

IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE HIGH COURT OF ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU

BEFORE HIS LORDSHIP, **HON. JUSTICE A. O. ONOVO** – JUDGE
ON FRIDAY THE **10TH** DAY OF **OCTOBER, 2014**

Charge No. **E/269C/2014**

BETWEEN:

The State Complainant

AND

Chimezie Okere Kingsley Accused

JUDGMENT

The accused person was brought to the court on an Information which charged him on two counts with Stealing and failure to make full declaration of assets punishable under section 353 (f) of the Criminal Code, Cap 30, Laws of Enugu State of Nigeria, 2004 and section 27 (3) (A) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 respectively.

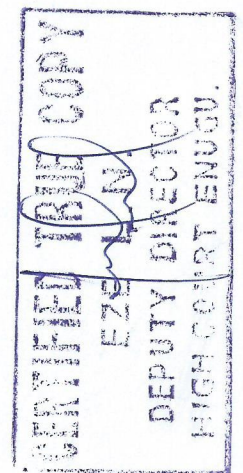
The particulars of the two-count charge is stated as follows:

PARTICULARS OF OFFENCE –COUNT ONE

“Chimezie Okere Kingsley, male, in 2012 within the jurisdiction of this honourable court, while as a servant of Access Bank Plc, with intent permanently to deprive Access Bank Plc of its money, stole the sum of Nine million, Five hundred thousand naira, N9, 500, 000 and thereby committed an offence.”

PARTICULARS OF OFFENCE – COUNT TWO

“Chimezie Okere Kingsley, male, in 2012, within the jurisdiction of this honourable court, while under investigation by the Economic and Financial Crimes Commission knowingly failed to make a full declaration of your assets, to wit, a bungalow under construction in your country side, Umuejim Umuekwume in Ngor-Okpala Local Government Area of Imo State and thereby committed an offence.”



OFFICIAL

When the charge as contained in the Information was read over to the accused to his understanding, he pleaded guilty on each of the two counts. Following this guilty plea by the accused person to the two counts contained in the Information, the prosecuting Counsel, S. M. H. Ibekwute Esq was asked to give a brief statement of the facts of the case. He consequently called one Abubakar Abubakar, an operative of the Economic and Financial Crimes Commission (EFCC) (herein subsequently referred to as "the Commission") as PW1 to give the facts of the case.

According to PW1, sometime in the year 2012, the Commission received a petition dated 20/6/2012 from Access Bank Plc, Ogui Road branch (herein referred to simply as "the Bank") against one Ogechi Perpetual Ibe and the accused person. They were alleged to have stolen the sum of Forty point three million naira belonging to Access Bank Plc. Upon investigation, what was actually missing was the sum of Twenty One million, Nine hundred and Seventy thousand naira only. The sum of N9, 500,000.00 was traceable to the account of the accused. He had used N3.2m leaving a balance of N6.3m. He willingly returned the sum of N6.3m back to the Bank. He had used part of the money to buy a Toyota Camry car which he equally surrendered to the Bank. In the course of the investigation into the case by the Commission, the accused made a total of six statements. Two of the statements were confessional in nature while four were denials of the commission of any offence. He also, in the course of the investigation, gave an asset declaration form to the accused. He failed to disclose the fact that he is erecting a bungalow in his country side of Umueji Umuekwume in Ngor-Okpala LGA of Imo State. He has virtually paid back the entire money to the Bank.

At the end of his testimony, the witness was not cross-examined by the defence counsel. S. M. H. Ibekwute Esq. addressed the court. He urged the court to convict the accused in view of the fact that the prosecution has proved the case against the accused and in view of the facts contained in the exhibits tendered in court by the witness. Obi K. Odo Esq., of counsel for the accused, urged court to take judicial notice of what the witness wrote as the account where he found the money. He urged the court to take notice of the remorseful nature of the accused person and therefore do justice in the matter.



The accused person, as stated earlier, is charged on a two-count Information with stealing the sum of Nine million, Five hundred thousand naira belonging to the Bank and knowingly failing to fully disclose his assets on inquiry by the Commission. In the course of the proceedings in this court, the prosecution tendered the following exhibits:

- a. A confessional statement made by the accused person on 29/8/2012 – Exhibit “A”;
- b. A confessional statement made by the accused on 20/9/2012 – Exhibit “B”;
- c. Four separate statements made by the accused person on 21/6/12, 22/6/12 at 10.20am and at 17.39hrs, 14/1/13 and 3/7/12 respectively marked as Exhibits “A2”, “A3”, “A4” and “A5”.
- d. Photograph of a building – Exhibit “C”; and,
- e. A declaration of assets Form filled by the accused person – Exhibit “D”.

Section 353 (f) of the Criminal Code under which the accused person is charged provides:

“Any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years, but if the offender is a clerk or servant and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.”

By section 27 (3) (A) of the Economic and Financial Crimes (Establishment) Act, 2004:

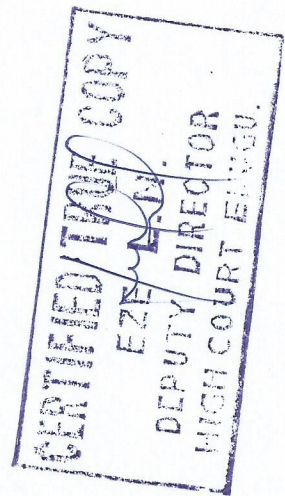
“(1) Where a person is arrested for committing an offence under this Act such person shall make a full disclosure of all his assets and properties by completing the Declaration of Assets Form as specified in Form A of the Schedule to this Act.

(2) The completed Declaration of Assets Form shall be investigated by the Commission.

(3) Any person who –

(a) knowingly fails to make full disclosure of his assets and liabilities;
or

(b) knowingly makes a declaration that is false; or

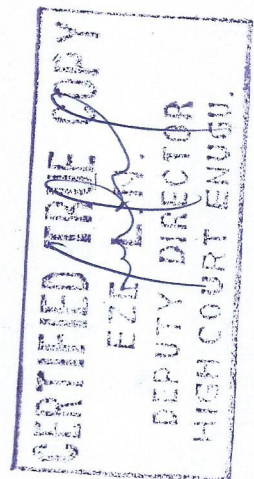


(c) fails, neglects or refuses to make a declaration or furnishes any information required, in the Declaration of Assets Form commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years.”

The offences charged are quite serious. A criminal charge against an accused person can be proved through confession, the evidence of eye witness or witnesses or by circumstantial evidence. In the instant case, the accused made a voluntary confessional statement admitting the commission of the offence charged. In open court, he pleaded guilty and when the prosecution called a witness who gave evidence detailing the facts of the case, there was no cross-examination of the witness. This is an admission that the facts as stated by the witness are correct. The court is bound to accept, rely on and act on the admitted and unchallenged evidence of a witness.

The accused has admitted that the confessional statement was voluntarily made by him. The prosecution has in addition to the confessional statement made by the accused, called PW1 who also gave evidence in line with the confession. For the court to convict an accused based on a confessional statement, the court must test the confessional statement. The test for determining the veracity or otherwise of a confessional statement, according to Rhodes-Vivour JSC, in the case of *The State v. Usman Isah & 2 Ors* (2013) 8 NCC 320 at page 345 are:

- i. Whether there is any evidence outside the confession to show that it is true;
- ii. Whether it is corroborated no matter how slightly;
- iii. Whether the facts contained therein so far as can be tested are true;
- iv. Whether the accused had an opportunity to commit an offence;
- v. Whether the confession of the accused person was possible; and,
- vi. Whether the confession was consistent with other facts which have been ascertained and proved.



The confession of the accused has satisfied all the above criteria and as such the court is entitled to act upon it. There is evidence that the accused was employed by the Bank and the money he took from his employer was taken in the course of the execution of his duties as such an employee. There is evidence that following the investigation carried out by the Commission, the accused has been able to surrender the car he had purchased with the money and also paid back some part thereof to the extent that he has virtually paid back the entire sum. The offence of stealing under section 353 (f) of the Criminal Code is thus established.

There is further evidence that when the accused was given Exhibit "D" to fill, he purposely failed to disclose the property shown in Exhibit "C" which he is constructing in his country side. This failure to disclose an asset is an offence established by section 27 (3) (a) of the Economic and Financial Crimes Commission (Establishment) Act, 2004. That offence is proved by the prosecution.

This court having found that the offences charged have been proved beyond reasonable doubt hereby finds the accused person, Chimezie Okere Kingsley guilty on both counts.

A. O. Onovo

A. O. Onovo
(Judge)
10/10/2014

REPRESENTATION:

S. M. H. Ibekwute Esq., appears for the prosecution

Obi K. Odo Esq., appears for the Accused person

*Certificate - #600/1918
Off. Trial*

CERTIFIED TRUE COPY
EZE L. N.
DEPUTY DIRECTOR
HIGH COURT ENUGU.

HIGH COURT
THE JUDICIARY
ENUGU
DATE *10/10/14*