibits and I would agree with the prosecution's submission to the effect that these exhibits under reference were tendered in their original form and thus needs no further certification – See *Jolayemi v Olaoye (1999)10 NWLR (Pt. 624) Pg. 1, Okeke v A. G. Anambra State & Ors. (1992)1 NWLR (Pt. 215) 601 at 80.*

In concluding these preliminary issues/objections raised by the 1st Defendant, I do not see any merit in them and he is accordingly overruled. Exhibits P5, P6 (a) and (b), P9 (a) – (d) and Exhibit P10, P11 and P12 are validly before the court. I will rely on them if and when necessary.

Having considered and determined all preliminary issues, the coast is now cleared for the consideration of the charge itself. I will therefore consider each count of the charge as it affects each of the Defendants.

Count one of the charge deals with the offence of conspiracy to wit: the conversion of the sum of One Hundred and Fifteen Million, Seven Hundred and Fifty Thousand Naira (₦115,750,000). Section 18 of the Money Laundering Act 2011 (hereinafter referred to as the Act) provides as follows:

18. A person who -

(a) conspires with, aids, abets or counsels any other person to commit an offence, or

(b) attempts to commit or is an accessory to an act or offence; or

(c) incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act.

Commits an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

Section 15 of the Act also provides as follows:

"1. Money laundering is prohibited in Nigeria.

2. Any person or body corporate, in or outside Nigeria, who directly or indirectly-

a. conceals or disguises the origin of;

b. converts or transfers;

c. removes from the jurisdiction; or

d. acquires, uses, retains or takes possession or control of any fund or property, knowingly or reasonably

ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act;

commits an offence of money laundering under this Act.

3. *A person who contravenes the provisions of subsection (2) of this section is liable on conviction to an term of not less 7 years but not more than 14 years imprisonment.*

The Act did not give the definition of conspiracy but the decisions of our appellate courts have provided adequate definition of the word "conspiracy". I will therefore draw from these judicial authorities in defining the word conspiracy. In *Michael Oloye v The State (2014) LPELR – 22545 CA, Dongban-Mensem* said:

> *"Conspiracy has been variously define as an agreement between one or more persons to do an illegal act by an illegal means".*

See also *Kaza v The State (2008) 5 SCM 70 at 104; The State v Salawu (2011) LPELR – 8252 (SC) Pp. 38-39.*

Conspiracy is generally proved by inference deduced from the criminal acts of the culprits done in the pursuit of the criminal or illegal purpose common to the conspirators. It should be noted that proof of the actual agreement which is the hub or essential elements of the crime is not always easy to establish since the agreement is almost always shrouded in secrecy- See *Rasaki v The State (2011) CA.*

However, to sustain a charge of conspiracy, the prosecution must prove the elements of the offence, viz:

i. *An agreement by two or more persons to execute an agreed act.*

ii. The agreed act must be unlawful.

The 1st Defendant in his statement Exhibit P10 stated thus:

> *"It is true that the institute received through two instalments payments from the Federal Ministry of Finance the sum of ₦606,261,869.80 (Six Hundred and Six Million, Two Hundred and Sixty One Thousand, Eight Hundred and Sixty Nine Naira, Eighty Kobo) between November and December 2010".*

This fact is corroborated by Exhibit P5 which shows that the Institute maintains an Account Number 0065001000074305 with Access Bank Plc. It was this same account that received the two separate lodgements as shown on the account narration of the 24th November 2010 and 21st of December 2010 of Access Bank maintained by the Institute. This sum according to the 1st Defendant in his statement, Exhibit P10 is for the payment of salaries and allowances of staff. What then happened? The 1st Defendant provided an answer to this in his statement Exhibit P10 when he said:

> *"From the second instalment of ₦303,130,935.00 received in December 2010, the sum of ₦177,571,609.50 which could not be spent before the end of the year was warehoused in staff club account by transferring the amount from PE to staff club account".*

This piece of evidence is supported by the narration on Exhibit P5 wherein there was withdrawal of the sum of N177,571,609.50 described as Hazard allowance from the institute's account. Under cross-examination, the 1st Defendant admitted that the said sum was transferred. According to the 1st Defendant in his statement Exhibit P10:

"This fund was used to appreciate staff of the Federal Ministry of Finance that facilitated the fund release...."

Now where was the Funds warehoused? The answer could be found in the evidence of the 1st Defendant under cross-examination by the prosecutor, wherein he admitted that the said fund was transferred to an account named as "Institute of Agricultural Research and Training Staff Club and Cooperative". This evidence is corroborated by Exhibit P6A which is a letter from Access Bank indicating the account name and number. Exhibit P6A also include the account opening document of the staff club cooperative account. Exhibit P6A also includes the statement of account of the staff club cooperative. On the 12th of January, 2011, two separate lodgement narrated as hazard allowance were made into the account viz the sum of ₦81,065,403.85 and ₦96,506,205.65 respectively. Exhibit P6 'A' shows that the 1st and 2nd Defendants are signatories to this cooperative account. On whether there was an agreement to open this account, the 1st Defendant admitted under cross-examination that the account was opened in consultation or agreement with the 2nd Defendant and other parties outside the Institute. A curious person will want to know the status of this account named as "Institute of Agricultural Research and Training Staff Club and Cooperative". The evidence of the 1st Defendant under cross-examination shows that this particular account is unknown to the Accountant General of the Federation as approval was never sought or obtained before the account was opened. It then makes the account a 'private account' which is subject to the overall control of the 1st Defendant. Money could therefore be expended from the account without due process.

This the 1st Defendant admitted in his statement Exhibit P10 that most of the expenses through this account were not vouchered. The 1st Defendant gave a vivid narration of how the money in the Co-operative account was spent and the channels through which those monies were withdrawn and disbursed at his instructions. For further corroboration, I refer to Exhibits P6B, P7 and P8, all showing the instruments of withdrawal amongst others from the Co-operative account. The 1st Defendant further admitted variously under cross-examination that part of the funds paid to the 4th – 13th Defendants were subsequently ploughed back to him.

From these pieces of evidence, it is obvious that the 1st Defendant did not act alone. This then leads me to the role played by the 2nd Defendant.

The 2nd Defendant is a signatory to Exhibit P6 (A). He stated in his statement dated 22nd of May 2013:

> *"The sum of ₦177,571,609.50 was transferred to Institute of Agricultural Research and Training Staff Club Account number 0101632695 on the 12th January, 2011. The transfer was actually done in December 2010 to prevent a mop up of the account by 31st of December 2010".* Under cross-examination, 2nd Defendant admitted that there is no such name as IAR&T Staff Club Co-operative. See Appendix 1.

In his statement dated 17th of May, 2013, Exhibit P11, the 2nd Defendant stated:

> *"My signature featured in the disbursement of the ₦177,571,609.50 from start to finish. I am a signatory to the staff club account No. 0101632695 with Access*

Bank. The reason why cash withdrawals were made from the staff club account is to make use of the cash for certain purposes. It is not right to make cash withdrawals from the staff club account. I authorized the withdrawals from the staff club account no. 0101632695 because I did not know at that time that it was wrong. The cash withdrawals were all authorized by the Executive Director and I do not know the details of the beneficiaries".

Responding to some questions under cross-examination, the 2nd Defendant has this to say:-

Q. It is your employer's policy that unspent funds should be evacuated by the Accountant General?

A. You are correct.

Q. It is also correct to say that you and the other Defendants agreed to prevent the evacuation in accordance with your Employer's Policy?

A. Yes, but for a reason.

Q. All of you agreed to prevent the return of the money from going back to the Treasury?

A. Yes.

Q. In carrying out this agreement, from Exhibit P6 (a), the total sum of ₦177million naira was transferred in two tranches.

A. Yes.

Q. In executing your agreement with 1st Defendant, the lodgement on the 12th of January 2012, the transaction narrated on that date was transferred into that account?

A. Yes.

By the evidence of the 2nd Defendant, he has clearly laid out the role he played vis-a-vis the charges against him.

The 3rd Defendant in his statement dated 17th of May, 2013, Exhibit P12 stated thus:

> *"The cheques written in my name were collected and I handed over the cash withdrawals to the Executive Director".*

Furthermore in his statement dated 5th June, 2013, the 3rd Defendant stated thus:

> *"...I wish to state that apart from ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) withdrawn by me from Access Bank Account No. 0101632695, the other channels through which I gave money to Professor Ogunbodede were by way of the Professor sending me to collect money on his behalf from Cradle Engineering or Engineer. I cannot remember the number of times I was sent by Professor Ogunbodede to collect money from the Engineer".*

Under cross-examination, the 3rd Defendant admitted that the sum of ₦7.5million naira which was withdrawn by him forms part of the ₦177million naira, subject matter of this charge. The 3rd Defendant also admitted under cross-examination that the various sums of money withdrawn by him does not form part of his emolument or payment for any service rendered to the Institute.

The 3rd Defendant further admitted under cross-examination that he collected money from one Omitowoju the 4th Defendant at various times on behalf of the 1st Defendant based on instruction.

He equally admitted knowing the said Omitowoju to be a contractor to the Institute.

By the evidence of the Prosecution Witenesses and that of the 1st, 2nd and 3rd Defendants, it will not be difficult for a discerning mind to find out that the offence of conspiracy has been established. The chain of conspiracy is based on the following sequence in summary. The 1st and 2nd Defendants agreed to warehouse the sum of ₦177,571,609.50 being money lawfully allocated to the Institute in order to prevent mop up exercise usually carried out on the 31st of December of every year. As a prelude to this, an account was generated with Access Bank bearing the name 'Institute of Agricultural Research and Training Staff Club & Co-operative with account No. 0101632695'. This account to all intent and purposes is fictitious and illegal. Funds were subsequently transferred into this account with a cover up name as Hazard allowance on the instrumentality or instructions of the 1st and 2nd Defendants who were the signatories to the account. Funds were thereafter withdrawn on the authority of the 1st and 2nd Defendants through the 3rd – 13th Defendants. On some occasions, the 3rd Defendant was used as the errand boy through whom the withdrawn money gets back to the 1st and 2nd Defendants. It is therefore safe to say that the 4th – 13th Defendants convict served as the conduit pipe for the warehoused funds while the 3rd Defendant served as the courier who conveyed the funds back to the 2nd – 3rd Defendants.

It is my finding therefore and I so hold that the prosecution has proved beyond reasonable doubt the offence of conspiracy made out in count one of the charges against the 1st, 2nd and 3rd Defendants. I find them guilty as such and are hereby convicted

under Section 18(a) read in conjunction with Section 15(1) (2)(b) and (3) of the Money Laundering Act, 2011.

Having now dealt with count 1 of the charge, counts 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16 deal with the offence of procuring the 11th, 5th, 8th, 10, 9th, 7th and 6th Defendants/convicts by the 1st – 3rd Defendants to commit various criminal acts punishable under Section 17(a) of the Money Laundering (Prohibition) Act, 2011.

Section 18(c) of the Money Laundering (Prohibition) Act 2011 again provides as follows:

18. A person who –

(c) incites, procures or induces any other person by any means whatsoever to commit an offence under this Act, commit an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

Also Section 17 of the Act provides:

17. Any person who –

(a). Conceals, removes from jurisdiction, transfers to nominees or otherwise retains the proceeds of a crime or an illegal act on behalf of another person knowing or suspecting that other person to be engaged in a criminal conduct or has benefitted from a criminal conduct or conspiracy, aiding, etc; or

(b) Knowing that any property either in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquires or uses that property or possession of it,

commits an offence under this Act and is liable on conviction to imprisonment for a term not less than 5

years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or both such imprisonment and fine.

The word 'procure' is not defined in the Act. In *Ezeadukwa v Maduka (1997)6 NWLR (Pt. 518)635 at 663 para G-H,* it was held that to 'Procure means to contrive or bring about or bring upon someone. The word procurement is the act of getting or obtaining something.

Also in *Frank Mukoro-Mowoe v The State (1973) All NLR 238*, the Supreme Court said: The word "Procure" should be given its ordinary meaning which imports effort, care, management or contrivance towards the obtaining of a desired end ...".

According to legal dictionary on its website, the free dictionary.com, the word procure is also defined as:

"To cause something to happen; to find and obtain something or someone. Procure refers to commencing a proceeding; bringing about a result; persuading, inducing, or causing a person to do a particular act; obtaining possession or control over an item; or making a person available for sexual intercourse".

Arising from these definitions is that for the prosecution to secure a conviction under Sections 18(c) and 17(a) of the Act, he must prove that the 1st – 3rd Defendants actually 'procured' the 11th, 5th, 8th, 10th, 9th, 7th and 6th Defendants in conjunction with the 4th Defendant who is the alter ego of these Companies to commit the various criminal acts as alleged.

In determining whether the 1st Defendant procured other Defendants/Convicts as alleged, permit me once again to quote

extensively from the statement of the 1st Defendant Exhibit P10 dated 14th of June, 2013:-

> *"Further to my statement dated 31/05/13 I wish to state that from the responses of Access Bank dated 14/05/13, which was received by the EFCC Lagos Office on 20/05/13 shown to me by the team handling the investigation of a petition written against me by the existing Staff Unions in my Institute, various payments were made from the staff club Account to either two of the Accounts staff, Mr. C. O. Adenose or Mr. Kunle Igo as well as various other companies (and I) to which I have these explanations to make. On 6th June 2011, I and the Chief Accountant of the Institute Mr. Z. K. Tejumola signed a staff club and cooperative Intercontinental Bank cheque of the Institute No. 00000012 valued ₦8,300,000 only in favour of Momm Ltd. It was part of the fund used to construct the 10 classroom Nursery/Primary School for the Institute. On the same day/date, another cheque from the same account was signed by I and the Chief Accountant to the tune of ₦4,500,000.00 in favour of Towsbury International Agency Ltd with number 00000013. It was also in respect of the construction of the Nursery/Primary School for the Institute. Another cheque number 00000011 also drawn from the same account which was signed by I and the Chief Accountant to the tune of ₦9,700,000 only in favour of CRADLE Engineering Nig Ltd. This was part of the ₦177million which was warehoused in the Staff Club Account so that it would*

not be mopped by the Federal Government but not that any job or contract was awarded to the company by the Institute. Several other cheques signed by I and the Chief Accountant and paid to different companies owned by Mr. Towo Jalekun from the Institute Staff Club Account with Intercontinental Bank Bodija Ibadan branch were not on grounds of contracts or jobs awarded by the Institute as follows Intercontinental cheque No. 00000016 dated 28/06/11 valued ₦5,000,000 only in favour of Arieco Trading Ventures; Intercontinental Bank cheque No. 00000015 dated 28/06/11 valued ₦5,300,000 in favour of Al-Tora Allied Business; Intercontinental Bank cheque No. 00000017 dated 29/06/11 valued ₦7,000,000 in favour of Manifold Ventures Ltd; Intercontinental Bank cheque No. 00000023 dated 29/06/13 valued ₦6,400,000 in favour of Allied Aqua Forte Ventures; Intercontinental Bank cheque No. 00000014 dated 28/06/11 valued ₦4,700,000 in favour of Afribiz Viables Konsult; Intercontinental Bank cheque No. 00000024 dated 04/07/11 valued ₦9,300,000 in favour of Momm Limited; Intercontinental Bank cheque No. 00000019 dated 04/07/11 valued ₦9,950,000 in favour of Agbeloba Agrotech Ventures Ltd; Intercontinental Bank cheque No. 00000025 dated 06/07/11 valued ₦9,700,000 in favour of CRADLE Engineering Services Ltd; Intercontinental Bank cheque No. 00000026 dated 06/07/11 valued ₦9,700,000 in favour of Towsbury International Agencies Ltd; Intercontinental Bank cheque

No. 00000029 dated 19/07/11 valued ₦9,300,000 in favour of Agbeloba Agrotech Ventures Ltd; Intercontinental Bank cheque No.00000027 dated 19/07/11 valued ₦9,100,000 in favour of Manifold Mercies Ventures; Intercontinental Bank cheque No. 00000028 dated 19/07/11 valued ₦8,400,000 in favour of Allied Aqua-Forte Ventures; Intercontinental Bank cheque No. 00000030 dated 19/07/11 valued ₦7,700,000 in favour of Afribiz Viable's Ventures. All these above payments in addition to those amounting to ₦60million or thereabout traced into Momm and CRADLE Engineering Services Ltd were to enable management of the Institute to easily obtain cash which would have otherwise been impossible through the Staff Club Account because cheque transactions from the account would have been unacceptable by the intended beneficiaries such as Federal Legislators and Federal Ministry of Finance officials who would not want to be identified since such payments can eventually be traced. I may not be able to give the names of the Ministry officials or legislators who benefited from the cash disbursed now. Out of the ₦204million cash that was withdrawn from the Institute Staff Account No. 0101632695, ₦27million was used to execute a formal contract of the construction of a Nursery/Primary School which followed due processes and was vouchered the sum of ₦30million naira was also used to upgrade electricity supply facilitates this was not vouchered and did not follow due processes, the remaining balance of

about ₦147million was used to appreciate Federal Ministry of Finance Officials, Federal legislators or a governing board member who made contacts for the Institute. These processes were not vouchered and did not pass through due process. The ₦25million paid by Mr. Towo Jalekun paid into the Bora Agro Nig Ltd Account in respect of donations to build the Nursery/Primary School were part of the about ₦176million he assisted management to cash from the Staff Club Account through his companies. This money was eventually part of what was paid to his company CRADLE Engineering for constructing the school".

The 1st Defendant in his very statement admitted paying money to Mr. Towo Jalekun (4th Defendant/convict) and other companies owned by Mr. Towo Jalekun. One of such payments is the one made to Momm Ltd with Intercontinental Cheque No. 00000024 to the tune of ₦9, 300,000 signed by the 1st and 2nd Defendants. This is the subject of count two. This is a clear confession and/or admission on the part of the 1st Defendant that he committed the offence as stated in count two. However in further corroboration of this is Exhibit P6 with particular reference to the Intercontinental Bank cheque dated 4th of July, 2011.

On his part, the 2nd Defendant has this to say in his statement dated 19th of June, 2013:-

"The cheque No. 00000024 issued to Momm Ltd was not for contract. Momm Ltd account was used to withdraw the money. The sum of ₦9, 300,000.00 written on the

cheque was handed over to the Director by Momm Ltd. ... I am a signatory to the staff club account".

The 2nd Defendant also confirmed this in his evidence under cross-examination when he was taken in a round of questioning thus:-

Q. What I am saying is that the withdrawal would not have been possible if you had not signed that cheque?

A. Yes.

Q. In count 2: reads, did you not sign this cheque of N9.3million naira in favour of the 1st Defendant?

A. I signed the cheque.

Q. Was that N9.3million naira for the execution of any project of the Institute?

A. No.

Q. It will be correct that the account of Momm Ltd was merely used to withdraw the money?

A. Yes.

The name of the 3rd Defendant did not feature in all these.

From the pieces of available evidence before me, the prosecution has proved beyond reasonable doubt that the 1st and 2nd Defendants procured the 11th Defendant/convict to retain in its account the sum of ₦9.3million naira which was subsequently ploughed back to the 1st and 2nd Defendants as it were. I therefore find the 1st and 2nd Defendants guilty of count two and are hereby convicted as charged.

The 1st Defendant also admitted in his statement as reproduced above of issuing an Intercontinental Bank cheque No. 00000014 dated 28th of June, 2011 in favour of Afribiz Konsult to the tune of ₦4,700,000.00. According to him, the instrument of

authorization was signed by him and the 2nd Defendant. This is the subject of count 4 of the charge. The 1st Defendant is hereby found guilty of the 4th count and he is hereby convicted as charged.

1st Defendant also admitted as per his statement of issuing an Intercontinental Bank cheque No. 00000019 dated 4th of July, 2011 valued ₦9,950,000.00 in favour of Agbeloba Agrotech Ventures Ltd (8th Defendant/convict). This is the substance of count 6 of the charge and he is found guilty of count 6 and he is hereby convicted as charged.

The 1st Defendant also agreed and/or admitted issuing Intercontinental Bank cheque No. 00000025 dated 6th of July 2011 to the tune of ₦9.7million naira in favour of Cradle Engineering Services Ltd 10th Defendant/convict. This relates to count 7 of the charge. I therefore find the 1st Defendant guilty of count 7 and he is hereby convicted as charged.

Furthermore the 1st Defendant admitted in his statement that he issued an Intercontinental Bank cheque No. 00000026 dated 6th of July 2011 valued at ₦9.7million naira to Towsbury International Agencies Ltd the 9th Defendant/convict. This is subject of the 9th count of the charge. It is my finding and I so hold that the prosecution has established the guilt of the 1st Defendant in respect of the 9th count and he is hereby convicted as charged.

Also with reference to the 11th count, the 1st Defendant admitted signing cheque No. 00000013 valued at ₦4.5million naira in favour of Towsbury International Agency Ltd the 9th Defendant/convict. The prosecution also has established the

guilt of the 1st Defendant in respect of the 11th count and he is hereby convicted as charged.

Furthermore and with reference to the 12 count, the 1st Defendant admitted signing cheque No. 00000029 dated 19th of July 2011 valued at ₦9.3million in favour of Agbeloba Agrotech Ventures Ltd. The prosecution has proved the guilt of the 1st Defendant in respect of the 12th count and he is hereby convicted as charged.

In respect of the 13th count, the admission of the 1st Defendant is in respect of Allied Aqua-Forte Ventures to whom he said he issued a cheque No. 00000028 dated 19th of July, 2011 valued at ₦8.4million naira. The Company named in the charge is one Manifold Mercies Ventures. Both the evidence of the 1st Defendant and Exhibit P6 (b) Particularly Intercontinental Bank cheque No. 00000028 dated 19th of July, 2011 shows that it was issued in favour of Allied Aqua-Forte Ventures as opposed to Manifold Mercies Ventures as reflected on the 13th count. This is a material contradiction and therefore falls short of standard of proof required of the prosecution as the court must not be used to fill in the gap for the prosecution. The 1st Defendant is hereby discharged and acquitted in respect of the 13th count for want of evidence.

On the 14th count of the charge, the 1st Defendant admitted issuing an Intercontinental Bank cheque No.00000030 dated 19th of July, 2011 valued at ₦7.7million naira in favour of Afribiz Viables Ventures. This is the purport of the 14th count. The prosecution has proved the guilt of the 1st Defendant in respect of the 14th and he is hereby convicted as charged.

On the 16th count which is the last concerning the 1st Defendant, the 1st Defendant equally admitted issuing an Intercontinental Bank cheque No. 00000023 dated 29th of June, 2013 valued at N6.4million naira in favour of Allied Aqua Forte Ventures. The 1st Defendant is also found guilty of the 16th count and he is hereby convicted as charged. The 1st Defendant confirmed under cross-examination that the values of these cheques were withdrawn on his instruction when responding to questions under cross-examination thus:

Q. Will it be correct to say that it was the proceed of those cheques that these Defendants were bringing to you together with Mr. Omitowoju?

A. Not bringing to me per se.

Q. The value of those cheques were taken on your instruction?

A. Yes.

This piece of evidence indicates that the 1st Defendant actively participated in the warehousing of the funds through the procurement of the 11th, 5th, 8th, 10th, 9th and 6th Defendants/Convicts and the subsequent withdrawal of same which is the subject of counts 2, 4, 6,7, 9, 11, 12, 15 and 16 of the charge under reference.

On the part of the 2nd Defendant who equally featured in all the counts involving the 1st Defendant, I will refer to and place reliance on his statement dated 17th, 22nd, 23rd of May 2013 and 19th of June, 2013. These statements as earlier observed are confessional and nothing can be added or subtracted from it. For clarity, I reproduced hereunder the statement of the 2nd Defendant dated 19th of June 2013.

" In addition to my statement made on 17/06/13 I wish to state as follows:

I have been shown a response from Access Bank dated 14/05/13 in which they forwarded instruments used to withdraw from the staff club account to the commission and I wish to comment as follows: The cheque with No. 00000013 dated 06/06/11 for an amount of ₦4,500,000 was not for contract. The contractor, Towsbury International Agency Ltd was paid the sum and withdrew the sum which he handed over to the Director. I do not know the real name of the contractor, I only know him by the name of his company. The cheque No. 00000011 dated 06/06/11 issued to Cradle Engineering Nig Ltd was not for contract. Cradle Engineering Nig Ltd account was used to withdraw the sum of ₦9,700,000 written on the cheque and the money was handed over to the Director by the contractor Cradle Engineering Nig Ltd. I do not know his real name, I only know him by his company's name. The cheque No. 00000016 issued to Arieco Trading Ventures on 25/06/11 was not for contract. Arieco Trading Ventures account was used to withdraw the money. The sum of ₦5,000,000 written on the cheque was handed over to the Director by the contractor. I do not know his real name, I only know him by his company's name. The cheque No. 00000015 issued to Al-tora Allied Business was not for contract. The Al-tora Allied Business's account was used to withdraw the money. The sum of ₦5,300,000

written on the cheque was handed over to the Director by Al-tora Allied Business. I do not know his real name, I only know him by his company's name. The cheque No. 00000017 issued to Manifold Mercies Ventures was not for contract. The contractor's account was used to withdraw the money. The sum of money ₦7,000,000 written on the cheque was handed over to the Director by the contractor Manifold Mercies Ventures. I do not know his real name, I know him by his company's name. The cheque No. 00000014 dated 28/06/11 issued to Afribiz Viable Konsult was not for contract. Afrizbiz Viable Konsult account was used to withdraw the money. The sum of ₦4,700,000 written on the cheque was handed over to the Director by the contractor Afribiz Viable Konsult. I do not know the contractor's real name, I only know him by his company's name. The cheque No. 00000024 issued to Momm Ltd was not for contract. Momm Ltd's account was used to withdraw the money. The sum of N9,300,000 written on the cheque was handed over to the Director by Momm Ltd. I do not know his real name, I only know him by his company's name. The cheque No. 00000019 issued to Agbeloba Agrotech Ventures Ltd was not for contract. Agbeloba Agrotech Ventures Ltd's account was used to withdraw the sum of ₦9,950,000 which was handed over to the Director by Agbeloba Agrotech Ventures Ltd. I do not know his real name, I only know his company's name. The cheque No. 00000025 issued to Cradle Engineering

Services Ltd was not for contract. Cradle Engineering's account was used to withdraw the money. The sum of ₦9,700,000 written on this cheque was returned to the Director by the contractor, Cradle Engineering. The cheque No. 00000026 issued to Towsbury International Agency Ltd was not for contract. Towsbury International Agency withdrew the money and returned the money to the Director. The sum of N9,700,000 written on the cheque was returned to the Director by Towsbury International Agency. I do not know his real name, I only know him by his company's name. The cheque No. 00000029 issued to Agbeloba Agrotech Ventures Ltd was not for contract. Agbeloba Agrotech's account was used to withdraw the money. The sum of ₦9,300,000 written on the cheque was returned to the Director by Agbeloba Agrotech Ventures. I do not know his real name, I only know him by his company's name. The cheque No. 00000027 issued to Manifold Mercies Ventures was not for contract. The sum of ₦9,100,000 written on the cheque was withdrawn and returned to the Director by Manifold Mercies Ventures. I do not know his real name, I only know him by his company's name. The cheque No. 00000028 issued to Allied Aqua-Forte Ventures was not for contract. The sum of ₦8,400,000 written on the cheque was withdrawn and handed over to the Director by Allied Aqua-Forte Ventures. I do not know his real name, I only know him by his company's name. The cheque No. 00000030 issued to Afribiz Viable Ventures was not for

contract. Afribiz Viable Ventures collected the sum of ₦7,700,000 written on the cheque and returned the money to the Director. I do not know the contractor's real name, I only know him by his company's name. For all the companies I mentioned, the contractor is one and the same person, but I do not know his real name, I only know his company's name. I do not know the details of what all the money was used for.

Payment vouchers were not raised for all these cheques. The contractor handed over all the cash withdrawals to the Director, Professor B. A. Ogunbodede. Vouchers were not raised for all these cheques because we did not want to raise vouchers for them.

I knew it was not normal not to raise vouchers for financial transactions. It is not in accordance with accounting practice not to raise vouchers. I am a signatory to the staff club account".

Aside from the statement of the 2nd Defendant, all the instruments used in drawing up cheques in favour of the 5th – 11th Defendants/convicts were all co-signed by him as the Institute's Chief Accountant. The 2nd Defendant also confirmed this in his evidence under cross-examination when he reacted to the question(s) fielded by the prosecution thus:

Q. Is it correct that the scheme leading to this charge is that part of this N177million naira were transferred to the 5th – 13th Defendants and the owner of the Companies received the money, cashed it and return it to you?

A. Money was not returned to me. I signed the cheques so I did not see how the money was cashed.

Q. Are you denying that these funds were not given to 5th – 13th Defendants?

A. They were given money.

Q. Are you denying that the 5th – 13th Defendants did not withdraw the money from the bank?

A. They did.

Q. And the money would not have been received by the 1st Defendant but for your signing the cheque which is the instrument of withdrawal unto the account that you open which is Exhibit P6.

A. It is part of my duty to sign cheque.

Q. What I am saying is that the withdrawal would not have been possible if you had not signed those cheques.

A. Yes.

This piece of evidence is further corroborated by Exhibit P6 (a) which contains all the instruments of withdrawals co-signed by the 2nd Defendant. Based on the evidence above, I do find and hold that the prosecution has further established the guilt of the 2nd Defendant in respect of counts 4, 6, 7, 9, 11, 12, 15 and 16 and he is hereby convicted of each of the counts as charged.

As earlier observed, the 2nd Defendant confirmed in his statement that the sum of ₦8.4million naira reflected on the 13th count was made to Allied Aqua-Forte Ventures and not Manifold Mercies Ventures as stated in the count. I will also hold that count 13 has not been established by the prosecution against the 2nd Defendant.

In the process of procuring the 5th – 13th by the 1st and 2nd Defendants, the name of the 3rd Defendant was never mentioned. It then means he did not play any role in the process of warehousing the funds involved.

The utilization of the funds by the 1st and 2nd Defendants are well stated in Exhibits P10 and P11.

I have considered Exhibits D13, 14, 15, 16 and 17 tendered in defence by the 1st Defendant. I have particularly considered Exhibits D13, 14 and 17 which has direct bearing on the charge under reference. These exhibits are the reports of different panels set up to investigate the finances of the Institute which eventually gave rise to this charge. The observations/recommendations of these panels are in conflict with the findings of this court which is predicated on evidence and facts. I will therefore not place any probative value on them.

I have also considered Exhibits D18, 19, 20 and 21 tendered by the prosecution through the 1st Defendant in the course of cross-examination. These exhibits were tendered without any objection.

For the purpose of clarity, I will reproduce part of the facts before the said panel in Exhibit 19 and their findings and recommendations.

> *"Allegation 1: Impropriety in dealing with the sum of ₦177,371,609.51 tagged Hazard Allowance.*
>
> The Following facts were established before the Panel:
>
> 1. *The sum of ₦177,371,609.50 was part of the total sum of ₦606,261,869.80 paid in two tranches of ₦303,130,934.90 by the Federal government on*

November 24th and December 21st 2010 as subvention to the Institute.

2. *The ₦177,371,609.50 was prepared and recorded in the Cash Book of the Institute (Annexure "B1 page 4) as Hazard allowance for the staff of the Institute using the name of Messrs Aliu and Tirimisiyu.*
3. *Contrary to the normal practice of making payment of personal emoluments of staffs into individual's staff account, the sum of N177,371,609.50 was broken into two with the sum of ₦81,065,403.85 posted as arrears of Hazard allowance for one Mr. Aliu and others and the balance sum of ₦96,506,205.65 posted as arrears of Hazard allowance for Mr. Tirimisiyu and others.*
4. *Messrs Aliu and Tirimisiyu were the first names on the nominal rolls of the senior and junior staff of the Institute respectively.*
5. *The voucher used to prepare the sum of ₦177,371,609.50 could not be found up till now.*
6. *The sum of N177,371,609.50 was paid into the Intercontinental Bank account of the Institute as Hazard allowance (Annexure "B3"page 7).*
7. *The decision to lodge the money in a separate account was taken by the Director and Chief Accountant, without informing other members of the Management team of the Institute and the money was actually paid into a separate account without the knowledge of Management of the Institute.*
8. *Facts of the account number and the Bank where the money was kept is only known to the Director and the*

Chief Accountant who are the signatories to the Institute's bank accounts.

9. *Both the Director and the Chief Accountant refused to disclose the particulars of the account and the Bank where it was kept to the Panel despite repeated demand for same when they testified before it.*
10. *Hazard allowance has not been paid to staff of the Institute up till the time the Director appeared before the Panel.*

Also part of the recommendations in Exhibit D21 states as follows:

"1) That Obafemi Awolowo University being the supervisory body charged with the Appointment, Discipline and promotion of staff of IAR&T Ibadan, should institute disciplinary actions against the Executive Director, the Chief Accountant Mr. Z. K. Tejumola and Mr. Adenose (Accountants) for their role in the misappropriation of government funds to the tune of ₦178,685,109.50...".

All these pieces of findings and/or recommendations of the various panels go to corroborate the evidence before the court.

In summary, the facts and evidence before the court lead me to an irresistible conclusion that the prosecution has proved beyond reasonable doubt the guilt of the 1st, 2nd and 3rd Defendants in respect of count one (1) and the guilt of the 1st and 2nd Defendants in respect of counts 2, 4, 6, 7, 9, 11, 12, 15 and 16 respectively and I so hold. I therefore return a verdict of conviction for the three Defendants in respect of count one (1). The 1st and 2nd Defendants are also hereby convicted of counts 2,

4, 6, 7, 9, 11, 12, 15 and 16. As observed earlier, it is my findings and I so hold that the prosecution has failed to establish beyond reasonable doubt the guilt of the 3rd Defendant in respect of counts 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16. I will therefore discharge and acquit him of those counts.

This shall be the judgment of the court.

HON. JUSTICE N. AYO-EMMANUEL
JUDGE
3RD OCTOBER 2017

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON TUESDAY, THE 3RD DAY OF OCTOBER, 2017
BEFORE HIS LORDSHIP, THE HONOURABLE
JUSTICE N. AYO-EMMANUEL
JUDGE

CHARGE NO: FHC/IB/55C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

1. PROFESSOR BENJAMIN ADEFEMI OGUNBODEDE
2. ZACCHEAUS TEJUMOLA
3. ADENOSE CLEMENT

} DEFENDANTS

S E N T E N C E

I have considered the allocutus well rendered by the defence counsel in respect of the convicts and the response of the learned prosecutor.

It must be borne in mind that the primary object of judicial sentencing is firstly, to seek to use the penal sanctions prescribed by the law(s) pursuant to which a convict was tried and convicted to seek to reform him. Secondly, it is to impose such sentence as will not only meet the justice of the case, but that will serve as a deterrence to others who are involved in similar criminal conduct but who are yet to be apprehended. Basically, these are the two(2) main objectives which every judicial sentencing seek to accomplish and both of them are essentially, sociological in nature.

In passing sentence, the court is required to take into account, a number of issues which will either serve to mitigate or aggravate the punishment which the court is to pass in

accordance with the law. One of such is the length of time the convict had spent in custody, the notoriety of the offence for which he was tried; the fact that the Defendant pleaded guilty at the earliest moment when he was charged to court; the extent of harm which his criminal conduct had occasioned, the wide spread of nature of the victims of his criminal conduct, the nature of injury caused, the extent of cooperation which investigators received from him when he was being investigated etc are some of the several issues which the court will be concerned with in order to make up its mind, whether the convict truly and generally deserves the sympathy of the court as someone who has become remorseful and has by his conduct, showed penitence and a sense of regret or should be given the stiffest punishment prescribed by law.

I have considered the scenario leading to this charge and I must confess that it is rather unfortunate. This is just one out of many showing how departments, ministries and agencies of Government are being administered. It further goes to show how Government officials go out of their ways to source for more funds to run their departments, how be it in an unprofessional and unethical manner.

Count 1 was based on Section 18(a) of the Money Laundering Act, 2011 made punishable under Section 15(1) (a) of the Money Laundering Act, 2011. I think the appropriate punishment section ought to have been Section 15 (1), (2)(b) and (3) of the Act which prescribed seven (7) but not more than fourteen (14) years imprisonment for count 1 of the charge.

I however asked myself if I have the discretion to impose a lesser sentence. I think I can particularly for a 1st offender.

While I cannot impose a higher sentence than that prescribed by law, I may impose a lesser sentence than that prescribed. See Section 416 (2) (d) and (e) of the Administration of Criminal Justice Act 2015 and Slap v AG of the Federation (1968) NMLR 326. Subsequently, in the light of the mitigating issues enumerated above, the allocutus of counsel and having taken into consideration the facts of the case, the 1st , 2nd and 3rd Defendants are hereby sentenced to four (4) years imprisonment on count one.

Count 2 was based on the provisions of Section 18(c) read in conjunction with Section 17(a) of the Act. The same applies to counts 4, 6, 7, 9, 11, 12, 15 and 16. Section 17(a) prescribes punishment of not less than 5years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or both such imprisonment and fine.

As indicated in count 1, I will exercise my discretion in reducing the sentence as stipulated.

Consequently, the 1st and 2nd Defendants are hereby sentenced to 4 years imprisonment each in respect of counts 2, 4, 6, 7, 9, 11, 12, 15 and 16 respectively without the option of a fine.

Cumulatively therefore, the 1st Defendant is sentenced to 40 years imprisonment for the ten counts. Sentences to run concurrently with effect from today. In the same vein, the 2nd Defendant is also sentenced to 40 years imprisonment for the ten counts. Sentences to run concurrently with effect from the date of his detention.

Finally, the 3rd Defendant is sentenced to 4 years imprisonment in respect of count one only of the charge. Sentence to run with effect from the date of his detention.

This shall be the sentence of this court

HON. JUSTICE N. AYO-EMMANUEL
JUDGE
3RD OCTOBER 2017