

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO- JUDGE**

CHARGE NO: FCT/HC/CR/82/07

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

JOLLY TEVORU NYAME.....DEFENDANT

**ROTIMI JACOBS SAN WITH O. ATOLAGBE; H.O. EJIGA FOR THE
PROSECUTION**

**LATEEF FAGBEMI SAN; CHARLES UWENSUYI EDONSANWAN SAN; H.T.
FAJIMITE; OLALEKAN OJO; ALH. A. YUSUF, FOR THE DEFENCE**

JUDGMENT

Reverend Jolly Tevoru Nyame, a Three-Term Former Governor of Taraba State is charged before this Court on a Forty-One Count Charge dated the 13th July 2007 for the Offences of Criminal Breach of Trust; Criminal Misappropriation; Gratification and Obtaining a Thing of Value without Consideration and these Charges are set out as follows: -

COUNT 1

That you **JOLLY TEVORU NYAME** between **January and February, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain Property to wit: the Sum of **N250, 000,000.00 (Two Hundred and Fifty Million Naira)** meant for the Purchase of Stationeries by the Taraba State Government committed Criminal Breach of Trust in respect of the said Sum and you thereby

committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 2

That you **JOLLY TEVORU NYAME** between **January and February, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: Funds meant for the Purchase of Stationeries by the Taraba State Government committed Criminal Breach of Trust in respect of the said Funds by collecting the Sum of **N180, 000,000.00 (One Hundred and Eighty Million Naira)** from the entire Sum for your personal use and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 3

That you **JOLLY TEVORU NYAME** on or about **3rd April, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria Dishonestly Misappropriated certain Funds to wit: the Sum of **N180, 000,000.00 (One Hundred and Eighty Million Naira)** which Sum formed part of **N250, 000,000.00 (Two Hundred and Fifty Million Naira)** belonging to the Taraba State Government and thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 4

That you **JOLLY TEVORU NYAME** on or about **3rd April, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria accepted from one **Abubakar Suleiman of Alusab International (Nig.) Ltd** through **Salman Global Ventures (Nig.) Ltd** a Gratification in the Sum of **N80, 000,000.00 (Eighty Million Naira)** (which was not a lawful remuneration) as reward for the award of contract by the Taraba State Government to **ALUSAB**

International (Nig.) Ltd and you thereby committed an Offence punishable under **Section 115 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 5

That you **JOLLY TEVORU NYAME** on about **3rd April, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria accepted from one **Abubakar Suleiman of Alusab International (Nig.) Ltd** through **Salman Global Ventures Ltd** a valuable thing to wit: the Sum of **N80,000,000.00 (Eighty Million Naira)** without consideration and whom you knew to have connection with your official function to wit: the execution of the water project at **IBI/WUKARI** in Taraba State and you thereby committed an Offence punishable under **Section 119 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 6

That you **JOLLY TEVORU NYAME** on about **14th February, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N165,000,000.00 (One Hundred and Sixty Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 7

That you **JOLLY TEVORU NYAME** on about **8th July, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N24,300,000.00 (Twenty Four Million, Three Hundred Thousand Naira)** belonging to the Taraba State Government and which Sum was meant for the Purchase of grains and you thereby committed an Offence punishable under

Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.

COUNT 8

That you **JOLLY TEVORU NYAME** on about **8th July, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N24, 300,000.00 (Twenty Four Million, Three Hundred Thousand Naira)** meant for the Purchase of grains by the Taraba State Government committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 9

That you **JOLLY TEVORU NYAME** on about **11th April, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N27, 000,000.00 (Twenty Seven Million Naira)** belonging to the Taraba State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 10

That you **JOLLY TEVORU NYAME** on about **11th April, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N27, 000,000.00 (Twenty Seven Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 11

That you **JOLLY TEVORU NYAME** on about **11th April, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N32, 300,000.00 (Thirty Two Million, Three Hundred Thousand Naira)** belonging to the Taraba State Government which Sum was purportedly meant for the preparation for the visit by the then President Olusegun Obasanjo and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 12

That you **JOLLY TEVORU NYAME** on about **11th April, 2005** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N32, 300,000.00 (Thirty Two Million, Three Hundred Thousand Naira)** meant for the preparation for the visit by then President Olusegun Obasanjo committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 13

That you **JOLLY TEVORU NYAME** on about **11th April, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N42, 000,000.00 (Forty Two Million Naira)** belonging to the Taraba State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 14

That you **JOLLY TEVORU NYAME** on about **11th April, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N42,**

000,000.00 (Four Two Million Naira) committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 15

That you **JOLLY TEVORU NYAME** on about **18th January, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N15,000,000.00 (Fifteen Million Naira)** belonging to the Taraba State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 16

That you **JOLLY TEVORU NYAME** on about **18th January, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N15,000,000.00 (Fifteen Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 17

That you **JOLLY TEVORU NYAME** on about **30th January, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, dishonesty misappropriated certain Property to wit: the Sum of **N25,000,000.00 (Twenty Five Million Naira)** belonging to the Taraba State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 18

That you **JOLLY TEVORU NYAME** on about **30th January, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N25,000,000.00 (Twenty Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 19

That you **JOLLY TEVORU NYAME** on about **19th February, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N20,000,000.00 (Twenty Million Naira)** belonging to the Taraba State Government you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 20

That you **JOLLY TEVORU NYAME** on about **19th February, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N20,000,000.00 (Twenty Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 21

That you **JOLLY TEVORU NYAME** on about **7th March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N2,000,000.00 (Two Million Naira)** belonging to the Taraba State Government

and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 22

That you **JOLLY TEVORU NYAME** on about **7th March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N2,000,000.00 (Two Million, Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 23

That you **JOLLY TEVORU NYAME** on about **24th March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N4,000,000.00 (Four Million Naira)** belonging to the Taraba State Government and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 24

That you **JOLLY TEVORU NYAME** on about **24th March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N4,000,000.00 (Four Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 25

That you **JOLLY TEVORU NYAME** on about **23rd March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Dishonestly Misappropriated certain Property to wit: the Sum of **N6, 000,000.00 (Six Million Naira)** belonging to the Taraba State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 26

That you **JOLLY TEVORU NYAME** on about **24th March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N6, 000,000.00 (Six Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 27

That you **JOLLY TEVORU NYAME** on about **30th March, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N20, 000,000.00 (Twenty Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 28

That you **JOLLY TEVORU NYAME** on about **15th December, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N9, 400,000.00 (Nine Million, Four Hundred Thousand Naira)** committed Criminal Breach of Trust in respect of the said Sum and you

thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 29

That you **JOLLY TEVORU NYAME** on about **8th January, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N25,000,000.00 (Twenty Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 30

That you **JOLLY TEVORU NYAME** on about **7th May, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N20,000,000.00 (Twenty Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 31

That you **JOLLY TEVORU NYAME** on about **27th November, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N20,000,000.00 (Twenty Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 32

That you **JOLLY TEVORU NYAME** on about **12th November, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N25, 000,000.00 (Twenty Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 33

That you **JOLLY TEVORU NYAME** on about **31st October, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N10, 000,000.00 (Ten Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 34

That you **JOLLY TEVORU NYAME** on about **13th March, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N5, 000,000.00 (Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 35

That you **JOLLY TEVORU NYAME** on about **4th May, 2007** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N25,**

000,000.00 (Twenty Five Million Naira) committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 36

That you **JOLLY TEVORU NYAME** on about **16th June, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N5, 000,000.00 (Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 37

That you **JOLLY TEVORU NYAME** on about **10th October 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N5, 000,000.00 (Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 38

That you **JOLLY TEVORU NYAME** on about **26th June, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N25, 000,000.00 (Twenty Five Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 39

That you **JOLLY TEVORU NYAME** on about **8th August, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N30,000,000.00 (Thirty Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 40

That you **JOLLY TEVORU NYAME** on about **24th August, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N3,000,000.00 (Three Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 41

That you **JOLLY TEVORU NYAME** on about **6th May, 2006** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Taraba State of Nigeria and in such capacity entrusted with dominion over certain properties to wit: the Sum of **N10,000,000.00 (Ten Million Naira)** committed Criminal Breach of Trust in respect of the said Sum and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

The Case was instituted in Year 2007 and immediately after his Arraignment, the Defendant filed an Application before the Court to Quash the Charges preferred against him vide a Motion on Notice, which was

countered by the Prosecution. The Court gave a Considered Ruling refusing the Application and ordered the Commencement of the Trial.

The Ruling was Appealed by the Defendant through the Court of Appeal and the Supreme Court, and at every Step of the Way, his Appeal was dismissed. The Substantive Trial commenced on the 19th of May 2010 and took a long time to Completion due to the Protracted Trial Within a Trial for all of the Defendant's Statements and extensive Cross-Examinations.

During the Trial, the Prosecution called Fourteen (14) Witnesses in proof of his Case, whilst the Defence called Four (4) Witnesses, including the Defendant, who testified in his Defence.

Due to the Intensity of Evidence spanning Three Record Books and Exhibits adduced across board, the Court will adopt a Style of Setting the evidence relative to Specific Sets of Circumstances involving Different Offences, Dates, Parties and Witnesses as well as the Events leading up to the Charge, and then situate the Testimonies of every Appropriate Witness to their Relevant Set of Circumstances.

At the Close of Evidence, Parties were requested to file their Final Written Addresses, and the Defendant filed his Final Written Address on the 9th of November 2017, dated the same date.

After an exhaustive analysis of the evidence, the Defence, Mr. Olalekan Ojo Esq., formulated Two Issues for the Court's determination, namely:-

1. Whether the Prosecution has proved Beyond Reasonable Doubt the Offences of Criminal Breach of Trust, Dishonest Misappropriation of Property, taking of Gratification and Obtaining Valuable Things without Consideration as a Public Office Holder with which the Defendant was charged in **Counts 1 to 41** of the Charge filed against the Defendant, having regard to the Quantity and Quality of the Evidence adduced by the Prosecution, the Evidence elicited from the

Prosecution Witnesses under Cross-Examination and the Evidence led by the Defendant in his Defence to the Charge.

2. Whether from the Evidence before the Honourable Court there exists any Serious Doubt about the Guilt of the Defendant in respect of the Offences with which the Defendant is charged, which Doubt ought to be resolved in favour of the Defendant and ought to result in the Discharge and Acquittal of the Defendant.

In response, Learned Senior Advocate of Nigeria, Rotimi Jacobs, representing the Prosecution in his Final Written Address dated the 10th of January 2018 and filed on the same date, formulated a Sole Issue for determination, after setting out a Brief Summary of the facts as follows: -

1. Whether having regard to the Evidence adduced before this Honourable Court and the Exhibits tendered, the Prosecution has not proved its case against the Defendant Beyond Reasonable Doubt to warrant his Conviction for the Offences Charged.

The Defence, in turn, filed their Reply on Points of Law dated 22nd February 2018 but filed on the 23rd of February 2018, and in it, responded to Specific Issues canvassed by Learned Senior Counsel to the Prosecution.

Now, after a careful consideration of the Evidence led during Trial, the Exhibits tendered across board, and after a careful regard of the Issues raised by the Learned Counsel/Senior Counsel in this Matter, the Court will formulate the following Issues for the just determination of the Case: -

1. Whether the Prosecution has proved Beyond Reasonable Doubt the Offences of Criminal Breach of Trust, punishable under **Section 315 of the Penal Code Act**, which was laid out in **Counts 1, 2, 6, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41**

2. Whether the Prosecution has established Beyond Reasonable Doubt the Offences of Criminal Misappropriation punishable under **Section 309 of the Penal Code Act**, which was laid out in **Counts 3, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25**
3. Whether the Offence of taking Gratification by Public Servants, charged under **Section 115 of the Penal Code Act**, and as laid out in **Count 4** was established Beyond Reasonable Doubt.
4. Whether the Offence of Public Servants Obtaining Valuable Thing without Consideration, charged under **Section 119 of the Penal Code Act**, and as laid out in **Count 5** was established Beyond Reasonable Doubt.

From the above, it can be seen that the Substantive Offences before the Court are in regard to the Offences of Criminal Breach of Trust, Criminal Misappropriation, Gratification and Obtaining a Valuable Thing without Consideration.

The Offences of Criminal Breach of Trust and Criminal Misappropriation, all revolve around Certain Special Sets of Circumstances, which are in regard to:

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1. **Stationeries and Office Equipment;**
2. **Grains;**
3. **Presidential Visit; and**
4. **Miscellaneous Sums from the Liaison Office.**

Both Learned Senior Counsel and Learned Counsel made copious Submissions on the Required Burden of Proof necessary to ground the Offences in the Charge and they are all on Record, therefore there is no need to restate them here.

Now, the Burden of Proof on the Prosecution is as imposed under **Section 135(1) of the Evidence Act 2011 (As Amended)**, which states "*that if the Commission of a Crime by a Party to any Proceeding is directly in issue in any Proceeding Civil or Criminal, it must be Proved Beyond Reasonable Doubt.*"

In the Case of **AKALEZI VS THE STATE (1993) 2 SCNJ 19**, it was held that “Proof Beyond Reasonable Doubt is not attained by the number of witnesses fielded by the Prosecution. It depends on the Quality of the Evidence tendered by the Prosecution.”

In the case of **ADIO & ANOR VS THE STATE (1986) 4 S.C. AT 195, OPUTA J.S.C.** it was held as follows: -“How is a case Proved Beyond Reasonable Doubt? Direct Oral Evidence can prove a Case. If the testimonies of witnesses who saw and heard were believed, there would be proof Beyond Reasonable Doubt. Circumstantial Evidence can also prove a case Beyond Reasonable Doubt. The Case of **JOSEPH OGUNBAYODE & ORS VS THE QUEEN (1954) 14 W.A.C.A. 458 (OTHERWISE KNOWN AS THE APALARA CASE)**, is an excellent example of Proof Beyond a Reasonable Doubt, based purely on inferences from Circumstantial Evidence. It is often said that witnesses can lie but circumstances do not, so in that sense, circumstantial evidence affords better Proof Beyond Reasonable Doubt.”

Section 36(5) of our Constitution is very clear that every person who is charged with the commission of an offence shall be presumed innocent until proven guilty. He who asserts must prove and that must be Beyond Reasonable Doubt. Once the Proof of a Crime Beyond Reasonable Doubt is discharged, then **Section 135 (3) of the Evidence Act** shifts the burden of proving Reasonable Doubt to the Defendant. See also the Cases of **WOOLMINGTON V. DPP (1935) AC 462; MICHAEL VS THE STATE (2008) 13 NWLR (PT. 1104) 361; AKINFE VS THE STATE (1988) 3 NWLR PT 85 PG 729(SC); AIGBADION VS THE STATE (2000) 4 SC PT 1 PG 1 AT PG15, 16 (SC); SIMEON NEBEIFE OBIDIKE VS THE STATE(2014) LPELR-22590 (SC); YONGO V. COP (1992) 4 SCNJ 113.** Reasonable Doubt which will justify Acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is doubt which a reasonable person might entertain and it is not a fanciful doubt, it is not imagined doubt. It is such as would cause a prudent man to hesitate before acting in a matter of importance. Reference is made to **Black’s Law Dictionary, 6th Edition, PAGES 161, 1266; ANI & ANOR VS THE STATE (2009) LR ELR SC 239/2006; AMUSA VS THE STATE (2005).**

The Prosecution or Defence must create a Reasonable Doubt in the mind of the Trial Judge. All it means, is that, the Prosecution must adduce such evidence, which if believed and if left uncontradicted and unexplained, could be accepted by the Trial Court as Proof.

In the light of the above, the Prosecution is expected to discharge the Requisite Burden of Proof, Direct or Circumstantial, sufficient enough to ground the Offences in the Charge.

On the Offence of Criminal Breach of Trust, Learned Counsel representing the Defence referred to **Section 311 of the Penal Code Act, Cap 530, LFN 1990** as the Governing Section and set out the Essential Elements required to establish the Offence of Criminal Breach of Trust. He challenged the Section under which the Defendant was charged, stating that he should have been charged under **Section 311** as opposed to **Section 315** and referred the Court to the Supreme Court's Decisions in the Cases of **UZOAGBA VS COP (2014) 5 NWLR (PT.1401) @ 456 PARAS F-H 463 PARAS E-G; AND MAFA VS STATE (2013) 3 NWLR (PT. 1342) 607 @ 619 PARAS A-C.**

In response, Learned Senior Counsel representing the Prosecution contended that **Section 311 of the Penal Code Act** as cited by Learned Counsel to the Defence was wrong because the Defendant, was a Public Servant, and he set out the Essential Ingredients as required under **Section 315 of the Penal Code Act**. He distinguished **UZOAGBA's** Case cited by the Defence as inapplicable because the Defendant in that Case was charged under **Section 312** of the Penal Code for Criminal Breach of Trust, and not **Section 315** as in the instant Case. Further, he stated that the Defendant completely ignored the Offence prescribed under **Section 315**, and urged the Court to ignore Learned Counsel's Submission on this point.

Learned Counsel representing the Defence in his Specific Reply on this Point of Law, argued that the Prosecution did not appreciate the Defendant's Argument on this issue, and was not mindful of the relevant Provision of the

Constitution and the Penal Code Law, which governs the Offence of Criminal Breach of Trust. The Complainant's Argument is misconceived because **Section 36 (12) of the 1999 Constitution** provides that the Offence must be Defined and the Penalty prescribed in a Written Law, which has been defined in **Section 311** and the Penalty prescribed in **Section 315 of Penal Code**.

Although the Defendant was charged under **Section 315 of the Penal Code**, it cannot be read in isolation. He placed reliance on the following Cases of **ELELU-HABEEB VS AG FED (2012) 13 NWLR (PT 1318) 423; ISHOLA VS AJIBOYE (1994) 6 NWLR (PT 352) 506; SARA KI VS FRN (2016) 3 NWLR (PT 1500) 531 @ 631**, arguing that to arrive at a meaningful interpretation of the Law, the Punishment Section of the Statute cannot be read without the defining Section of the Law. According to him, the Decision in the case of **UZOAGBA (SUPRA)**, which the Prosecution heavily relied on, did not support his Case. Rather, it helped the Defendant's Argument and he urged the Court to disregard the Complainant's Argument as being unfounded.

Now, it is initially important to set out the Ingredients of this Offence to guide the Court in the determination of the Offences brought under this Head and the Court finds that the Offence of Criminal Breach of Trust is defined under **Section 311** and punishable under **Section 315 of the Penal Code Act** is as follows: -

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

Section 315 the Punishment Section states thus: -

"Whoever, being in any manner entrusted with Property or with any dominion over Property in his capacity as a Public Servant or in the

way of his business as a Banker, Factor, Broker, Legal Practitioner or Agent, commits Criminal Breach of Trust in respect of that Property, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to a fine.”

The Argument of Learned Counsel, Olalekan Ojo Esq., representing the Defence, is correct to the extent that the Substantive Section of the Law creating the Offence ought to be stated in the Charge Sheet. However, the fact that the Prosecution charged under the Penalty Section alone, is not fatal and was even contemplated by the Author of the **Criminal Procedure Code** in the Northern States of Nigeria, Jeffrey Richard Jones, erstwhile Chief Judge of Kano State, who analyzed this Section, and stated that normally, it is the Punishment Section alone that should be stated in the Charge, and it was a correct practice with regard to the **Penal Code**. See **Appendix B of the Criminal Procedure Code**.

Even though the Criminal Procedure Code was the Applicable Law at the Time of Drafting these Charges, it has been held in a Newly Delivered Judgment of the Supreme Court dated the 26th day of January 2018, **PERAKA’AHS JSC**, in the case of **GABRIEL DAUDU VS FEDERAL REPUBLIC OF NIGERIA (2018) SUIT NO: SC.172/2017**, who held *inter alia*, “that it is the Substantive Law in operation at the time an Offence is said to have been committed, that has to be referred to, when a Person is being charged to Court but the Procedural Law to be used, would be the Current One. Thus, if the Evidence Act or the Criminal Procedure Law has been Amended or Replaced, and a New One is in place at the time of Trial, it is the Amended or Newly Enacted Evidence Act/ Criminal Procedure Code that will be used to guide the Trial, notwithstanding that the Offence was committed before the Promulgation of the New Procedural Law.”

Therefore, this Court will refer to the Provisions of the **Administration of Criminal Justice Act 2015**.

Now, under **Section 194(3) of the Administration of Criminal Justice Act 2015**, formerly **Section 201 (4) of the Criminal Procedure Code**, it states

that the Law and Section of the Law against which the Offence is said to have been committed shall be mentioned in the Charge.

However, **Section 220** of the **Administration of Criminal Justice Act 2015**, which is in *pari materia* with **Section 206 of Criminal Procedure Code**, states thus: -

“An error in stating the Offence or the Particulars required to be stated in a Charge or an Omission to state the Offence or those Particulars, or any duplicity, misjoinder or non-joinder of the Particulars of the Offence shall not be regarded at any Stage of the Case as Material unless the Defendant was in fact misled by the error or omission.”
Section 206 however added **“and it has occasioned a failure of justice.”**

In the case of **JOHN TIMOTHY VS THE FEDERAL REPUBLIC OF NIGERIA (2012) LPELR-9346 (SC)**, the Supreme Court agreed with the Court of Appeal on their adoption of **Section 166 of the Criminal Procedure Act** and held that, “no error in stating the Offence or the Particulars required to be stated in the Charge and no omission to state the Offence or those Particulars shall be regarded **AT ANY STAGE** of the case as **MATERIAL** unless the Defendant was in fact misled by such error or omission.”

Further, under **Section 195 of the Administration of Criminal Justice Act 2015**, which replaced **Chapter XIX AT Section 201 (5) of the Criminal Procedure Code**, it states that the fact that a Charge is made, is equivalent to a Statement that every legal condition required by Law to constitute the Offence charged was fulfilled in the particular case. This is a Legal Presumption.

In any event, in the determination of whether an Error, Omission or Irregularity in a Proceeding under the Code has occasioned a failure of justice, the Court shall have regard to the fact whether the Objection could and should have been raised at an Earlier Stage in the Proceeding.

Therefore, the fact that the Prosecution did not expressly mention **Section 311 of the Penal Code Act** in the Charge Sheet, did not affect the Charges before the Court. Learned Counsel representing the Defendant, has not shown that the Defendant was ignorant of the Nature of the Offences he is charged with and has not shown how the failure of the Prosecution to mention **Section 311** in the Charge Sheet was prejudicial to the Defendant.

Further, since 2007 when the Charge was instituted and throughout the Trial and Appeal of an Interlocutory Issue, the Defendant was silent as to this Contention, it is rather belated at this Stage to raise this Contention must especially as he has not shown how he was prejudiced by this Sections of the Law he was charged with.

Now, there are Two Distinct Parts involved in the Commission of the Offence of Criminal Breach of Trust. The First consists of the Creation of an Obligation in relation to the Property over which the Defendant acquires Dominion or Control. The Second is the Misappropriation, Use, Conversion or Disposal or Otherwise Dealing with the Property, Dishonestly and Contrary to the Terms of Obligation Created.

The Person handing over the Property must have Confidence in the Person taking the Property, so as to create a Fiduciary Relationship between them or to put him in position of a Trustee. The Person who comes into Possession of the Property receives it legally but illegally retains it or converts it to his own use against the Terms of the Contract.

The definition of "Property" is not restricted to moveable or immovable alone as the definition of the particular kind of Property envisaged, could be extended to cover the Purpose, i.e., whether that Property can be subject to the ambits/acts contemplated under this Section.

Therefore, the Defendant must be in such a position where he could exercise his Control over the Property i.e., Dominion over the Property and

Dishonestly put that Property to his own use or to some unauthorized use, as Dishonest Intention to Misappropriate, Convert or Dispose, are crucial Elements to be proved to bring home the charge of Criminal Breach of Trust.

In NWAMARA'S ENCYCLOPAEDIA OF THE PENAL CODE AND CRIMINAL PROCEDURE CODE OF THE NORTHERN STATES OF NIGERIA AND ABUJA AT PAGE 608, the Author defined the Offence of Criminal Breach of Trust as an Aggravated Offence of Criminal Misappropriation, where the Person comes into possession by Express Entrustment or by some Process placing the Defendant in a Position of Trust and there is Dishonest Use or Disposal of the Property in Violation of the Trust.

Reference is also made to the **1976 MADRAS SERIES LAW JOURNAL (CRIMINAL) PAGE 20 AT PAGE 28(DB); His Lordship PETER-ODILI, J.C.A. (AS SHE THEN WAS) AT PAGES 17, 18, PARAS E-B**; in the case of **HON. YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA); SABO VS COMMISSIONER OF POLICE (1973) NNLR PAGE 207; and in AIYEJENA VS THE STATE (1969) NNLR PAGE 73**, it was held that before there can be a Conviction on a Charge of Breach of Trust, there must be evidence of Entrustment and of Dishonest Misappropriation of what was entrusted, reference was made in that case, to the case of **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153**.

His Lordship CRAIG JSC, in the case of **THEOPHILUS ONUOHA VS THE STATE SC.8/1988 AT PAGES 10, 11 AT PARAS F-C; (1988) 3 NWLR PART 83 AT PAGE 460 (SC)**, held *inter alia*, whilst referring to the case of **AKWULE VS THE QUEEN (1963) NNLR PAGE 105** that, what the Prosecution was expected to prove was: (1) That the Defendant was a **Public Servant**; (2) That in such Capacity he had been **entrusted** with the Money in question; (3) That he had committed a Breach of Trust in respect of the Money, i.e., either (a) He had **Misappropriated** it; or (b) **Converted** it to his Own Use; or (c) In any way whatsoever **Disposed** of it **Fraudulently** and in a Manner Contrary to the **Directive(s)** given to him.

Therefore, the Prosecution must prove the following **THROUGHOUT** the Counts of Charges for Criminal Breach of Trust in: - **1, 2, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41**

- 1. That the Defendant is a Public Servant;**
- 2. That in his Capacity as Public Servant, he was Entrusted with the Monies or with Dominion over the Monies;**
- 3. That he committed Criminal Breach of Trust in respect of the Monies by-**
 - i. Misappropriating; or**
 - ii. Converting to his own use; or**
 - iii. Using the Property; or**
 - iv. Disposing of the Monies or intentionally or willfully allowing any other Person(s) to do so,**
- 4. That he acted dishonestly in Misappropriating, Converting or Disposing of the Monies.**
- 5. That he did so in Violation of: -**
 - i. Any Direction of Law or Directive prescribing the Mode in which such Trust is to be discharged; or**
 - ii. Any Legal Contract touching the discharge of such Trust; or**
 - iii. They intentionally allowed some other Persons to do so or commit the above stated.**

From these ingredients, there are some Basic Elements that are Standard and therefore, the Proof and Determination of them will completely satisfy their Requirements in All the Related Offences and will be applicable throughout all the Counts in the Charge. Such Elements are whether the Defendant is a Public Officer and whether he was Entrusted or had Dominion over the Funds of Taraba State.

On the First Element of whether the Defendant is a Public Officer, Learned Counsel to the Defence in his Final Written Address whilst listing out the Essential Elements of the Offence of Criminal Breach of Trust, did not state that a Defendant who is 'Entrusted' with the Property or Dominion over it" must be a Public Officer.

On the part of the Prosecution, he listed one of the ingredients of the Offence of Criminal Breach of Trust under **Section 315 of the Penal Code Act** as that the Defendant was either a Public Servant or a Banker or a Merchant or a Factor or a Broker or a Legal Practitioner or an Agent. The Learned Senior Counsel submitted that the Defendant being a Public Servant and Governor of Taraba State had enormous Executive Powers conferred on him by virtue of the Provisions of **Section 5 (2) (a) and (b) of the 1999 Constitution**.

Learned Counsel to the Defendant in his Reply, contended that there is nothing before the Court as presented by the Complainant proving the Defendant was a Public Servant. The only fact before the Court is that the Defendant was a Governor of Taraba State between 1999 and 2007. According to him, the Defendant was neither a Public Servant nor a Public Officer, but a Political Office Holder, and that the Prosecution had not proved that the Defendant was under the Employ of the Taraba State Civil Service Commission. He placed reliance on the case of **ALAFIKI VS GOVOF RIVERS STATE (1991) 8 NWLR (PT. 211) 575 @ 599, PARAS E-D**. Therefore, he argued that the Prosecution, who alleged that the Defendant is a Public Servant must establish this fact by adducing credible evidence of his Employment under **Section 182 (g) of the 1999 Constitution**, and then relied on the case of **ORJI VS UGOCHUKWU (2009) 14 NWLR (PT. 1161) 207**.

Also, **Section 318 (1) of the 1999 Constitution**, which specified who a Public Servant is, did not mention the Governor as a Member of the Public Service of Taraba State. The position of a Governor is totally excluded from positions under **Section 318 of the 1999 Constitution** and even the

Chambers Dictionary (1998 Edition) defined a Public Servant as one under Government Employ.

Learned Counsel submitted that the failure to establish that the Defendant is a Public Servant or Agent of the Federal Government as well as the Prosecution's inability to establish that any of the Monies were given to the Defendant for a particular purpose, resulted in the failure to prove the Offence of Criminal Breach of Trust.

Now, Section 318 of the 1999 Constitution does not define who a Public Servant is but defines what Public Service is and who the Staff are and the Members contemplated under this definition. Public Service of the Federation, means the Service of the Federation in any capacity in respect of the Government of the Federation, and includes Service as, *"...Member or Staff of any Commission or Authority established for the Federation by this Constitution or by an Act of the National Assembly."*

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

It may be proper to disclose at this point that the Decisions of the Nigerian Courts followed the English Common Law interpretation of a Public Officer in the cases of **R VS BEMBRIDGE (1783) 3 DOUG KB 32; R VS WHITAKER (1914) KB 1283**, where it was held that: "A Public Office Holder is an Officer who discharges any duty in the discharge of which the Public are interested, more clearly so, if he is paid out of a Fund provided by the Public."

Section 10 of the Penal Code Act, which is the Definition Section, on its own part, Lists out Several Categories of Public Servants, but of particular interest, are **Section 10(a)** thereto, which states: - *"every Person appointed by the Government or the Government of the Federation or of a Region*

while serving in Northern Nigeria or by any Native, Provincial, Municipal or other Local Authority and every Person serving in Northern Nigeria appointed by a Servant or Agent of any such Government or Authority for the performance of Public Duties whether with or without remuneration or for the performance of a specific Public Duty, while performing that duty”, is a Public Servant; and

Section 10(b), which states: -

“Every Person not coming within the description set forth in Paragraph (a) who is in the Service of the Government or of any Native, Provincial, Municipal or Local Authority in a Judicial or Quasi-Judicial, Executive, Administrative or Clerical Capacity;

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

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

(a)...

(b) The Public Service of a State; or

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

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

See further the Cases of **RE MIRAMS (1891) 1 QB AT 594, CAVE J.; ASOGWA VS CHUKWU (2003) 4 NWLR (PT. 811) 540 AT 551 per ABOKI JCA; CHIEF JOHN EZE VS DR. COSMAS I. OKECHUKWU (1998) 5 NWLR PART 548 PAGE 43 AT 73**, where His Lordship OHO, J.C.A. in **PAGES 34-36 AT PARAS. E-D** held that:

“Public Officer' is a Holder of a Public Office in the Public Sector of the Economy as distinct and separate from the Private Sector and that he is entitled to some remuneration from the Public Revenue or Treasury. In addition, that he has some authority conferred on him by Law, with a fixed tenure of Office that must have some permanency or continuity; above all else that a Public Officer has the power to exercise some amount of Sovereign Authority or Function of Government.”

Further, **Part I of the Fifth Schedule of the 1999 Constitution of the Federal Republic of Nigeria, particularly under Section 19**, the Interpretation Section, states “Public Office means a Person holding any of the Offices specified in **Part II of this Schedule**. In **Part II of the Fifth Schedule**, particularly under **Section 4**, Governors and Deputy Governors of State are listed therein.

By **Exhibits RR1 to RR3**, the Defendant’s Code of Conduct Forms, it can be seen that the Defendant had to be a Public Officer otherwise he would not have thrice filled out a **Code of Conduct Asset Declaration Form for Public Officers**, if he was not a Public Officer/Public Servant.

Then, there is also **Exhibit SS**, the Zenith International Bank Limited Account Opening Forms dated the 1st of August 2001 and the Mandate Card at **Page 3**, which irrefutably shows that the Defendant, Rev. Jolly Nyame, during his Tenure of Office, claimed to be a Public Servant with a Permanent Home Address as Government House Jalingo. By the Defendant’s own showing, he is a Public Servant and he properly recognised himself as such.

Therefore, it is without a doubt that the Defendant was the Governor of Taraba State first in **1991**, and later between the **Years 1999 and 2007**. He performed Public Functions, was paid from Public Funds and was empowered by the Law to carry out Public Duties for the benefit of the Public and did exercise some amount of Authority or Function on behalf of the Federal Government. The Defendant had Relatively Fixed Tenure of Office with some sense of Permanency or Continuity.

By the above Statutory Definitions, and by the Documentary Exhibits and Oral Testimonies, which confirmed the Defendant served as Governor, the Defendant is found by the Court to qualify as a Public Servant/Officer for the purposes of this Trial and for proving the **First Element** in the Offence of Criminal Breach of Trust.

This Finding holds True in **Counts 1, 2, 4, 5, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41.**

The Next Ingredients to be proved are those of Entrustment and Dominion.

Learned Counsel to the Defendant made no Specific Submissions on the Issues of Entrustment and Dominion in his Final Written Address. However, the Learned Senior Counsel representing the Prosecution, submitted in his Final Written Address, that the Defendant as a Public Servant, was entrusted with the Property and Funds of the State and all the Payments were made based on his Approval. In that Capacity, the Defendant employed fraudulent means, misappropriated and disposed of the Funds thereby committing the Offence of Criminal Breach of Trust.

In **Reply on Points of Law**, Learned Counsel to the Defendant disagreed with the Prosecution on the ground that, none of the Monies, which formed the basis of the Counts were entrusted to the Defendant, stating that he did not dishonestly misappropriate the Funds, as required by **Section 315 of the Penal Code Act**. Therefore, he argued that the Court is not permitted to speculate or supplement any missing piece of evidence that ought to prove any of the ingredients of the said Offence or any Offence at all. He cited the case of **MOHAMMED BATSARI VS KANO NATIVE AUTHORITY (1966) NMLR 151.**

Learned Counsel further submitted that the Complainant failed to prove Custody of the Funds, which is a Crucial Element of the Offence. It was imperative that the Property must be in the Custody of a Person, in order to ground the Offence of Misappropriation. According to him, the Funds alleged

to have been delivered to the Defendants in **Counts 3, 7, 9, 11, 13, 15, 17, 19, 21, 23 and 25**, were not in his Custody or Dominion.

The claim by **PW8**, Mr. Abdulrahman Mohammed, that he delivered Monies to the Defendant personally or at the Governor's lodge, without tendering into evidence any document showing what purpose the Monies were meant for, which was in fact received by the Defendant was absurd and he urged the Court to discountenance the assertion.

Further, the Decision in the Case of **ONUOHA (SUPRA)** relied on by the Complainant is inapplicable to this Case, because the Defendant never admitted he misappropriated the Security Funds or any Other Funds and he urged the Court to discountenance this dictum therein.

Now, after considering all the above Submissions and Arguments, it is clear that before there can be a Conviction on a Charge of Criminal Breach of Trust, there must be evidence of Entrustment and of Dishonest Misappropriation of what was entrusted, see **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153.**

“To Entrust” and “To have Dominion” were stated disjunctively in the Penal Code. To Entrust means to assign responsibility for doing something to someone and also means to put something into someone's care or protection. Dominion, on the other hand, means Sovereignty, Control over the Property and the Power or Right of Governing or Controlling that Property.

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

In R VS GRUBB (1915) 2 KB PAGE 683 AT PAGE 689, Lord Reading held that where the Defendant has obtained or assumed the control of the Property of another Person under circumstances whereby he becomes entrusted or whereby his receipt becomes a receipt for or on account of another person, and fraudulently converts it or the proceeds, then he has committed an Offence. The words 'being entrusted' should not be read as being limited to the moment of the sending or delivering of the Property by the owner, but may cover any subsequent period during which a person becomes entrusted with the Property..."

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

CORNISH, J. in the case of **EMPEROR VS JOHN MCIVER, AIR (1936) Mad 353**, referred to the definition of the word "entrusted" by **Lord Haldane** in **LAKE VS SIMMONS (1927) AC 487**, where His Lordship held that entrustment may have different implications in different contexts. The notion of a "trust" in the ordinary sense of that word is that, there is a person, the trustee or the entrusted, in whom confidence is reposed by another, who commits Property to him and this again supposes that the confidence is freely given. It could cover the case of Property honestly

obtained by the person entrusted with it but subsequently Dishonestly Misappropriated by him in breach of his trust. See also the case of **J. M. AKHANEY VS STATE OF BOMBAY [AIR 1956 SC 575]**, which clarified that this Term does not contemplate the Creation of a Trust with all the Technicalities of the Law of Trust. It contemplates the creation of a relationship whereby the owner of Property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

Under our Laws, Public Servants, who are entrusted, have positions of greater responsibility more than the General Populace. This is because of the Special Status and the Trust, which a Public Servant enjoys in the eyes of the Public, as a Representative of the Government or Government Owned Enterprises. The Entrustment to him need not be expressed, it could be implied. See the recent cases of **B. D. PATEL VS STATE OF GUJARAT & ON 20 APRIL (2017) R/CR.MA/19007/2014 AND SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS V SK ROY AIR 1974 SC 794, (1974) CR.LJ 678 (SC)**, where it was held by the Supreme Court of India, that it is the ostensible or apparent scope of a Public Servant's Authority when receiving the Property that has to be taken into consideration.

The Public may not be aware of the technical limitations of his Powers under some technical limitations of the Internal Rules of the Department or Office concerned. It is the use made by the Public Servant of his Actual Official Capacity, which determines whether there is sufficient nexus or connection between the acts complained of and the Official Capacity, so as to bring the act within the scope of the Section.

The Defendant as Governor was Dominus Litis over Taraba State Funds, and only he could grant Approvals for Disbursements. Therefore, it connotes that the Defendant held the "Property" (Funds) for and on behalf of the Person offering it to him, i.e. the Citizens of Taraba State and the Federal Government through Consolidated Funds. The implication of the word 'Entrustment' is that the person handing over the Property continues to be

the owner of the Property. The People of Taraba State, who voted the Defendant in as their Governor and Conferred over to him the authority, must have had confidence in him. This established a fiduciary relationship between the People of Taraba State and the Defendant.

Therefore, the Defendant did hold the Funds i.e. the Property for and on behalf of Taraba State Government. See the cases of **OGUONZE VS THE STATE (1998) 4 SC PAGE 110 AT PAGE 155, 156 PARAS 40-5; EDOHO VS THE STATE (2004) 5 NWLR PART 865 PAGE 17 AT PAGE 51 PARAS A-C; NNOLIM VS THE STATE (1993) 3 NWLR PART 283 PAGE 569 AT PAGE 581 PARA B.**

From these Principles also, the Court finds that the Defendant at the material time was the Governor of Taraba State and is found to have been entrusted with dominion over the Funds of the Taraba State Government.

Therefore, this finding that the Defendant was entrusted and had dominion over Taraba State Government Funds, holds true throughout the Counts of the Charge and in this instant, **Counts 1, 2, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41.**

The Next Element to be satisfied is the **Quadruplet Modes** or the Four Options upon which the Offence of Criminal Breach of Trust is established. Learned Senior Counsel and Learned Counsel across the divide, submitted corporately on these Modes and failed to address them separately.

Learned Counsel to the Defence, listed out the Essential Elements in **Section 311 of the Penal Code Act, Cap 530, LFN 1990** and submitted that none of the evidence adduced had established Misappropriation and Conversion to the Defendant's Use in **Counts 1, 2 and 6.**

Learned Counsel submitted that where a Defendant is charged with Conversion/Misappropriation of a Specific Amount, the Prosecution has the Burden to prove the specific amount. Where there is no such direct and specific evidence, the Court is bound to discharge the Defendant and he

relied on the Case of **ONAGORUWA STATE (1993) 7 NWLR (PT.303) 49 @ 91, PARA A-D.**

Learned Senior Counsel to the Prosecution on his own part, submitted that the evidence adduced before the Court showed that the Defendant committed the Offence of Criminal Breach of Trust because Salman Global Ventures Nigeria Limited was given a Cheque for a Contract they did not bid for. The Cheque was fraudulently disposed off contrary to the Directives for Direct Purchase in the Memo, **Exhibit CC.**

In his Reply on Points of Law to the above contention, Learned Counsel to the Defence maintained that the Ingredients of Misappropriation and Conversion have not been proved, because it was not shown that the Defendant received these Monies, either physically or through the crediting of his Bank Account. According to him, the Argument of the Complainant that the Defendant, as Governor of a State, took advantage of his position and trust imposed on him to fraudulently convert the State Government Resources to his own use, was not borne out of the evidence before this Court, and he urged the Court to disregard this line of argument.

Now, it is important to note that **Section 311 of the Penal Code**, the Definitive Section, lists the Elements of the Offence in a **DISJUNCTIVE FASHION** by the consistent use of the word **“OR”**. This is to say that any of the underlisted could operate independently in order to establish the Offence, as proof of one, dispenses with proof of the others. Whilst Entrustment is paired with Dominion, the Prosecution may then decide to proceed on the basis of any of the Four Options, or **Quadruplet Modes**, through which the Entrustment or Dominion was breached. It is very **important** to understand, that none of the Quadruplet Modes takes greater pre-eminence over the other, as Proof of One is sufficient to sustain the Charge.

The Prosecution is expected to establish that the Defendant as Public Servant, being Entrusted and having Dominion over the Taraba State Government Funds

a) Misappropriated **OR**

b) Converted the Funds to his Own Use; **OR**

c) Used the Funds; **OR**

d) Disposed the Funds **OR** by intentionally **OR** willfully allowing any other Person(s) to do so. It is also worthy of note that in regard to the element of Disposal, the Section again, appears to widen up, by expanding the Defendant's culpability under this Charge to include his Influence or Interference in Causing or Affecting another Person's Actions by suffering them to Dispose of the Property.

After determining any of the above from the evidence adduced at Trial, the Prosecution is then mandated to prove through Counts **1, 2, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41** of Offences that the Defendant committed these Offences, Dishonestly and in Violation of any Direction of Law, prescribing the Mode in which such Trust is to be discharged or in Violation of any Legal Contract, Express or Implied, which he made touching on the Discharge of such Trust.

Now, after a careful consideration of the above Submissions made by Learned Silk and Learned Counsel, in this regard, the Court would initially consider the Mode of **Conversion**. It is an unauthorized control, wrongfully and intentionally, exerted over another's Property, in denial of, or inconsistent with, his Title or Rights therein, or in derogation, exclusion, or defiance of such Title or Rights, **WITHOUT** the Owner's consent and **WITHOUT** lawful justification. It involves an unauthorized assumption of the right of ownership over another's Property. Generally, any Type of Conversion that occurs after a person obtains lawful possession of the Property is sufficient.

Further, in order to commit misappropriation of Funds, a person must not only take the Money, but must use it for his own purposes. However, this

does not require that the Defendant actually took the Money and used it to buy something or otherwise spent it. Courts have held it enough that to transfer the Money to a Bank Account or even to refuse or fail to hand over the owner's Money when the owner demands it amounts to Conversion.

The element of knowledge is found when the Defendant engages in the conduct and he is aware to a high probability that he is doing so. An essential element of Criminal Conversion is that “the Property must be owned by another and the conversion thereof must be without the consent and against the will of the Party, to whom the Property belongs, coupled with the fraudulent intent to deprive the owner of the Property. See the case of **PEOPLE VS FIELDEN, 162 COLORADO 574, 576 (COLORADO 196)**. Knowledge coupled with the intentional exertion and Criminal Intent of unauthorized control, forms the crux of the Crime of Conversion. Exercising Control over the Property means, “to Obtain, Take, Carry, Drive, Lead Away, Conceal, Abandon, Sell, Convey, Encumber or Possess Property, or to Secure, Transfer, or Extend a Right over the Property. See the case of the case of **IRVIN VS STATE, 501 N.E.2D 1139, 1141 (INDIANA CT. APP. 1986)**.

The Defendant must have converted the Property to his Own Use or for purposes other than those for which it was entrusted. It is clear that Conversion may not ordinarily be a matter of direct proof, but when it is established that the Property, is entrusted to him or that he had dominion over it and rendered false explanations for his failure to account for it, then an inference of conversion may readily be made. A whole series of contemporaneous facts and surrounding circumstances of an event must be considered together in the circumstances of the case, in order to fix the Defendant irresistibly to the Commission of the Offence of Criminal Breach of Trust. See the cases of **LORTIM VS THE STATE (1997) 2 NWLR PART 490, PAGE 711 AT 725 PARAS C-D; AND MAGDALENE ONOGWU VS THE STATE (1995) 6 NWLR PT 401 PAGE 276**.

His Lordship ADEKEYE JCA, (AS SHE THEN WAS, NOW JSC RTD) in PATRICK OKOROJI VS THE STATE (2002) 1 NCC PAGE 279 AT PAGE 297,

held that the Prosecution must establish the following Elements of Conversion, which are: - 1) Intent to convert the tangible or intangible Property of another to one's own possession and use; and 2) The Property in question is subsequently converted. It is immaterial whether the thing or Money converted is taken for the purpose of conversion, or whether at the time of the conversion, it was in the possession of the person who converts it.

The intention must also be shown that the unauthorized act deprives another of his Property, permanently or for an indefinite time. See **FRANCIS AKILAPA VS COMMISSIONER OF POLICE (1981) 4 OYSHC AT 558 AT 562-563**, where it was held that the intent to permanently deprive the owner of the Money can be formed either at the time of the receipt of the Money or subsequently after the receipt. See also the case of **OKOROJI VS THE STATE (2002) 5 NWLR PT 759 PAGE 21 AT PAGE 49 PARAS G-H**.

As regards the Second Mode of **Use**, it refers to the applying, taking, holding, employing or deploying something, or consuming an amount of that thing from a limited supply. It also includes obtaining a benefit from something or putting into service to attain an end or availing one's self of something as a means to an end. Depending on the Context in which it is used, it could have a positive or negative connotation. A Person who misappropriates Funds with the intent to later return the Money to the rightful owner is still Guilty of Use or Misappropriation. It also does not matter if the Misappropriation or Use only lasted for a short amount of time.

As regards the Third Mode of **Disposal**, it refers to the Act of transferring the Property or relinquishing the Control over the Property to Another's Care or Possession, where through the Operation of Law, the Title over that Property is lost. This Act of Disposal could either be done by the Defendant for his own Personal Interests or could on behalf of a Third Party or Parties. It could also mean the Systematic Destruction by the Defendant, who had Power and Authority to dispose as he willed.

At this juncture, it is important to decide whether Taraba State Government Funds were **MISAPPROPRIATED**, which is the Fourth and Final of the Quadruplet Modes.

Misappropriation and a clear understanding of what the Term actually means, is important. It is the Intentional and Illegal Use of Property or Funds and is also the Improper Application of Funds entrusted to a person's care.

The Legal Scholar NWAMARA at PAGE 621 defined Misappropriation of Money to be the wrongful setting apart or assigning of a Sum of Money to a purpose or use, for which it should not lawfully be assigned or set apart. **Reference is made to ALL INDIA LAW REPORT MANUAL VOLUME 28 PAGE 678.**

Misappropriation is the Umbrella Term under which the different ways of misusing someone else's Funds are grouped. **Black's Law Dictionary, Seventh Edition**, defines it as the unauthorized, improper, or unlawful use of Funds or other Property for purposes other than that for which it is intended, including not only stealing but also unauthorized temporary use for one's own purpose, whether or not he derives any gain or benefit therefrom. It thus includes defalcation, defined in **Black's** as misappropriation of trust Funds or Money held in any fiduciary capacity, and failure to properly account for such Funds, and conversion, which is any unauthorized act which deprives an owner of his Property permanently or for an indefinite time. See the case of **Re Lunt, 255 Kan. 529, 1994.**

It is important to note that it is not enough to establish that the Money has not been accounted for or that it was mismanaged. It has to be established that the Defendant had dishonestly put the Property to his own use or to some unauthorized use. See the case of **Y.O. BAKARE & 2ORS VS THE STATE PER COKER JSC SC. 338/67; LC VOL. 1 2004 AT PAGE 173**, where His Lordship held that the necessary Criminal Intent is as stated in **Section 16 of the Penal Code**, which had to be proved.

Dishonest Intention to Misappropriate is a Crucial Fact to be proved to bring home the Charge of Criminal Breach of Trust.

In the case of **I.G. TIRAH VS COP (1973) NNLR AT PAGE 143, PER JONES SPJ**, it was held that the Defendant, in dealing with the Money or Property entrusted to him, did something else with it, constituting Misappropriation.

The Next Essential Element to be established by the Prosecution, is the Violation of Law or Contract, and he must prove that the **Defendant** did so in violation of:

- I.** Any **Direction of Law** or **Directive** prescribing the **Mode** in which such **Trust** is to be discharged; **OR**
- II.** Any **Legal Contract** touching the Discharge of such **Trust**; **OR**
- III.** He intentionally **allowed** some other Person(s) to do so **OR** commit the above stated.

Violation of Law therefore is any Act (or, less commonly, failure to act) that fails to abide by Existing Law or **Something that needs to be treated with RESPECT**. Some Acts, such as Fraud or Misappropriation, can violate both Civil and Criminal Laws. It is an Action taken in Breach of a Law or Code of Behavior, and is an Infringement, Transgression, Infraction, and Contravention of a Duty or Right, Interrupting or Disturbing the Natural Prescribed Order of Things. It could also mean the Failure to do what is Required or Expected by a Law, Rule or Agreement, and it could occur when a Person crosses a Legal Boundary or a Binding Business Deal.

In the instance of Violation of a Contract, it is synonymous with the Term "Breach of Contract" and could include many different types of Violations. Once a Contract is signed, the Parties are bound/obliged to keep their own part of the bargain, as failure to do so, can result in legal consequences. To excuse a Party from performing his or her own end of the bargain, under the Strict Regulating Guidelines of the Contract, that excuse or justification for the breach or errancy of the Terms of the Contract, imposes on the Party, the necessity of providing or adducing legal excuse recognizable by the Courts and Contract Law. Nothing else will suffice.

Learned Senior Counsel representing the Prosecution had in his Address mentioned the Directives to include inter alia, **Section 5(2)(a), (b) and 208 of the 1999 Constitution**, the Financial Instructions in **Exhibit Y**, and the Memos in **Exhibits Q and CC**.

In his Reply on Points of Law, Learned Counsel to the Defence submitted that no evidence was led to prove any Directive given to the Defendant by anybody whatsoever, or by any means whatsoever on the said Monies forming the basis of the said Counts, such that the Prosecution could be said to have proved all the Ingredients of the Offence of Criminal Breach of Trust.

Now, the Special Circumstances of this Case will entail examining the Regulatory Laws, Directives and Guidelines to determine whether the Actions taken by the Defendant, as Governor, were in Strict Compliance with the Law.

Starting with the **1999 Constitution of the Federal Republic of Nigeria (As Amended)**, the **Seventh Schedule**, which contains the Oath of Office of a Governor of a State, it states *inter alia*: -

“I, ...do solemnly swear/affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Governor of...State, I will discharge my Duties to the best of my ability, faithfully and **in accordance with the Constitution of the Federal Republic of Nigeria** and the Law... that **I will strive to preserve the Fundamental Objectives and Directive Principles of State Policy** contained in the Constitution of the Federal Republic of Nigeria... that I will not allow my Personal Interest to influence my Official Conduct or my Official Decisions...; that I will abide by the **Code of Conduct** contained in the **Fifth Schedule to the Constitution of the Federal Republic of Nigeria**...; and I will devote myself to the **service and well-being of the people of Nigeria. So help me God.**”

Now, the Court will initially refer to the Case of **AKINBOBOLA VS THE STATE (1991) 8 NWLR PT 208 191 AT 207**, where it was held that the Constitution must be construed to give effect and force to **ALL** the Provisions otherwise its Purposes would not be Served. Further, reference is made to the cases of **OKHAE VS GOVERNOR OF BENDEL STATE & ORS (1990) 4 NWLR PT 144, 327 AT 366; ISHOLA VS AJIBOYE (1994) 6 NWLR PT 352, 506 AT 558-559; P.D.P. VS I.N.E.C. (1999) 71 LRCN 2465 AT 2518; I.M.B. SECURITIES PLC VS TINUBU (2001) 91 LRCN 3000 AT 3016; OBIH VS MBAKWE & 2 ORS (1984) 1 SC 325 AT 341 AND IFEZUE VS MBADUGHA (1984) 5 S.C. 79 AT 101.**

The **Oath of Office** as contained in the **Seventh Schedule**, is an Undertaking, he either affirmed or swore to uphold and can be said to be an Agreement between him and the People of Taraba State that he would carry out his Official Duties in Compliance with the Law. Therefore, he is expected to Comply, Obey and Issue out Lawful Directives in compliance with the Taraba State Financial Instructions, which was birthed by the **Public Finances (Control and Management) Law CAP. 108**. That is just one!

Other Possible Violations could be from the **Code of Conduct for Public Officers, the Penal Code Law, and the Taraba State Civil Service Rules.**

After resolving whether any or all of those Modes have been proved Beyond Reasonable Doubt, the Court will then determine, whether based on the Principles set out above, the Modes were done in Violation of the Law **AND** were carried out by the Defendant, Dishonestly.

The Final Element to be established is, whether the Defendant did so **DISHONESTLY.**

Learned Counsel representing the Defence, contended that the Prosecution had the requisite burden to prove Beyond Reasonable Doubt that the Defendant acted dishonestly.

In response, Learned Senior Counsel representing the Prosecution argued that the Defendant had no regard to Law and the Procedure and had acted dishonestly. Specifically in relation to **Count 3**, he claimed the Defendant acted dishonestly when he received the One Hundred and Eighty Million Naira (N180, 000, 000.00) through Salman Global Ventures Nigeria Limited and when he converted it to his own use. As regards **Count 7**, which captured the Sum of Twenty-Four Million, Three Hundred Thousand (N24, 300, 000) meant for the Purchase of Grains, this Sum was handed over to the Defendant. As a matter of fact, the Defendant's Intention for raising this Memo was not to Purchase Grains as stated by **PW5**, Mr. Japheth Wubon, who had stated that the Funds were meant to be used for Security Gadgets. This Memo was Dishonestly raised and Due Process to Purchase the Grains was boycotted.

Further, the instruction given to **PW4**, Mr. Dennis Nev, to devise a means of raising a Memo for the Presidential Visit was a dishonest act, as the Defendant ignored the State's Financial Regulation on Funds Management with impunity and took over Funds, which were neither his Entitlements, Salaries or Duty Tour Allowances.

Further still, the Movement and Receipt of Sums of Monies from the Government House to the Taraba State Liaison Office in Abuja, were done Dishonestly, in that the Monies in Cash were deposited in his Bedroom without the Defendant signing for them.

In his Reply on Points of Law, Learned Counsel representing the Defence contended that there was no Evidence adduced by the Prosecution in regard to Stationeries, that showed that the Defendant had prior knowledge of the fact of the Stationeries, and that the Purchase of which he approved was not requested for. According to him, none of the said Monies forming the basis of the Counts of Criminal Breach of Trust in this Charge was ever proved by any Evidence to have been entrusted to the Defendant, and dishonestly misappropriated by Him.

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

A Person must knowingly misappropriate the Money, and cannot commit the Crime by making a mistake or error. A Person who misappropriates Funds does not have to intend to actually physically take the Money. It can be enough for the Prosecution to show that the Defendant intended to take any action that results or would likely result in the misappropriation of Funds. In some instances, the Defendant must know that the Action is illegal, while in other instances the Defendant only has to Act intentionally and does not need to know that the Conduct is Criminal.

Section 16 of the **Penal Code** defines “Dishonestly” as “A Person is said to do a thing “dishonestly”, who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person.” By wrongful gain this was defined under **Section 13** of the Act, as gain by unlawful means of Property to which the person gaining is not legally entitled. The Penal Code Act also went further to define what is meant by wrongful loss in **Section 14** to mean, the loss by unlawful means of Property to which the person losing it, is legally entitled. Under **Section 15**, a person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully, and a person is said to lose wrongfully when such person is wrongfully kept out of any Property, as well as when such person is wrongfully deprived of Property. A dishonest intention is an essential ingredient of Criminal Breach of Trust.

Further, the intention may frequently be presumed from the consequences of the act, as a person is presumed to intend the natural consequences of his act. See **WIGMORE ON EVIDENCE VOLUME 2 PAGE 42 PARTICULARLY AT PARAGRAPH 242**

The Decision in **ONUOHA VS THE STATE (1988) 7 SC PT 1 PAGE 74 AT PAGE 94** recognized that it is sufficient to construe dishonestly in its natural meaning, i.e., intended to cheat, deceive or mislead. See also **His Lordship, PETER-ODILI, J.C.A. (AS HE THEN WAS)** in the case of **HON. YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA)** per (P. 18, PARAS B-E). Further reference is made to the cases of **TIRAH VS COMMISSIONER OF POLICE (1973) NNLR PAGE 143 (CA); OKONKWO VS COMMISSIONER OF POLICE (1985) HCNLR PAGE 1277; J. ONIBANIYI & ANOR VS THE STATE (1972) SUIT NO: SC.235/1971 8-9 SC PAGE 97 PER UDO UDOMA JSC.**

In Australian Jurisprudence, the words, "Honesty" and "Dishonesty" as discussed in the case of **R VS SALVO (1980) VR PAGE 40 AT PAGE 407**, are used in ordinary parlance to connote respectively, "noncompliance with or disregard of the dictates of the Moral Virtue of Justice, which acknowledges and gives effect to the rights of others to, or in respect of material things, or of the relationship of one person to another, e.g. Master and Pupil, Vendor and Purchaser, Employer and Employee, etc. The Terms may in certain contexts connote respect for or disregard of the Moral Virtue of Truth. The word "Dishonestly" implies reference to a Standard of Morality underlying the Law: they derive not from the Law but from the Standard of Ethics accepted by the Community. The Law sets Standards of Legality and Illegality but cannot set and never has purported to set Standards of Morality."

The Court of Appeal in England in the case of **R VS GHOSH (1982) 2 ALL ER PAGE 689 AT PAGE 696** at **RATIO 154**, held that Dishonesty is an element of *Mens Rea*, clearly referring to a State of Mind, and that overall, the Test that must be applied is Hybrid, but with a Subjective Bias which "looks into the mind" of the person concerned and establishes what he was thinking. The Test was Two-Stage, namely:

- "Where the Person's Actions honest according to the Standards of Reasonable and Honest People?" If a Jury decides that they were, then the

Defendant's claim to be honest will be credible. But, if the Court decides that the Actions were dishonest, the further question is: -

- "Did the Person concerned believe that what he did was dishonest at the time?"

The **Queensland Court of Appeal in Australia** in the Case of **R VS DILLON; EX PARTE ATTORNEY GENERAL (QLD) (2015) QCA PAGE 155 OR (2016) 1 Qd R 56 (14/194)**, departed from the Dictum in **R VS GHOSH (CITED SUPRA)**, when it held inter alia that, "...Queensland Courts must now construe the Term "Dishonestly" as requiring the Prosecution to prove only that what the Accused Person did was dishonest by the Standards of Ordinary Honest People, and to secure a Conviction, the Prosecution **need not prove** that the Accused Person must have realized that what he or she was doing, was Dishonest by the Standards of Ordinary Honest People."

The Decision in **R VS GHOSH (CITED SUPRA)** was also criticized in 2017, and overruled by the **United Kingdom's Supreme Court** in the case of **IVEY VS GENTING CASINOS (UK) LTD TRADING AS, CROCKFORDS [2017] UKSC 67. DELIVERED 25TH OCTOBER 2017**, where the Supreme Court concluded that the Correct Approach is:

- To determine what the Defendant actually knew of or believed as to the Facts. Whether the Defendant's beliefs were reasonable, are not a Separate Issue – but goes to whether the Beliefs were genuinely held;
- To decide whether the Defendant's Conduct is dishonest by the Standards of Ordinary, Reasonable and Honest People;
- There is no further Requirement that the Defendant knew or appreciated that he or she acted Dishonestly.

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

Now, the Brief History of this Case arose as a result of a Petition written by Mrs. Hauwa Kulu Usman, the Widow of Late Alhaji Usman Abubakar, the Managing Director of Alusab International Limited, a Contractor with the Taraba State Government. Following his demise, Mr. Suleiman Abubakar, his younger brother, through a Family Arrangement, took over the Management and Control of the Company. The Taraba State Government had issued a Cheque in the Sum of N135, 794, 608.00 in favour of this Company, which Mr. Suleiman Abubakar lodged into a New Account with Zenith Bank Plc., in Jalingo, Taraba State.

According to her, Mr. Suleiman Abubakar squandered the Monies in the Cheque for which cause, she asked the Economic and Financial Crimes Commission (hereinafter referred to as the “**EFCC**”) to investigate and recover.

Mr. Suleiman Abubakar was invited wherein he confirmed the above, but stated that he did not squander the Monies as alleged in the Petition. He explained that the Company had an ongoing Contract for the Rehabilitation of the Ibi Wukari Water Project with the Taraba State Government prior to the demise of Alhaji Usman Abubakar. Through Alhaji Abubakar Tutare, the Commissioner of Finance, the Company applied for Additional Works, which was granted by the Taraba State Government. The Estimation for the Additional Works was N35, 000, 000.00, and the Commissioner of Finance instructed that an Additional Sum of N100, 000, 000.00 be added to the Estimation, which he did.

A Cheque in the Sum of N135, 000, 000.00 was issued, and the Commissioner of Finance gave him a Complimentary Card bearing an Account Number at the back of the Card, instructing him to pay the Sum of N100, 000, 000.00 into it. He then asked Alhaji Tutare about the Tax and the VAT Payments for this Sum, and was told that after deducting the 10% Tax amounting to N10, 000, 000.00, the Balance of N90, 000, 000.00 should be disbursed by bringing N10, 000, 000.00 in Cash to him, and paying N80, 000, 000.00 into the Account stated on the Complimentary Card for the Governor of Taraba

State. He was also told to give the Bank Account Officer the Complimentary Card, as he would know what to do.

The Cheque of N135, 000, 000.00 was duly paid into Alusab's Account with Zenith Bank Plc. in Jalingo and he paid the Sum of N80, 000, 000.00 as per the Complimentary Card.

After withdrawing the Sum of Ten Million, Two Hundred, and Fifty Thousand Naira (N10, 250, 000.00) from the Company's Account, Mr. Suleiman Abubakar went back to his Hotel and later visited the Commissioner of Finance, Abubakar Tutare at his Residence in the night, where he met him in the company of several people. The Commissioner instructed one of his House Aides by name Hussein Ali to follow him to collect something. At an unnamed empty street, the House Aide confirmed the amount, and the Sum of Ten Million Naira (N10, 000, 000.00) was transferred into the Aide's Car and they parted ways.

Based on Mr. Suleiman Abubakar's explanations, the EFCC commenced investigation and the Commissioner of Finance, Alhaji Abubakar Tutare, was invited. Alhaji Tutare confirmed the rendition of Mr. Suleiman Abubakar, but stated that he acted on the instruction of the then Governor of Taraba State, Rev. Jolly Tevoru Nyame, to pay the Sum of N80, 000, 000.00 into Salman Global Ventures Nigeria Limited's Account.

The EFCC subsequently discovered that there were Purchases of Stationeries by the Taraba State Government in the Sum of Two Hundred, and Fifty Million (N250, 000, 000) in January 2005, another in the Sum of N200, 000, 000.00 in February 2005 and yet another worth N20, 000, 000.00 in October 2005. Alhaji Abubakar Tutare was yet again confronted with these new sets of facts, and based on his response, Some Officials of the Ministry of Finance in Taraba State were invited, questioned and their Statements were taken.

Further investigation took Members of the Investigating Team, including Mr. Ibrahim Galadima and Mr. Ishaq Salihu Ismael, to the Government House in

Jalingo, where it was discovered that the Defendant directed the Permanent Secretary Government House, Mr. Dennis Nev, to raise Funds for a One-Day Presidential Visit, in the Sum of N101, 000, 000.00.

Due to the fact that the Defendant was still serving as the Governor of Taraba State, the investigation was extended to the Taraba State Liaison Office in Abuja, where the Defendant had directed Mr. Japheth Wubon, the Permanent Secretary of the Abuja Liaison Office to raise a Memo for the Supply of Grains in the Sum of N24, 300, 000.00.

From the Liaison Office Bank Account, the Team discovered Several Inflows of Monies ranging from N2, 000, 000.00 to N30, 000, 000.00 remitted from the Government House in Jalingo, and the Accountant, Alhaji Abdulrahman Mohammed, who collected the Monies, was questioned.

After the Tenure of Rev. Jolly Tevoru Nyame as Governor of Taraba State ended, he was confronted with the above facts and Three Statements dated the 6th and 7th of June 2007 and the 11th of July 2007, were obtained from him.

The Defendant made a Blanket Denial of receiving the Monies, stating that he did not have any Business Dealings with the Managing Director of Salman Global Ventures Nigeria Limited, and did not direct his Commissioner of Finance to pay any Monies into the Company's Account. Further, he denied the Physical Receipt of any Cash in regard to the Presidential Visit, and explained the dire need of Grains by Tarabans that necessitated the Purchase of Grains through the Liaison Office.

As regards the Various Sums of Monies paid in from Jalingo and withdrawn in Abuja said to have been given to him personally, he acknowledged the receipt of the Monies, both in his Oral and Documentary Evidence, and justified his receipt as being for Allowances, Dispensation, Entitlements and Security Funds. He, however, denied receiving the Funds directly from the Accountant stating that his Orderly, Mr. Philip Akolo, collected all his Allowances, and further rebutted the Accountant's assertions that the

Delivery of the Monies in Cash were taken to his Bedroom at the Governor's Lodge, Abuja.

Mr. Philip Akolo confirmed his closeness to the Defendant as an Orderly and confirmed receiving and signing for Funds due to the Defendant as Governor. However, he stressed the fact that he only collected Allowances and nothing else, and that he never collected any Huge Sums of Monies for the benefit of the Defendant. He also denied seeing certain Government Officials make Cash Deliveries to the Defendant in BOTH his Office at Jalingo and at the Liaison Office/Governor's Lodge in Abuja.

The Other Two Witnesses for the Defence testified as to the Administrative Procedural Steps of Ministries, Payments therefrom and the Application of the Financial Instructions of the State, stating that the Auditor General of the State did not query the Funds expended because proper steps were taken.

Now, the Court will consider the Substantive Offences in the Charge: -

AS REGARDS THE 1ST SET OF CIRCUMSTANCES UNDER CRIMINAL BREACH OF TRUST: -STATIONERIES IN COUNT ONE FOR THE SUM OF TWO HUNDRED, AND FIFTY MILLION NAIRA (N250, 000, 000)

The Defendant, **Jolly Tevoru Nyame**, in **Count 1** is alleged to have committed Criminal Breach of Trust in respect of the Sum of **Two Hundred, and Fifty Million Naira (N250, 000, 000)** meant for the Purchase of Stationeries by the Taraba State Government. In Proof, the Prosecution called the following Host of Witnesses and tendered the following List of Documents.

Learned Senior Counsel representing **the Prosecution** called a total number of **Seven Witnesses**, and they are: - **PW4**, Mr. Dennis Nev, the Permanent Secretary Government House Jalingo; **PW5**, Mr. Japheth Wubon, the Permanent Secretary Taraba State Abuja Liaison Office; **PW6**, Alhaji Abubakar Nagari, the Chief Accountant in the Office of the Accountant

General of Taraba State; **PW7**, Mrs. Asabe Maiangwa, the Permanent Secretary in the Taraba State Ministry of Finance; **PW9**, Mr. Ibrahim Galadima, the EFCC Investigating Police Officer; **PW10**, Alhaji Abubakar Tutare, the Taraba State Commissioner for Finance; **PW11**, Mr Joel Andrew, the Chief Accountant Taraba State Government House; **PW12**, Mr. Ishaq Salihu Ismael, Chief Superintendent of Police, seconded to the EFCC; **PW13**, Mrs. Oyewo Ganiat Bimbo, a Relationship Officer from Unity Bank Plc.; and **PW14**, Dandison Akurunwa Esq., the Company Secretary of Salman Global Ventures.

In further Proof, Learned Senior Counsel tendered Five Documentary Exhibits namely: **Exhibit Z4**, Extra-Judicial Statement of the Defendant dated 6th June 2007 tendered through **PW9**; **Exhibit CC1-CC6**, the Memo in from the Ministry of Finance, Jalingo, Taraba State Requesting for the Release of Two Hundred and Fifty Million Naira dated the 31st of December 2004 tendered through **PW12**; **Exhibit FF**, Defunct Pacific Bank now Unity Bank, Statement of Account of Salma Global Nigeria dated the 31st of October 2016 tendered through **PW13**; **Exhibit GG**, The Certified True Copy of Incorporation Document of Salman Global Ventures Limited dated 21st March 2003 tendered through **PW13**; **Exhibits 001 and 002**, tendered through **DW3**; **Exhibit VV**, A Query from the Permanent Secretary, Taraba State Ministry of Finance, Jalingo to the Chief Stores Officer, dated 30th March 2005, tendered through **DW4**.

In **Defence**, the Learned Counsel called Mr. Yakubu Bulus, a Retired Civil Servant from the Taraba State Ministry of Finance, who testified as **DW1**; Mr. Aminu Ayuba, the Present Acting Accountant General of Taraba State as **DW3**, and the Defendant, Jolly Tevoru Nyame who testified as **DW4**.

In further **Defence**, a total number of **Twelve Documentary Exhibits** were tendered during the **Cross Examination** of **PW6, PW7 and PW10**, and they are: - **Exhibits T, T1 and T2**, the **Extra-Judicial Statements of PW6, Alhaji Abdulkadir Nagari Umar**, the Chief Accountant, Ministry of Finance, Jalingo, which are dated the 23rd of February 2006, 28th of June 2007 and

11th of May 2010 respectively; **Exhibits U, U1 and V, the Extra-Judicial Statements of PW7, Asabe Maiangwa**, the Permanent Secretary, Ministry of Finance, Jalingo, which are dated the 15th and the 16th of November 2005, and 12th of July 2007; **Exhibit Z8, Z9, Z10, Z11, Z14 and Z16, the Extra-Judicial Statements of PW10, Alhaji Abubakar Tutare**, the Commissioner for Finance, dated 17th of November 2005, 24th of November 2005, and 12th of July 2007; Report of the Accountant General of Taraba State for Year 2007, 2008 and 2009 admitted as **Exhibits NN1, NN2 and NN3** respectively.

As regards the Offences of Criminal Breach of Trust and Criminal Misappropriation, Learned Counsel representing the Defence made a Corporate Submission and Argument on both Offences, arguing that they relate to the same Alleged Act of the Defendant and then gave a Critical Analysis of the Evidence proffered by the Prosecution in proof of these Offences pertaining to the Taraba State Government Funds. Conversely, Learned Senior Counsel representing the Prosecution submitted and argued on all the Offences Separately.

These Arguments will be infused into the Court's Analysis in the determination of the Case.

It is important to note that throughout their Written Addresses, contentions in regard to Accomplice; Corroborative Evidence; Hearsay Evidence; Documentary Hearsay; Contradictions and Competent Witnesses pervade throughout the Written Submissions of Learned Counsel and Learned Senior Counsel and it appears that each Argument was recurrently restated.

CONTENTIONS...

Now, it is expedient for the Court at this point, to consider the strenuous contentions made by Learned Counsel representing the Defence on the contention that PW6, Mr. Abdulkadir Umar Nagari, PW7, Mrs. Asabe Maiangwa and PW10, Alhaji Abubakar Tutare for the purpose of proving Counts 1, 2 and 6, relating to Stationeries, are all Self-Proclaimed Accomplices in Law, and also the contention that the Chief Stores Officer was

also an Accomplice, and he relied on the Cases of **EZEUKO VS STATE (2016) 6 NWLR (PT.1509) 529 @ 580 – 581, PARAS H-A and QUEEN VS EZECHI (1982) ALL NLR (PT.1) 113.**

According to him, the Law imposes a Statutory Duty on the Court to tread with caution in convicting solely on the Uncorroborated Evidence of an Accomplice, and the failure to do so, ought to result in the Convicts Acquittal and he referred the Court further to the Cases of **AMADI VS STATE (1993) 8 NWLR (PT. 313) 644 @ 661; UKUT VS STATE (1966) NWLR 18 and ALLI VS STATE (1988) 1 NWLR (PT. 68).**

He argued that based on **Exhibits T, U and Z8-Z16**, PW6, PW7 and PW10 appeared to be deeply involved in the allegation against the Defendant, and are *Participis Criminis*, whether as Accessories Before or After the Fact.

Again, Learned Counsel referred the Court to the Case of **IDAHOSA VS THE QUEEN (1965) NWLR 85 AT 87** to state that it was not impossible for these Witnesses to fabricate evidence against the Defendant, whether on their own or to save their respective heads. Therefore, it would be dangerous to rely on their evidence without Independent Corroboration.

In response, Learned Senior Counsel to the Prosecution contended that the Defendant's argument is misplaced in Law. He cited the Dictum of **Belgore (JSC)** in the Case of **OKOSI VS STATE (1989) 1 NWLR (PT.100) 642 AT PAGE 657 – 658**, as well as **Section 198 of the Evidence Act** on the Position of the Law regarding who an Accomplice is, and what would be the relevance of the evidence of an Accomplice.

According to Learned Senior Counsel, it is not illegal for the Courts to rely on the evidence of an Accomplice to ground a Conviction, even where such evidence is not corroborated. An Accomplice is a Competent Witness and he placed reliance on the Case of **AMADI VS STATE (1993) 8 NWLR (PT.314) 644 AT 661**, to say, that once the Court is satisfied that the evidence of the Accomplice is reliable, the Court can proceed on that evidence, but if the Court is in doubt as to the Truth of the Evidence, then it will become unsafe

to Convict based on any part of the Evidence. At that point, the Court would warn itself as to the safety to convict or not to. However, in this instant case there is no such doubt as to the testimonies of the Prosecution's Witnesses. He cited further **Section 198 (2) of the Evidence Act** and the Case of **EZEUKO VS. STATE (2016) 6 NWLR (PT.1509) 529 AT 580 - 581.**

Learned Senior Counsel further contended that from the Body Language in the Courtroom, PW6 showed that he was aggrieved with the conducts of PW10 and the Defendant, for which he raised a protest. When PW7 told him to share the monies he stated that he had no interest in it, and did not benefit from the money. There was also the contention that even though Alhaji Tutare was a reliable ally of the Defendant, from the same Political Party, who assisted the Defendant to commit the Offences, he had no choice because he was directed or else face resignation, and therefore could not be an Accomplice.

Both Legal Representation went back and forth on the Applicability of Cited Case Law Authorities and also on the question of the proportion of the share of money that went to the Officials of the Ministry of Finance from the Contractor.

Learned Counsel representing the Defence, in his Reply on Points of Law submitted that these Witnesses were not Competent Witnesses, and the Evidence they rendered was unreliable making it unsafe for the Court to convict in the absence of Corroborative Evidence of a Witness whose Evidence does not in itself require Corroboration.

There was also the Challenge on Contradictions and Inconsistencies in the Evidence of the Prosecution Witnesses, and the fact that the Evidence of some of the Witnesses amounted to Hearsay, with the Documents said to amount to Documentary Hearsay.

All these Contentions, keenly argued by both Legal Representatives across the divide, are essential on the Records of the Court and will be addressed in

the determination of the Case. Suffice to say, the Court will set down the brief Principles of Law that would guide it in considering the Contentions.

As regards the Question of Accomplice, **Section 198 of the Evidence Act 2011 (As Amended)** regulates who would be considered as an Accomplice, and what effect he/she's Evidence would amount to in Law, and it states thus: - (1) An Accomplice shall be a Competent Witness against a Defendant, and a Conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an Accomplice: Provided that in cases when the only Proof against a Person charged with a Criminal Offence is the Evidence of an Accomplice, uncorroborated in any Material Particular implicating the Defendant, the Court shall direct itself that it is unsafe to convict any Person upon such Evidence.

(2) In this Section and in **Section 199 of this Act**, an Accomplice is any Person who pursuant to **Section 7 of the Criminal Code** may be deemed to have taken part in committing the offence as the Defendant or is an Accessory After the Fact to the Offence, or a Receiver of Stolen Goods.

The term "Accomplice" has received varying Definitions in different cases. In **OZAKI VS STATE (1990) 1 SCNJ 76**, it was held that an Accomplice could be: (a) a Participant in the Actual Crime charged; or (b) a Receiver of Property of which the Defendant is charged for Stealing; or (c) a Participant in another Crime alleged to have been committed by the Defendant - where evidence of such other Crime is admissible to prove system or intent, or to negative accident. See also **POSU VS STATE (2010) ALL FWLR (PART 546) 504**; **UTTEH VS THE STATE (1992) 2 SCNJ (PART 1) 183**; **EJIGBADERO VS THE STATE (1978) 9 - 11 SC** and **R VS EZECHI (1962) 1 ALL NLR 113**, where it was held that An Accessory Before or After the Fact to a Crime is also an Accomplice, **OGUNLANA VS THE STATE (1995) 5 SCNJ 189 @ 120**; **EKPO VS THE STATE (1964) 1 ALL NLR 375**; AND **IDAHOSA VS THE QUEEN (1965) NMLR 85**.

The Decision of the Supreme Court in **AMADI VS STATE (1993) 8 NWLR (PART 314) 644 (SC)** seems still relevant, in spite of **Section 198(1) of the**

2011 Act. In this case, the Apex Court held that since an Accomplice himself is a Suspect Witness, which fact itself requires corroboration of his testimony, it is not for the Trial Judge to pick and choose which part of his evidence could be believed and which part requires Corroboration. Thus, though the Court can convict once it is satisfied that the Accomplice's Evidence is reliable without corroboration, if the Court is in doubt as to the truth of the evidence of an Accomplice, it is unsafe to convict based on any part of that evidence, for once lie in his evidence makes the whole of his evidence suspect.

SARKAR ON CRIMINAL PROCEDURE LAW on the Gist of Law Relating to Corroboration of Accomplice Evidence, stated as Settled Law that Accomplice Evidence must be corroborated in Material Particulars although such evidence need not be sufficient by itself to prove the Guilt of the Defendant. See the Case of **AMBIKA VS R; ABDUL MAJID VS R; BISHNUPADA VS R; DESMINATHAN VS S, A 1957 SC 340**. The result of the Decisions appears to be that –

1. There must be corroboration as to – (a) the Commission (*corpus delicti*) and Circumstances of the Crime; (b) the Identity of each of the one of the Defendant; and (c) Actual Participation of each of the Defendant in the Crime, i.e., “the confirmation should be as to some matter which goes to connect the Prisoner with the transaction [per **GURNEY B. in R VS DYKE, 8 C & P 261**].
2. Evidence necessary for Corroboration must proceed from an independent and reliable source and therefore evidence of one Accomplice is not available as corroboration of another.
3. Corroboration need not be Direct Evidence of Commission of Crime it may be Circumstantial.
4. Corroboration must be in regard to Material Particulars i.e., it is not enough if it shows that the Accomplice told the truth in matters unconnected with the Guilt of the Defendant.
5. The Evidence of an Accessory after the Fact must be corroborated in the same way as the Evidence of an Accomplice [**MAHADEO VS. R, A 1936 PC 242**].

In the Cases of **R VS MAKANJUOLA; R VS EASTON (1995) 2 CR. APP. R. 469, CA, Lord Taylor C.J.**, giving the Judgment of the Court, said that they had been invited to give guidance as to the circumstances in which, as a matter of discretion, a Judge, in summing up, ought to urge Caution in regard to a Particular Witness and the terms in which that should be done. His Lordship continued:

“The circumstances and evidence in Criminal Cases are infinitely variable and it is impossible to categorize how a Judge should deal with them. But it is clear that to carry on giving ‘discretionary’ warnings generally and in the same terms as were previously obligatory would be contrary to the Policy and Purpose of the 1994 Act. Whether, as matter of discretion, a Judge should give any warning and if so its strength and terms must depend upon the content and manner of the Witness’s Evidence, the circumstances of the Case and the issues raised. The Judge will often consider that no special warning is required at all. Where, however, the Witness has been shown to be unreliable, he or she may consider it necessary to urge Caution. In a more extreme Case, if the Witness is shown to have lied, to have made previous false Complaints, or to bear the Defendant some grudge, a stronger warning may be thought appropriate and the Judge may suggest it would be wise to look for some supporting material before acting on the impugned Witness’s Evidence. We stress that these observations are merely illustrative of some, not all, of the factors which Judges may take into account in measuring where a Witness stands in the Scale of Reliability and what response they should make at that level in their directions to the Jury. We also stress that Judges are not required to conform to any Formula and this Court would be slow to interfere with exercise of Discretion by a Trial Judge who has the advantage of assessing the manner of a Witness’s evidence as well as its content.” (Underlining Mine)

As regards PW6, Mr. Abdulkadir Umar, and the Evidence he rendered before the Court, this Witness was the Assistant Chief Accountant of the Ministry of Finance, who by his function, had to be involved, whether he liked it or not, in the Financial Transactions before the Court. This Witness was consistent in his Testimony that he only obeyed Orders and when he sensed a Breach,

had raised Two Queries on the Procedure he was directed to comply with. How he is an Accomplice is a Mystery. From all the above Principles cited above, Body Language has never been a Factor to consider in determining whether one is an Accomplice or not. This Witness rendered uncontroverted evidence to the effect that **he did not** personally benefit from the Money shared in the Ministry. He was only directed to engage in the distribution of what was shared. Therefore, if he was displeased, with what he perceived of the Conduct of Rev. Jolly Nyame and Alhaji Tutare, it only speaks to his Background and shows that he is of a General Good Address. He does not in any way, qualify as an Accomplice.

As regards PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, it is clear that she benefitted from the Crumbs that fell off the Table. She was a participant and she did not deny it, and justified it as a Gift. What will make her Evidence inadmissible would be positive evidence of what she stood to gain by her rendition before the Court, or the establishment of a Vendetta. It is clear that she was not charged before the Court alongside the Defendant, and the sharing that occurred for which she personally gained, is distinct from the Charge before the Court. Her evidence was principally material to the Procedure and the Administrative Workings of the Ministry of Finance and therefore she has nothing to gain in testifying against the Defendant.

As regards PW10, Alhaji Tutare the Erstwhile Commissioner of Finance, he was good enough to realize his active participation in some of the Offences in the Charge, and can by every definition be classified as an Accomplice. He continuously expressed remorse and was not charged alongside the Defendant. What then did he stand to gain? This Witness had not been shown to have a grudge against the Defendant most especially as he pleaded to be charged along with his Boss, the Defendant. It is clear as would still be seen, that he started making his Extra-Judicial Statements in the Year 2005 long before the Defendant was charged with any Offence and had continued what had to be a cordial relationship with the Defendant till Year 2007, when the Defendant left Office.

Therefore, he was an Accomplice.

He did not deny his involvement. It would have been a different case if he had denied his involvement because it means he had something to gain. According to him, he came clean. If he came clean, then he would have calculated the implications of his Confession and would have anticipated an Indictment and be charged along with his Boss.

In any event, he still faced the Consequences as the EFCC made him to refund every Penny he took.

Even though there is no apparent evidence of Bias, his Testimony would still be corroborated by other Direct or Circumstantial Evidence, whether Oral or Documentary, as the Case is being determined.

As regards the alleged Contradiction In Evidence, it is trite as held **PER His Lordship, BELGORE, J.S.C (P. 15, PARA A) in IKEMSON & ORS V. STATE (1989) LPELR-1473 (SC)** that if there are contradictions in the evidence of the prosecution, and the contradictions go materially to the charge, doubt will be created and benefit of it must be given the accused person, in which case he will be discharged.

Her Lordship, AUGIE, J.S.C (PP. 45-48, PARAS. D-B) in IKPA V. STATE (2017) LPELR-42590 (SC), held thus: -

“It is not every minor contradiction that matters and as held in the Case of **KALU V. STATE (1988) 3 NSCC 1**, for a Trial Judge to disbelieve a Witness, the Contradiction in his Evidence must be on a Material Point. The Law allows room for Minor Discrepancies in the Evidence of Witnesses, which may not be fatal to the Prosecution's Case. The Word "Contradiction" comes from two Latin words - contra meaning opposite, and dicere, which means to say. So, to contradict is to speak or affirm the contrary, and a piece of evidence is contradictory to another when it asserts or affirms the Opposite of what the other asserts; not necessarily when there are minor discrepancies in the details between them. As **NNAEMEKA-AGU, JSC, SAID IN OGOALA V. STATE** "Contradiction between two pieces of evidence goes rather to the essentiality of something being or not being at the same time

whereas minor discrepancies depend on the person's astuteness and capacity for observing meticulous detail".

Reference is also made to the Cases of **AKPAN V. STATE (1991) 3 NWLR (PT. 182) 646 SC, DAGGAYA V. STATE (2006) 7 NWLR (PT. 980) 637 SC AND in OCHEMAJE V STATE (2008) 15 NWLR (PT. 109) 57**, where in **Tobi, JSC**, explained - Contradictions definitely arise in evidence of witnesses in Court. That explains the human nature and the humanity in witnesses. Although witnesses see and watch the same event, they may narrate it from different angles, in their individual peculiar focus, perspective or slant. This does not necessarily mean that the event they are narrating did not take place. It only means most of the time that the event took place, but what led to the event was given different interpretations, arising from the senses of sight and mind dictated by their impressions and idiosyncrasies. That is why the law says that contradictions, which are not material or substantial will go to no issue. The Main Interest of the Court, is that the witnesses are in Union or Unison as to the happening of the event but gave different versions in respect of the peripheral surrounding the event".

In the Cases of **THE STATE VS AZEEZ & ORS (2008) 8 SCM 175; (2008) 4 SC 188; DIBIE & 2 ORS VS THE STATE (2007) 7 SCM 101; (2007) 3 SC (PT.1) 176; STEPHEN JOHN & ANOR VS THE STATE (2011) 12 (PT.2) SCM 238**, it was severally held as Trite Law that for inconsistency or contradiction in evidence to negatively affect its veracity, such inconsistency and contradiction must be materially significant as to affect negatively the **Overall Case Of The Prosecution**, otherwise such insignificant inconsistency or contradiction will be discountenanced by the Court. **See also GALADIMA V. STATE (2017) LPELR-43469 (SC), PER ARIWOOLA, J.S.C (PP. 29-30, PARA. E)**

The Contentions in regard to Contradictions will be situated when applicable in the determination of this Case.

As regards Hearsay Evidence, **His Lordship, RHODES-VIVOUR J.S.C (Pp. 19-20, Paras F-C) in FRN v. USMAN & ANOR (2012) LPELR-7818 (SC)**

well stated the definition of Hearsay when he held that

"The question to be answered is what constitutes Hearsay Evidence. A Witness is expected to testify in Court on Oath on what he knows personally. If the Witness testifies on what he heard some other Person say, his Evidence is Hearsay. Such Evidence is to inform the Court of what he heard the other Person say e.g. in cases of Slander. If on the other hand his Testimony is to establish the Truth of an Event in question or as in this case to establish the truth of the contents of the Appellants Statements, it is Hearsay and Inadmissible Evidence. Hearsay Evidence is Secondary Evidence of an Oral Statement best described as Second-Hand Evidence. What a Witness says he heard from another Person is unreliable for many reasons. For example he may not have understood the Informant/Interpreters, or he may say things that were never said. Such evidence remain Hearsay Evidence because it cannot be subject to Cross-Examination in the absence of the Informant/Interpreters."

As regards the Contention that the Evidence of an IPO constituted Hearsay Evidence, the Court refers to the Cases of **ANYASODOR V. STATE (2018) LPELR-43720 (SC) (PP. 20-21, PARAS E-C); KAMILA VS STATE (2018) LPELR-43603 (SC) (PP. 22-23, PARAS. D-A) and OLAOYE VS STATE (2018) LPELR-43601 (SC)**, where it was severally held **PER SANUSI, J.S.C.** that an IPO gives evidence on what he actually saw or witnessed, or what he discovered in the course of his work as an Investigator. His testimony will be positive and direct on what was narrated to him by the Witnesses he came into contact with, in the course of his investigation, and can therefore never to be tagged as Hearsay.

An IPO only narrates to the Court the outcome of his investigation or enquiries or what he recovered or discovered in the course of his duty. He must have discovered or recovered some pieces of evidence vital to the commission of the crime, which Trial Courts normally consider in arriving at a just decision one way or the other. **See also the Cases of OLAOYE VS**

STATE (2018) LPELR-43601 (SC); and AROGUNDADE VS THE STATE (2009) ALL FWLR (PT. 469) (SC) 423

The Contentions in regard to Hearsay will be dealt with in the determination of the Case.

As regards the Contention of the Defence that the Proper Party to testify on behalf of Salman Global Ventures Nigeria Limited was its Managing Director, Alhaji Ibrahim Abubakar and not **PW14**, Mr. Dandison Akurunwa Esq., the Company Secretary (it is note worthy that the Defence elected to disregard his proper designation as a Company Secretary and preferred to refer to him as Secretary, simpliciter.), and also the reference to Evidence of PW13, Mrs. Oyewo Ganiat the Unity Bank, Relationship Officer and her Competence to testify, the Court refers to the Case of **CHEMIRON (INTL) LTD V. STABILINI VISINONI LTD (2018) LPELR-44353 (SC)**, where **Her Lordship, PETER-ODILI, J.S.C. (Pp. 17-20, Paras. B-A)** held that a Body Corporate carries out its Affairs and Responsibilities through its Agents and Servants who are Human Persons.

This was restated by the Court per **COKER- JSC IN KATE ENTERPRISES LTD V DAEWOO NIGERIA LTD (1985) 2 NWLR (PT5) 116**, who HELD that any Servant or Agent of the Company acting for the Company would meet the requirement of testifying on behalf of the Company. It is not necessary that it is only that Person who carried out the function on behalf of the Company that must testify. Any Official of the Company well equipped with the Transaction and or related Documents would suffice to testify. Her Lordship also referred to the Cases of **ANYAEBOSI V RT BRISCOE NIG. LTD (1987) 2 NWLR (PT.59) 84; KATE ENTERPRISES LTD V DAEWOO NIGERIA (SUPRA) and SALEH V B. O. N. LTD (2006) NWLR (PT.976) 316 AT 326 – 327**, to sayeven where the Official giving the Evidence is not the one who actually took part in the Transaction on behalf of the Company, his Evidence is nonetheless relevant and admissible and will not be discountenanced or rejected as Hearsay Evidence.....

This Principle was further adopted in **COMET S. A.NIGERIA LTD VS BABBIT NIG LTD (2001) 7 NWLR (PT.712) PG.442, 452 PARA. B, PER GALADIMA JCA(as he then was, now J.S.C.)**, who held that Companies have no flesh and blood. Their existence is a mere legal abstraction. They must therefore, of necessity, act through their Directors, Managers and Officials. Any Official of a Company well placed to have personal knowledge of any particular transaction in which a Company is engaged can give Evidence of such Transaction.

An Offshoot of this Contention is the argument in regard to Documentary Hearsay in respect of **Exhibits VV1 and VV2**, which were the Query from the Ministry of Finance sent to the Chief Stores Officer, and his Reply to the Query. These Exhibits were tendered through the Defendant during his Cross-Examination for which Learned Counsel to the Defence argued that the Document was unsigned, and the Defendant was not the Maker of the Document and therefore, was not a Competent Witness to say anything on the Document, and therefore the Document was inadmissible.

It was held in the **Court of Appeal's Decision** in the Case of **ACHUKU VS STATE (2014) LPELR-22651, Per OGBUINYA J.C.** that the tendering of a Document is sufficient as it effectively dispels with the attendance of the Maker to Court. The failure to call the Maker as a Witness does not vitiate the admission and validity of the Document, de jure, in usage by the Lower Court.

See also the Case of **OLUBODUN & ORS V. LAWAL & ANOR (2008) LPELR-2609 (SC), PER OGBUAGU, J.S.C (PP. 61-62, PARAS. F-C)**, reference was made to Oputa, JSC in the Case of **THE ATTORNEY-GENERAL BENDEL STATE & 2 ORS. V. UNITED BANK FOR AFRICA LTD. (1986) 4 NWLR (PT.337) 547 @ 563**, who held stated that he was aware that a Document could be Primary/Original or Secondary, but had never heard of Documentary Hearsay, as there is no such Provision under the Evidence Act. What he knew was that Documentary Evidence, is the Best Evidence. A Document tendered in Court, is the best proof of the contents of such a Document and no Oral Evidence will be allowed to discredit or contradict

the contents thereof except in cases where fraud is pleaded. The Court follows this Dictum

As regards the fact that the Document was unsigned, a careful look at the Document would show that the Name of the Maker was affixed on it and therefore the Ownership of the Letter was known, and the Court had already given a considered Ruling on the admissibility of this Document which can only be questioned by the Appellant. This Query was an Original Copy that was attached to a Reply that was duly signed with his Name and Designation on it. Moreover, they are Official Documents of the Government for which any Officer of the Government, including even the Defendant could tender. Therefore, the Document having been found admissible will remain relevant in determining this Case.

Now, having sorted out the Contentious Arguments that seep through virtually every line of arguments across the divide, the Court will now proceed to consider the Offence of Criminal Breach of Trust.

The Defendant, Rev. Jolly Nyame, in his Extra-Judicial Statement before the Court, discussed his Role as Governor at both the State and National Levels. He also set out the extent of his Executory Powers on Budgetary Allocations and further discussed Due Process Operation in his State. He acknowledged the Memo from the Ministry of Finance, requesting the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000.00) for the Provision of Office Equipment and Stationeries, and noted that on the 30th of December 2004, he “conceded” his Approval. He could not recall all the Details or whether the Goods were actually delivered and promised to supply more Details after Consultation with his Commissioner of Finance, Alhaji Tutare.

During his Testimony in Chief, he maintained the above, asserting that all he did was ONLY to Approve the Memo brought to him. He denied each and every Statement, both Oral and Documentary, in regard to the Transaction, distancing himself from Alhaji Tutare’s actions on the Purchase of the Stationeries and Office Equipment. All he could remember was that Alhaji

Tutare told him that all the Monies collected were refunded to the EFCC, and had stated further that he would contact the Government Officials that made the allegations, and whatever was his Share of the Money, he would refund.

It is notable that he referred to the Purchase of Stationeries and Office Equipment in the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000.00) as an Award of Contract.

DW1, Mr. Yakubu Bulus, now Retired Accountant, and a Former Official in the Ministry of Finance, Taraba State had no contribution to this Transaction.

The current Acting Accountant General of Taraba State, Mr. Aminu Ayuba as **DW3**, was aware of the Transaction when he was a Staff in the Ministry of Finance, and testified that there were no Audit Queries in regard to the Payment, thereby validating the Payment.

DW2, Mr. Philips Akolo, the Defendant's Orderly did not testify to in regard to this Transaction.

From the Evidence adduced both Oral and Documentary before the Court, Public Expenditures by the Government of Taraba State begins with a Memo. Therefore, a Memo has a Root Source that can be traceable with precision and where, it is a Memo that would specifically bear Cost Implications, it would be traceable to that Root Source and that Root Source alone.

PW4, Mr. Dennis Orkuma Nev, a Civil Servant and Permanent Secretary (Administration) Government House, Jalingo since year 2004 testified under Oath, elaborately setting out his Schedule of Duties, and explaining in depth the Meaning and the Procedure of Due Process. The Memo is a request for Approval from the Governor, who will grant the Approval on the Memo and after the Approval is given, a Cheque would be raised, and a Payment Voucher serves as authority to the Payee to collect the Funds.

According to **PW11**, Mr. Joel Andrew Gilenya, the Chief Accountant of Taraba State Government House, he made it clear that pertaining to Stationeries, it was the responsibility of the Central Stores under the Ministry of Finance to raise the Memo, but in this instance, he did not know who was responsible for raising such Memo in that regard.

This witness only pointed to SOURCE of the Memo being the Ministry of Finance and perhaps, a Department in the Ministry, but he could not identify the Officer, in the Employ of the Ministry of Finance, directly responsible for kick-starting the Process of the Memo in question.

PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance set out the Administrative, Financial/Payment and Delivery Procedures for the BulkPurchase of Stationeriesand Office Equipment to be that the Chief Stores Officer would inform the Secretary of the Ministry, who is his Superior, about a Shortage of Stationeries in the Stores. The Secretary of the Ministry would also inform the Permanent Secretary, and the Permanent Secretary would then suggest to the Commissioner on the need to Purchase the Stationeries. If the Commissioner accepts this fact, that acceptance would be communicated to the Permanent Secretary, who would then forward the Commissioner's Consent to the Secretary, and the Secretary would then notify the Chief Stores Officer.

The Chief Stores Officer, upon receipt of the Commissioner's Consent would then prepare a Comprehensive List of the Items that are needed along with their Cost Implications. This List would be sent to the Secretary, and from the Secretary to the Permanent Secretary, and from the Permanent Secretary to the Commissioner of Finance. If the Commissioner agrees with it, he would then direct the Permanent Secretary to prepare a Memo. After the Memo is prepared, it would be sent to the Permanent Secretary for vetting, and subsequently forwarded to the Commissioner for Signing. After it is signed, it would be sent to the Governor's Office for Approval. The Memo would usually be approved in the Name of the Commissioner. Where the Memo is approved, the Ministry of Finance would send a Copy of the Memo to the Office of the Accountant General.

Thereafter, the Permanent Secretary would also forward the Memo to the Secretary, who in turn, forwards the Memo to the Accountant in the Ministry of Finance. The Accountant would then process the Cheque. After Processing and Collecting the Money, the Accountant notifies the Permanent Secretary through the Secretary. The Permanent Secretary would then direct the Cheque to be lodged in the Ministry of Finance's Account and await the Directives of the Commissioner of Finance. Where there is a Contractor or anyone who bided for the Contract, then a Cheque would be issued to them.

When the Items arrive, the Chief Stores Officer would report to the Secretary, who would in turn inform the Permanent Secretary. The Permanent Secretary would then direct the Chief Stores Officer to receive the Items. Once he has received the Items, the Chief Stores Officer would inform the Secretary, who would in turn inform the Permanent Secretary. The Permanent Secretary would then inform the Commissioner of Finance, and the Commissioner would then direct that the Items be distributed according to the Requests from the Ministries.

From the above narration by Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry, on the Procedure of Purchase of Stationeries and Office Equipment, it can be seen that she has outlined in a Steady Stream, Key Officers in her Ministry, the Ministry of Finance, who would directly and indirectly play some form of Administrative Role in relation to this BulkPurchase by her Ministry.

The Court observes from the above rendition of Mrs. Asabe Maiangwa, that her role in regard to the Memo is limited as she is only responsible for Vetting the Memo after it had been prepared. Her evidence shows that the Memo when prepared, must go through a TUNNEL or CHANNEL where it ends on the Table of the Defendant, who is the Approver of what is contained in the Memo.

Through this Tunnel or Channel, the Defendant, as Governor is well informed that the Memo got to his desk in an appropriate fashion and that

the Request contained therein was a Prudent and Genuine Request. The Defendant, as Governor minutes his Approval to the Permanent Secretary, to have physical custody over the Funds, and it was up to her to utilize the Key to release the Funds, upon a Clear Directive from the Commissioner of Finance.

However, the Commissioner of Finance did not give her ANY Directive in this instance. He, as Commissioner, used his own Key to authorise, in her absence, and instructed **PW6**, Mr. Abdulkadir Nagari to issue a Cheque in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) payable to Salman Global Ventures Nigeria Limited.

Now, from the evidence rendered so far by **PW6**, Mr. Abdulkadir Nagari, the Assistant Chief Accountant in the Ministry of Finance, he referred to a File containing the Commissioner of Finance's Payment Directive to pay Salman Global Ventures Nigeria Limited the Entire Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) and according to him, the File also contained the Memo in **Exhibit CC**. He had twice queried the Directive to Pay the Full Amount and pointed out that after carrying the Directive in the File he never saw the File again.

During Trial, the Prosecution did not produced this File and the non-production of this File was challenged by the Defence, who saw it important that the File be tendered as Documentary Evidence before the Court. After a Considered Ruling, the Defence was given a freehand to produce this File, via a Subpoena or Summons, but never did so. According to Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, the File was sent to the "DIP"(whatever that means), which establishes its existence and the fact that Mr. Nagari did not see the File again would not mean the File does not exist. The absence of this File before the Court does not in any way overthrow the Memo and its Accompanying Documents, which are before the Court as **Exhibit CC**. The content of the Memo stated that the Bulk Purchase was to be through Direct Labour.

DW1, Mr. Yakubu Bulus, a Retiree from the Office of the Accountant General of Taraba State testified on Subpoena as to what was meant by Direct Labour. According to him, **USUALLY** Direct Purchase was done through Committees and this was the Procedure for **ALL** Government Functionaries and Monies specified on the Memo for Direct Purchase was absolutely to be used for that purpose.

PW12, Mr. Ishaq Salihu Ismael, the IPO and Chief Superintendent of Police, corroborated this piece of evidence rendered by **DW1**, Mr. Yakubu Bulus, stating that that Direct Labour is a Cost-Saving Mechanism whereby a Committee would be set up to Purchase the Stationeries and Office Equipment and it is not a Contract that would require a Third-Party.

DW3, Mr. Aminu Ayuba, the Present Acting Accountant General Taraba State, a Subpoenaed Witness, under Cross-Examination, was shown **Page 1 of Exhibit CC**, the request for release of Two Hundred and Fifty Million (N250, 000, 000.00).

He confirmed the Memo and the Accompanying Processes and explained the Purpose of the Funds after it had been released to the Ministry of Finance, and presumed that they were supposed to transact business through Direct Purchase, meaning it would not be contracted out. Civil Servants would directly Purchase the items without Third Party involvement, in line with **Exhibit CC**. When questioned that the Approval stated that the Memo was covered by the 2004 Budget, he answered that it was the last date in 2004 and the Accountant General was notified to release the Funds.

Further, he confirmed **Page 5 of Exhibit CC**, which reflects the Acknowledgement Receipt dated the 4th of January 2005, issued by the Ministry of Finance to the Accountant General who received the Cheque of Two Fifty Million (N250, 000, 000. 00). He also confirmed the Voucher in **Page 6** dated the 31st of December 2004, which had normally predated the release of the Cheque.

From the above evidence, it is clear that the BulkPurchase of Stationeries and Office Equipment was to be orchestrated through Civil Servants, who are in the employ of the Taraba State Government and the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was accessible to the Ministry of Finance on the 4th of January 2005. The only Custodian of this Fund was Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, who doubled as the Accounting Officer and there was need to constitute a Committee consisting of Civil Servants, who would conduct the BulkPurchase. However, at the material time, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance was absent.

The Court has had a careful regard to the evidence of **PW6**, Mr. Abdulkadir Nagari, the Assistant Chief Accountant of the Ministry of Finance, who in his Witness Statement to the EFCC dated 23rd of February 2006 and admitted as **Exhibit T**, stated that: -

“On the 4th of January 2005, he was instructed by the Commissioner- Ministry of Finance, Hon. Abubakar Tutare to go to the Cash Office, in the Office of the Accountant General and collect a Cheque for Two Hundred and Fifty Million Naira (N250, 000, 000.00), for the Purchase of Stationery.”

By this piece of evidence, the Instruction to collect the Cheque in the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000) ordinarily would have emanated from the Permanent Secretary or the Secretary of the Ministry of Finance, who deputized in her absence. But what can be seen is a bypass of Several Administrative Steps between the Chief Stores Officer and the Permanent Secretary and Several Financial Steps, whereby he directly instructed the Accountant to collect the Cheque from the Cash Office in the Office of the Accountant General.

Further, as Commissioner of Finance, he knew the Procedural Steps for the Purchase of Stationeries and Office Equipment but still instructed the Accountant to pay the Entire Sum to Salman Global Ventures.

By this Act, Alhaji Abubakar Tutare as Commissioner of Finance certainly had clout and was extremely audacious to have pulled the Rug from under the Feet of the Ministry of Finance. One thing and just one thing alone is sacrosanct, he was APPOINTED not by the people of Taraba State but by the Defendant, as the Governor of Taraba who was ELECTED.

It is imperative therefore to bring to the fore the Background of this Witness, **PW10**, Alhaji Abubakar Tutare, the Substantive Commissioner of Finance, as he is the only **nexus** between the Ministry of Finance and Salman Global Ventures Nigeria Limited and between the Defendant and the Purchase of Stationeries and Office Equipment.

At the Time of Trial, **PW10**, Alhaji Abubakar Tutare, according to the Defendant was a Serving Senator of the Federal Republic of Nigeria. Alhaji Tutare stated that he had known the Defendant as far back as 1992 when he was the Deputy Speaker of the Taraba State House of Assembly. Their relationship spanned from the Defendant's Second and Third Tenure in 1999 until 2007 when he left Office. During this Period, he served as the Defendant's Commissioner in the following Ministries namely: The Ministry of Rural Development, the Ministry of Finance, the Ministry of Water Resources and the Ministry of Sports and Youth Development.

He had attributed his Benefactor to be the Defendant and during Cross-Examination, had stated that he could not bite the hand that fed him and had only appeared before the Court on a Subpoena.

Since he had never been a Civil Servant, was not conversant with the Civil Service Rules but learnt on the Job, as Commissioner of Finance, it is no wonder that he would attribute his Position to the Defendant.

As would soon be seen, he had met the MD/CEO of Salman Global Ventures Nigeria Limited through the Defendant at his Residence in 2004.

As regards, Alhaji Abubakar Tutare's nexus with Salman Global Ventures Nigeria Limited, it is important to point out that from the evidence adduced

by the Court, both Oral and Documentary, NONE of the Officers/Staff in the Ministry of Finance that were called to testify knew the Company Salman Global Ventures Nigeria Limited, either as a Successful Bidder or a Standby Contractor in relation to the BulkPurchase of the Stationeries and Office Equipment. Further, since the Request in the Memo categorically stated Direct Labour as the only Mode for the BulkPurchase of Stationeries, Salman Global Ventures Nigeria Limited had no business to participate either in part or in whole in this transaction. There is no evidence before the Court to show that another Memo was raised to vary the Previous Memo in **Exhibit CC**, in order to change the Mode of Purchase from Direct Labour to a Contract, which would involve recourse to a Contractor, who is definitely not in the employ of the Ministry of Finance or the Government of Taraba State, as a whole.

The Name, Salman Global Ventures Nigeria Limited first featured from the testimony of **PW6**, Mr. Abdulkadir Nagari, the Assistant Chief Accountant in the Ministry of Finance, who Mrs. Asabe Maiangwa instructed not to release the Cheque in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) unless a Cash Receipt was produced by Salman Global Ventures Nigeria Limited. Her instruction ensured that the Funds were not released without any Document emanating from this Company.

According to Mr. Abdulkadir Nagari Umar, during his Examination in Chief, his testimony, which was not specifically contradicted by the Defence, is stated thus: -

“When the Company’s Representative, Alhaji Musa Yahaya came to collect the Cheque, I insisted that not only would he sign the Voucher in the Register, he must issue the Company’s Cash Receipt to the tune of Two Hundred and Fifty Million Naira (N250, 000, 000.00). The Representative did not have the Company’s Receipt on him, and because I insisted, the Representative left without the Cheque.

Later in the evening, I received a Telephone Call from the Commissioner for Finance, Alhaji Abubakar Tutare, who summoned me to meet him at

the Jalingo Motels Annex, Jalingo. On getting there, I met the Commissioner in the company of Salman Global Venture's Representative, Alhaji Musa Yahaya and the Defendant, who was about to take his leave. The Commissioner then asked me why I refused to release the Cheque to Alhaji Yahaya, and I explained that the Representative did not come with the Company's Official Receipt. Then Defendant jokingly asked the Representative why he did not go along with the Receipt, the Representative answered that it was an oversight, and then Defendant left. The Commissioner then agreed with the Representative that I would accompany Alhaji Yahaya, the Representative to Abuja the next Morning and collect the Company's Cash Receipt, then release the Cheque. As agreed, the journey was made and the Company's Receipt was obtained, with the Voucher and the Register both signed by the Company's Representative. After a period of Ten days I discovered that the Company was yet to supply the materials. I then raised an Alarm and made reference to the Page where I had earlier queried the Payment and then demanded to know the Position of the Transaction."

By this above rendition, PW6, Mr. Abdulkadir Nagari, the Assistant Chief Accountant of the Ministry of Finance, travelled to Abuja, where he collected Salman Global Ventures Nigeria's Cash Receipt covering the Entire Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000) before releasing the Cheque in the same Amount. The Cash Receipt of Salman Global Ventures Nigeria Limited is dated the 7th of January 2005 as seen in **Page 12 of Exhibit CC**. Salman Global Ventures Nigeria Limited issued this Receipt upon collecting this Sum and the purpose of the Payment as per the Receipt is, "PROCUREMENT OF EQUIPMENT AND STATIONERIES."

For the Government of Taraba State through its Representative, the Assistant Chief Accountant of the Ministry of Finance, to travel to Abuja to release the Cheque in the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000), shows the enormity of the clout Salman Global Ventures Nigeria Limited had in Taraba State. Salman Global Ventures Nigeria Limited

eventually received this Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000) without signing any Contract Agreement for the Procurement of Equipment and Stationeries with the Ministry of Finance and this adds further credence to its relationship with the Authority that exercised Control and Sovereignty over the Government of Taraba State. The Company and its Managing Director clearly had more than a casual relationship with the Government of Taraba State.

What then was **SPECIAL** about Salman Global Ventures Nigeria Limited?

Before this Court are the Incorporation Documents for Salman Global Ventures Nigeria Limited admitted as **Exhibit GG. Page 18 of this Exhibit** sets out the Company's Memorandum of Association, which in turn sets out clearly the Object/Business Clauses. The Court observes that in **ALL** the Seven Subparagraphs of its Object/Business Clauses in **Paragraph 3**, it made no mention of the fact that one of its Objects/Businesses included Procurement or Purchase or Warehousing of Stationeries, Office Equipment or Goods of any nature or that the Company was involved in General Merchandise. Even Alhaji Ibrahim Abubakar, the Managing Director of Salman Global Ventures Nigeria Limited said as much in his Witness Statement of the EFCC dated the 31st of November 2006 admitted as **Exhibit Z7**, that his Company was "***presently involved in Real Estate Development.***"

According to Alhaji Abubakar Tutare, the Defendant's Commissioner of Finance, he stated both in his Examination in Chief and under Cross-Examination that Alhaji Ibrahim Abubakar, the Managing Director of Salman Global Ventures Nigeria Limited and the Defendant were friends. Specifically under Cross-Examination, he stated that sometime in 2004, he met Alhaji Ibrahim Abubakar at the residence of the Defendant, Jolly Tevoru Nyame and added that Alhaji Ibrahim Abubakar was not his friend but had paid visits to his Office in the Ministry of Finance.

Further, Alhaji Abubakar Tutare when he was Commissioner of Finance of Taraba State stated that Salman Global gave out their Account Number to him and whenever he was directed by the Governor to pay Money into the Company's Account, he would notify Salman Global before depositing the Money into the Account. According to him, if he was **not directed** by the Governor to pay such huge amounts of Money into Salman Global's Ventures Account, he could not possibly have stayed for a day, as he would have been sacked and neither would he have been reappointed by the Defendant.

EXHIBIT Z4 – The Defendant's Extra-Judicial Statement to the EFCC dated 6th of June 2007, stated thus: -

“As the Governor of Taraba State, he was the Chief Executive of the State. He administered politically and took charge of the Security issues. He chaired both the State Executive Council Meetings and that of the State Security, and represents the State at the National Council of States. The Ministry, on the Approval of the EXCO, handles all Developmental Projects. The Governor can give Approvals but ratified by the EXCO. Projects are executed within the Budget and those out of it will get the blessing of the House of Assembly by way of Supplementary Budget. The Due Process came in as a child of necessity to curtail excesses, scrutinize Projects and certify payments. The Head of Due Process in Jalingo is Mr. Rabo Usman.

He confirmed being shown a Memo for the BulkPurchase of Office Equipment and Stationeries by the Ministry of Finance to the tune of Two Hundred and Fifty Million Naira (N250, 000, 000.00) dated the 30th of December 2004 and he conceded Approval. At the time of the Report, he could not say off-hand, and could not remember the details of the award of Contract or the items Purchased. He promised to furnish the details later. On the issue of whether these items were purchased I wouldn't know. I did not in any way investigate because EFCC were investigating already the issue of the Purchase. I know Ibrahim Abubakar as a Businessman who supplied and installed a dome tent in Jalingo but I wouldn't know details of his Company. The issue of share of One Hundred

Fifty, I must confess I must contact the Govt Officials who alledged given me the Money whatever is my share I will refund. But I can remember Hon. Comm. Tutare told me all Monies was refunded to EFCC.”(Sic).

From the above **Exhibit Z4**, it is important to state that the Beneficiary of the BulkPurchase of Stationeries and Office Equipmentwas the Government of Taraba State, forthe smooth operation and conduct of Government businesses. The Defendant, Jolly Tevoru Nyame,made it clear in his above Statement, that it was only Developmental Projects that needed the Approval from the Executive Council. By implication, the BulkPurchase of Stationeries and Office Equipment was within his Personal Dominion and Control to grant the Approval as Governor of Taraba State. He did not need Approval from the Executive Council, as this was not a Developmental Project. Therefore, the Enabler of this Transaction had to be the Defendant as Governor.

The Question must be asked, how did the Defendant, Jolly Tevoru Nyame, as Governor of Taraba State, know Alhaji Ibrahim Abubakar was a “Businessman”, as this fact ought to be a Personal Detail. Further, how did the Defendant know that Alhaji Ibrahim Abubakar did not only supply the Dome Tent but had also installed the Dome Tent? Further, the Defendant in his Extra-Judicial Statements knew Companies that were given Contracts and the Stages of Completion for some of the Contracts referred therein. For example, the Defendant in **Exhibit Z4**, which is dated the 6th of July 2007, stated that the Airport Construction was given to a Company named Tarmac Works Limited, a Successful Bidder and the Contract had been 60percent completed. The Defendant also in regard to the Jalingo Market under the Supervision of the Ministry of Commerce, knew that the Contractors’ name was Mr. Uche and also knew that at the time of Commissioning, about 90percent of the Job had been completed with 90percent of the Funds disbursed.

From this, the familiarity of the Defendant to the Projects going on in the State and especially to the Purchase of the Stationeries and Office Equipment could be seen.

Apart from that, it is apparent from the evidence adduced that the Defendant, Jolly Tevoru Nyame, had no Stake, Shareholding or Holding in any Office in Salman Global Ventures Nigeria Limited. He denied any relationship whatsoever with Salman Global Ventures Nigeria Limited, its Managing Director, Alhaji Abubakar Ibrahim and its Representative, Alhaji Musa Yahaya.

Learned Counsel had contended that Alhaji Abubakar Ibrahim, as a Material Witness, ought to have been summoned by the Prosecution to testify before the Court, and his absence was fundamental. In response to this Argument, Learned Senior Counsel referred to the evidence of both the **IPOs, PW9** and **PW12**, to say that all efforts to secure the attendance of this Witness was futile as he could not be reached. The Investigating Team had visited the Office of Salman Global Ventures Nigeria Limited in Abuja, but could not trace this Witness and the Office was no longer operative at that Address. Further, the Sureties were nowhere to be found and so, it was not a Case of Non-Production but a Case of Non-Availability.

On this basis, a Subpoena had been served on the Company and the Company Secretary **PW14**, Dandison Akurunwa Esq., came forward to testify on behalf of the Company.

It is noted that this Witness, Dandison Akurunwa Esq., is **INDEPENDENT** of Alhaji Abubakar Tutare and did not **PERSONALLY** feature in any transactions between his Company and the Government of Taraba State. According to him, Alhaji Ibrahim Abubakar, the Managing Director, did the Jobs for Taraba State Government and **NATURALLY** knew and related **VERY WELL** with the Defendant.

This piece of evidence corroborates the evidence of Alhaji Abubakar Tutare, showing some form of familiarity between the Defendant, as Governor and Alhaji Ibrahim Abubakar the Managing Director of Salman Global Ventures Nigeria Limited.

Now, the Catalyst for the Bulk Purchase of Stationeries started off with a “Secret” Memo dated the 28th of December 2004 as informed in **Pages 2 and 3 of Exhibit CC**, written and signed by the Commissioner of Finance, Alhaji Abubakar Tutare to the Defendant, as Governor. The Memo is titled, **“REQUEST FOR FUNDS FOR BULK PURCHASE OF ASSORTED OFFICE EQUIPMENT AND STATIONERIES FOR DISTRIBUTION TO MINISTRIES, BOARDS AND PARASTATALS.”**

On the 31st of December 2004, the Honourable Commissioner of Finance minuted and signed, **“PROCESS FOR PAYMENT”**, as informed in **Exhibit CC**, the Approved Memo. Therefore, it was for the Ministry of Finance through a Constituted Committee, barely having hours before the End of the Year 2004, to Purchase and Replenish the Central Stores of Taraba State with the Stationeries and Office Equipment in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000). This feat would surely take a Miracle to perform.

The next line of Communication after this Memo, is a Secret Letter from the Ministry of Finance Headquarters dated the 31st of December 2004, written on behalf of the Permanent Secretary by Mr. Bello Mohammed Ibrahim to the Accountant General titled, **“REQUEST FOR RELEASE OF N250, 000, 000. 00.”**

The Letter states,

“I am directed to convey His Excellency’s Approval for the release of the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000.00) only to the Permanent Secretary, Ministry of Finance being Funds for Bulk Purchase of assorted Office Equipment and Stationeries for distribution to Ministries, Boards and Parastatals as per Approval attached.”

Since Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, has lucidly set out the Procedure, which inherently shows the Hierarchy or Chain of Responsibility for the Purchase of Stationeries and Office Equipment, the sidelining of one or more of these Officers, would

PROBABLY result in a Breach of Established Procedure. This is because there is a Presumption of Regularity that every Official Act had been complied with prior to the forwarding of the Memo to the Governor. There is no contrary evidence before the Court to show some form of abeyance or redundancy in any of the Offices/Officers. An example, is where Mrs. Asabe Maiangwa, at the time she went on her Two Week Leave, her Immediate Subordinate, the Secretary in the Ministry of Finance deputized for her and this a Logical Procedure in the Civil Service.

From the evidence of the Permanent Secretary of the Ministry of Finance, Mrs. Asabe Maiangwa, she stated clearly that she was only aware of the Memo in **Exhibit CC** and in fact she was away on Leave at the relevant time the Memo was approved. Following Civil Service Rules, in her absence, she was to delegate her responsibilities to her Immediate Subordinate, who in this case, is the Secretary in the Ministry of Finance, Mr. Jonah Mamman. She never mentioned the name Mr. Bello Mohammed Ibrahim or mentioned that she assigned any role to Mr. Bello Mohammed Ibrahim, who from the evidence of **PW6**, Mr. Abdulkadir Nagari, described Mr. Bello Mohammed Ibrahim, as an Administrative Officer. The Role of Mr. Bello Mohammed Ibrahim, as Administrative Staff did not feature anywhere in the evidence and there is reason to wonder why an Inferior Officer would be delegated the responsibility of writing to the Accountant General to release the Funds, when in fact, the next in line is the Secretary in the Ministry of Finance, who is a Superior Officer.

It simply does not make any sense!

According to the Memo, it was the Ministry of Finance's Statutory Function to Purchase these Stationeries and Office Equipment, not only for itself, but also on behalf of other Ministries, Boards and Parastatals, especially when the demand arose from the daily increase in the volume of Government Activities. In the Memo, the Commissioner noted that the Last Batch had since been exhausted and there was need to replenish the Stores. He stated the effect of non-availability of the Stationeries and Office Equipment and on

this basis, it was imperative to Purchase another Batch, since it was provided for in the 2004 Budget.

In the Penultimate Paragraph, it was stated that upon the grant of His Excellency's Approval, the Purchase would be executed through "**DIRECT LABOUR**". In other words, Direct Labour would be the **ONLY** MEANS towards achieving THE END, which is, the Purchase of Stationeries and Office Equipment for the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) only.

On the face of this Memo, are Two Handwritten Minutes, one belonging to the Defendant, as Governor wherein he gave his Approval and the other belonging to the Commissioner of Finance, Alhaji Abubakar Tutare, seen written immediately after the Approval, wherein he ordered the processing of payment, as approved.

The Question that must be asked is, **WHY** did the Commissioner of Finance wait until Three Days to the End of the Year to write this Memo.

On a Comparative Analysis of this Memo with another Memo in **Exhibit CC at Page 8**, written by the Secretary to the State Government and addressed to the Defendant, as Governor titled, "**REQUEST FOR FUND TO PURCHASE STATIONERIES**", the Author made this Request Two Months before the End of Year 2005. When the Defendant approved it, the Ministry of Finance requested for the release of Twenty Million Naira (N20, 000, 000) as per the Memo. This showed a Prudent Request.

In this instance, the Court had expected the same pattern of prudence from the Ministry of Finance, as it is saddled with the Statutory Duty to make such a Request. However, this was not the case.

Further, the Ministry of Finance's Memo at **Page 2 of Exhibit CC**, clearly shows that the Ministry made a General Request and it was logically expected that reasonable and responsible forecast or projections would be made in a

timely fashion to mitigate shortfalls in Stationeries and Office Equipment that may arise before the End of the Year.

The Court observes that from the Tone of the Commissioner of Finance's Memo at **Page 2 of Exhibit CC**, there was **sufficient time** within which that Request could have been made for the Bulk Purchase of Stationeries and Office Equipment. This is as stated particularly at **Paragraph 2** of the Memo, wherethe Commissioner of Finance stated thus:

*"Your Excellency may wish to note that the demand for these essential Stores Items by Ministries and Departments is increasing Daily due to the increase in the Volume of Government Activities. **However, the last Batch of these essential Items HAVE SINCE BEEN EXHAUSTED, hence there is a need to replenish our Stores.**"*

By this Paragraph, it could mean that the Stationeries and Office Equipment were depleted the Previous Day, Week, or Month before the writing of the Memo.

It is logically expected that this Ministry has in place some form of Reporting System or Request Mechanism on the Mode each Ministry, Board or Parastatal, would channel their Demands either severally or collectively to the Ministry of Finance. It is also expected that whether a Demand is made either severally or collectively, that Demand would have to be made Weeks or Months before the End of the Year 2004 and not when it was barely Three Day to the End of the Financial Year. This is to avoid a situation as envisaged in the Memo, where due to increasing volume of their Collective Government Activities, the scarcity of materials could ground the smooth operation and conduct of Government Business in Taraba State or negatively affect Government Activities for the Following Year 2005.

In this instance, the Commissioner of Finance waited for the Year to come to its wits end before making this Significant Request, which is a fatal flaw in the Administrative Process of his Ministry, as this was not a Fresh Input into the Budget, but was the implementation of what had already been budgeted for in the Year 2004 Budget. To appropriate the Funds at this latter stage is an act of gross financial irresponsibility or recklessness. It Sets on Edge any

Member of his Staff or any Staff of the Taraba State Government, who would one way or another be involved in the Bulk Purchase of this Stationeries and Office Equipment, as barely Three Days remained to the End of the Year. Further, it limited or narrowed down the Options the Government of Taraba State would normally have exercised in procuring the Stationeries and Office Equipment. The Taraba State Government was only left with a Singular Viable Mode of Procurement, which was, the Direct Labour. Even with this Narrow Mode of Procurement, Procedures still had to be complied with.

Further, a General Request for Bulk Purchase would certainly have an EMANATING SOURCE, which procedurally would start off from within his own Ministry, starting from the bottom through to him, as Commissioner and then to the Governor for his Approval. This is to ensure a Checking Mechanism is in place, allowing only for Genuine Requests to pass through to the Governor of the State and will no doubt whittle down Phantom Requests or Requests fashioned from the Commissioner's own cognition.

On the face of **Page 3** of this Memo in **Exhibit CC**, the Defendant, as Governor minuted his Approval initially to the Honourable Commissioner of Finance but struck "HCF" off, and instead minuted and signed the Approval to the Permanent Secretary "P/Sec" as follows, "**APPROVAL IS FOR TWO HUNDRED AND FIFTY MILLION NAIRA ONLY (N250, 000, 000.00)**", and he signed it on the 30th of December 2014.

This is to say, he gave his Blessing to the Memo barely a Day before the End of the Year, precisely on the 30th of December 2004.

Alhaji Abubakar Tutare, the Commissioner of Finance, who testified as **PW10**, was shown the Memo and he stated in his Examination in Chief that: - ***"On the 20th of December 2005, a Memo to the tune of Two Hundred and Fifty Million Naira (N250, 000, 000) was raised by the Ministry of Finance to the Defendant, as Governor, for Direct Purchase of Stationeries and the Approval was granted on the 30th of December 2005."*** He corrected the conflict in the dates by stating that he was diabetic and his memory would not be accurate. However, he confirmed that this was the Memo

raised by the Ministry of Finance, which he signed and the Approval was granted on the 30th of December 2004. He stated thus:

“The Approval was processed through the Accountant-General’s Office, for release of the Funds, to the Ministry of Finance and the Funds were released accordingly. After the release, the entire Funds were deposited into Salman Global Ventures Limited’s Account on the Directive of his boss, the Defendant, as Governor of Taraba State. There was a directive from the Defendant that N180Million should be paid to Salman Global’s Account out of the total sum of N250Million.”

According to **PW6**, Mr. Abdulkadir Nagari, after Salman Global Ventures collected the Cheque of Two Hundred and Fifty Million Naira (N250, 000, 000) on the 7th of January 2005 and issued a Cash Receipt, they did not supply any of the items within the Two Weeks Time Span for which the Supply of the Stationeries and Office Equipment was scheduled for delivery.

PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, complained to the Defendant as regards the Mode of Payment of the Sum of Two Hundred and Thirty Million Naira (N250, 000, 000) unilaterally employed by the Commissioner of Finance, Alhaji Abubakar Tutare. According to her, the Defendant was “not happy” but the question remains, what did he, as Governor, do thereafter?

As Governor, it was certainly good that he was unhappy but what he ought to have done thereafter was the MOST CRUCIAL, which is some form of Chastisement. It was only under Cross-Examination that he stated that he did not investigate the default in the supply of the Stationeries because the EFCC Investigations were ongoing and Alhaji Tutare had informed him that Monies collected had been refunded. However, there is no evidence showing that the Defendant, as Governor, either issued out a Query to the Commissioner of Finance or constituted a Panel of Inquiry to investigate the Commissioner. The failure to do so could only mean he acquiesced or impliedly approved the act as carried out by his Commissioner. He never

struck when the sword was brimming and blazing with flames of fire nor struck when the flames fizzled out and became as cold as ever.

There is nothing before the Court to show that the Defendant followed the Complaint through, as he simply denied the fact of this Complaint made by Mrs. Asabe Maiangwa and denied ever having such discourse with her.

But Mrs. Asabe Maiangwa did not stop right there.

According to her, she confronted the Commissioner of Finance, Alhaji Abubakar Tutare on his return, who told her that he was directed to pay the Sum of One Hundred and Eighty Million Naira (N180, 000, 000) to Salman Global Ventures.

Since the Cheque for Bulk Purchase of Stationeries and Office Equipment worth the Sum of Two Hundred and Thirty Million Naira (N250, 000, 000) had been released to Salman Global Ventures Nigeria Limited, why then would the Defendant instruct the Sum of One Hundred and Eighty Million Naira (N180, 000, 000) to be paid to Salman Global Ventures Nigeria Limited?

The Defence Counsel, Olalekan Ojo contended that this piece of evidence rendered by Mrs. Asabe Maiangwa was Hearsay Evidence, which ought not to be relied upon by this Court and cited the case of **OKEREKE VS UMAHI (2016) 11 NWLR PART 1524 PAGE 438 AT PAGE 489 PARAS F-G.**

Learned Senior Counsel, Rotimi Jacobs SAN, argued as incorrect and misconceived, the above contention by stating that Mrs. Asabe Maiangwa gave evidence of what she heard, which PW10, Alhaji Abubakar Tutare supported in his unshaken testimony in Court. Therefore, Mrs. Asabe Maiangwa's evidence cannot suffice as Hearsay. Learned Senior Counsel made reference to the Case of **UTTEH VS STATE (1992) 2 NWLR PART 223 PAGE 257 AT PAGE 269 (SC); SECTION 126(b) OF THE EVIDENCE ACT 2011 (AS AMENDED).**

Now, it is important to state that this piece of evidence as rendered by Mrs. Asabe Maiangwa cannot possibly be Hearsay. Mrs. Asabe Maiangwa is not asserting the truth of the fact that the Defendant directed Alhaji Abubakar Tutare to pay the Sum of One Hundred and Eighty Million Naira (N180, 000, 000) to Salman Global Ventures. She was only stating that she confronted Alhaji Abubakar Tutare and only went on to state the outcome of that confrontation. What Alhaji Abubakar Tutare divulged to her, was what she heard him say in reply.

The veracity or truth of whatever Alhaji Abubakar Tutare told her could only be tested through positive evidence, as she was not there when the Defendant gave that instruction to pay Salman Global Ventures Nigeria Limited the sum of One Hundred, and Eighty Million Naira (N180, 000, 000). Therefore, the fact of what **she heard is admissible not for the purpose of establishing the truth** but the fact of what was heard. Reference is made to the case of **DPP VS SUBRAMANIAM (1956) 1 WLR PAGE 965 AT PAGE 969; JIMOH AMOO & ORS VS THE QUEEN (1959) 4 FSC PAGE 113 AT PAGE 115; UTTEH VS STATE (1992) LPELR-6239 (SC).**

From the evidence above, it is apparent that there was a deviation from the Mode of Purchase from Direct Labour to the Status of a Contract and the cause of the diversion started with the Directive of the Defendant to pay a Certain Sum of the whole to a Company. Alhaji Abubakar Tutare, who authored the Memo in **Exhibit CC**, followed this deviation path. After the Approved Sum of Two Hundred and Fifty Million Naira (N250, 000, 000), was released into the Account of the Ministry of Finance from the Accountant General, he bypassed the Custodian of the Funds, i.e., the Permanent Secretary by ordering the Assistant Chief Accountant of the Ministry of Finance, to pay the Entire Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) to Salman Global Ventures Nigeria Limited. It is in evidence that Alhaji Tutare had testified this Cheque could not be split.

The Court notes that the Prosecution tendered towards the tail end of the Defendant's Cross-Examination, **Exhibit VV1**, a Secret Letter dated the

30th of March 2005. This Letter is a Query from the Ministry of Finance Headquarters written on the behalf of the Permanent Secretary by Mr. Jonah Mamman, the Secretary to the Ministry to Mallam Mohammodu Juli, Chief Stores Officer.

Of particular interest is **Page 2 of the Exhibit**, wherein the Chief Stores Officer in charge of the Central Stores, in answer to the Query wrote thus: -

“PERMANENT SECRETARY

I as the Chief Stores Officer of this Ministry under whom Central Stores Division is, have a Duty to enlighten you on anything that affects the Division in particular and this Ministry generally.

You may not be aware perhaps, that I am aware that you have written a Memo to Government House for the Purchase of Office Equipment and Stationeries worth N250 Million.

UNDER NORMAL CIRCUMSTANCES, THAT MEMO SHOULD HAVE EMANATED FROM MY OFFICE THOUGH YOU MADE IT A POINT THAT I SHOULD BE SIDE LINED. I am also aware that H.E. has approved the Memo.

From this abridged Excerpt of **Page 2**, which is plagued with many forgivable grammatical errors and mistakes, it explained the necessity for proper vetting by his Superiors before it was presented to His Excellency. The Court finds these errors pardonable, as what is crucial is the message the Response tends to convey, which is that Mallam Mohammodu Juli, the Chief Stores Officer, should be the **Root Source** of the Memo for the Bulk Purchase Stationeries and Office Equipment, but he was sidelined.

According to Mrs. Asabe Maiangwa, he, as Chief Stores Officer was also solely responsible for generating the Cost Implications for this Purchase of Stationeries and Office Equipment.

The Question must therefore be asked, **WHY** was he sidelined?

From the Unchallenged Evidence of Mrs Asabe Maiangwa, who positively fingered the Responsibility of the Cost Implications to the Chief Stores Officer, it could only mean that Alhaji Abubakar Tutare, on the 28th of December 2004 prepared the Memo in his Office without any input from the Chief Stores Officer. How he arrived at the Cost Implications using his OWN Mathematical Thought Process to the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000), is only known to him. His untimely request to Purchase Stationeries and Office Equipment was crowned with the Mode of Purchase being Direct Labour and behold! A Frankenstein was brought forth, even though lame!!!

In **EXHIBIT Z14**, the Further Statement to the Extra-Judicial Statement of the 6th of March 2006 made by Alhaji Abubakar Tutare dated the 12th of July 2007, and tendered by the Defence during his Cross-Examination, it reads thus: -

“On the issue of the Stationery which is Two Hundred and Fifty Million Naira (N250, 000, 000.00), out of it Forty Million Naira (N40, 000, 000.00) was used for the Purchase and One Hundred and Eighty Million Naira (N180, 000, 000.00) was given to Salman Global Ventures, while Ten Million Naira (N10, 000, 000.00) was given to the Politicians and Ten Million Naira (N10, 000, 000.00) was for him, and Ten Million Naira (N10, 000, 000.00) to the rest of the Staff of the Ministry”

Further, **EXHIBIT Z16**, another Extra-Judicial Statement of Alhaji Abubakar Tutare dated the 12th of November 2006, and tendered by the Defence during his Cross-Examination, confirms **Exhibit Z14**, and it reads thus: -

“On the issue of Stationery, N250Million was approved for Purchase and out of it N40Million was used for the Purchaseand N180Million was given to Salman Global Ventures. Whilst N10Million was given to Politician, and N10Million to himself, and N10Million to the rest of the Staff of the Ministry.”

It is important to note that since Alhaji Abubakar Tutare, the Commissioner of Finance, used his OWN DISCRETION to secure for himself Ten Million Naira (N10, 000, 000) from the filthy lucre, WHY then did he not appropriate

for himself the WHOLE of the One Hundred and Eighty Million Naira (N180, 000, 000) in the first instance, had it been he acted all alone in this saga. He certainly was not acting alone in putting together this Frankenstein Monster. Someone would have aided him to achieve this feat since he was only a Freshman in the Civil Service of Taraba State Government.

According to Alhaji Abubakar Tutare, the Defendant's Commissioner of Finance: -

"The Content of the Memo was for the Purchase of Stationeries and an Approval was given ALONG WITH A VERBAL INSTRUCTION that the Sum of One Hundred and Eighty Million Naira (N180, 000, 000), should be paid into the Account of Salman Global Ventures."

It is worthy of note that the Defence eviscerated this material piece of evidence under Cross-Examination.

What then does that say about the Memo? It could be a Memo inhabited by Two Spirits, one Good and the other Evil. The Good Spirit was the Written Instruction while the Evil Spirit was the Verbal Instruction or a good depiction of Dr. Jekyll and Hyde. Whether Good or Bad, both appeared to be emanating from the Same Source. According to Alhaji Abubakar Tutare, ***"Instructions are Instructions and whether Written or Verbal, as long as they come from one's Boss, they are considered as Instructions. These Verbal Instructions of the Governor were based on the Governor's Written Approvals contained in the Memo."***

In other words, the Defendant, as Governor, not only gave the Memo life by giving his Approval, but apparently sanctioned the Thought Process of the Commissioner of Finance, Alhaji Abubakar Tutare. Alhaji Tutare, was a Witness with no Civil Service Background, who learnt the Pros and Cons of the Civil Service in the course of occupying that Office as Commissioner, and to him, every instruction from his Superior was an Order.

Further, he stated that the entire Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was initially deposited into the Account of Salman

Global Ventures Nigeria Limited, on the Directive of the Defendant, as Governor. There was a Follow-Up Directive by the Defendant that the Sum of One Hundred and Eighty Million Naira (N180, 000, 000) be paid to Salman Global Ventures Nigeria Limited out of the Total Sum of Two Hundred and Thirty Million Naira (N250, 000, 000). According to Alhaji Abubakar Tutare and I quote,

“When the Cheque was raised and it was paid into Salman Global’s Account, it was because there was there was directive from my boss that One Hundred and Eighty Million Naira (N180, 000, 000) should be paid to Salman Global out of the Two Hundred and Fifty Million Naira (N250, 000, 000). Since it was a Direct Purchase Order and not a Contract Order, there was no way they could split the Cheque from the Ministry (Ministry of Finance, insertion mine), the Whole Money was paid into his Account and he took One Hundred and Eighty Million (N180, 000, 000).”

Before the Court is **Exhibit FF**, the Statement of Account of Salman Global Ventures Nigeria Limited with Pacific Bank (now Unity Bank Plc.). This **EXHIBIT FF** is dated the 31st of October, 2016 addressed to the Executive Chairman EFCC, titled, **“RE-INVESTIGATION ACTIVITIES: PACIFIC BANK ACCOUNT NUMBER 5020725-7/001/0094/00, SALMAN GLOBAL VENTURES LIMITED.”**

This Statement of Account was Computer Generated and Certified and signed by **PW13**, Mrs. Oyewo Ganiyat, the Relationship Officer of Unity Bank, confirming the contents of the Accounts as being a True and Accurate Record from the Bank’s System.

According to her, on the 24th of January 2005, a Fixed Deposit Account in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was credited into the Bank’s Suspense Account and not into the Current Account of the Customer. She gave Two Scenarios for using a Bank Suspense Account to include: - 1) Where a Customer does not have an Account with the Bank but desires to utilize the Bank’s Fixed Deposit Interest Rate; and 2) Where the

Customer does not want the Funds to be traced to his own Account. In this instance, she could not say when the Cheque of Two Hundred and Fifty Million (N250, 000, 000) was cleared and since it was deposited in the Bank's Suspense Account, it was untraceable and the Customer did not probably intend that the Source of the Fundsto be reflected in his own Account.

Further, she testified that the Sum of Two Hundred and Fifty Million (N250, 000, 000) was booked on the 24th of January 2005 and liquidated on the 28th of January 2005 and was moved out with only the accrued interest of N589, 041.80Kobo dropping into the Current Account. This accrued interest suffered a penalty fee due to the fact that the Fixed Deposit was liquidated before the time agreed with the Bank and so the Sum of N441, 780.81Kobo, was paid to the Customer by the Bank. She added that the Sum of N250Million was untraceable because it was cleared through the Bank's Suspense Account and removed through the same Account.

From **Page 3 of Exhibit FF**, she identified yet another Sum of N150Million paid in on the 17th of February 2005 and stated that this inflow came in the same way as the first, as it was paid directly into the Bank's Suspense Account, fixed on the 17th and liquidated on the 28th of February 2005. Similarly, the accrued interest dropped into the Current Account of Salman Holdings while the Bulk of Money was moved out. It was not reflected in the Records where the Money was moved. Again, from an accrued interest of N904, 109.58Kobo, the Bank paid the Company interest of N197, 260.27Kobo. Since the Money was booked through the Suspense Account, it could not be traced as if booked through a Current Account where the Statement of Account would have shown the destination of the Bulk of the Money.

According to her, it is either the Cash was collected or it was collected with a Cheque and transferred, but even at that, what the Statement would show will be the Transfer Instructions by the Order of Salman Global Ventures. It would not show to whom it was sent.

Before a Fixed Deposit can be collected or transferred, the Customer/Owner of the Account must initially Liquidate the Fixed Deposit. If Liquidated, the Fund is supposed to drop into the Current Account. But in this instance, the Fixed Deposit was not booked through the Current Account and the Customer would have to issue out Two Instructions at once. The First Instruction would be to liquidate and the second would be to give the details of where the Money was meant to go.

She was shown the Statement of February 2005 at **Page 2 of Exhibit FF**, and noted that on the 1st February 2005, the Account Position was Zero (“0”).

PW6, Mr. Abdulkadir Nagari, the Assistant Chief Accountant of the Ministry of Finance stated that after collecting the Cash Receipt of Salman Global Ventures Nigeria Limited, which is dated the 7th of January 2005, as informed in **Exhibit CC**, Ten Days after, Salman Global Ventures Nigeria Limited, did not Supply the Stationeries and Office Equipment paid through the Cheque of Two Hundred and Fifty Million Naira (N250, 000, 000).

He again raised another alarm, initially referring to the Page where he had earlier raised an alarm and querying the fact that he has not seen any materials in regard to the supply, brought to the Ministry of Finance and he demanded to know the position. Even though **PW6**, Mr. Abdulkadir Nagari’s Query Alarm was raised sooner than the expected date of delivery, he capsulated this evidence by stating that up and until the time he left the Ministry of Finance in June 2005, the Supplier, Salman Global Limited, who collected the Cheque on Friday the 6th of January 2005, did not supply a Single Sheet of Paper, and the Time Limit to supply the Goods was Two Weeks.

PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, in her testimony in Chief stated that she played no role in regard to this Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) and did not receive Stationeries, as the Major Players in this Transaction were the

Secretary of the Ministry of Finance, who deputised for her in her absence, the Accountant and the Honourable Commissioner of Finance.

Further, she crescendos with the fact that there was NO Request from the Chief Stores Officer to her concerning the BulkPurchase of Stationeries and Office Equipment. Upon her return from Leave, the Secretary of the Ministry of Finance did not informed her that any Stationery and Office Equipment were supplied. She even requested to see the Memo but was only shown the Photocopy of the Cheque made in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000).

PW10, Alhaji Abubakar Tutare, the Substantive Commissioner of Finance, crescendos his testimony in Chief when he was asked whether Salman Global Ventures did anything in relation to the **Purchase of Stationeries**, the Cheque of N200Million and the Water Project, and he replied in the negative, stating that Salman Global did NOTHING in regard to these Projects.

PW9, Assistant Superintendent of Police Ibrahim Galadima, corroborated this fact when he stated that Salman Global Ventures Nigeria Limited did not supply any Stationery and Office Equipment during the course of the investigation. They had discovered that the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was lodged into the Account of Salman Global Ventures Nigeria Limited with Pacific Bank in Abuja and found that the Purchase of Stationeries and other Office Equipment were not done, with the amount not returned to the Government Account.

More importantly, the Team discovered that the said Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was later returned to Alhaji Abubakar Tutare, the Commissioner of Finance, who, in turn, gave Alhaji Ibrahim Abubakar, the personal friend of the Defendant, the Sum of One Hundred and Eighty Million Naira (N180, 000, 000). The Remaining Balance of Seventy Million Naira (N70, 000, 000) was retained by Alhaji Abubakar

Tutare, the Commissioner of Finance, who shared this Balance Sum amongst Officers of the Ministry of Finance.

Under Cross-Examination, **PW9**, Assistant Superintendent of Police Ibrahim Galadima, stated that the purpose of the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000) was to serve as a deposit to Purchase for the Defendant, as Governor, a House at N0. 6 Yaoundé Street, Wuse Zone 6 in Abuja of the Federal Capital Territory.

Further, this Sum of One Hundred and Eighty Million Naira (N180, 000, 000) was never meant for the Purchase of Stationeries and Office Equipment in 2005, which in any case, their Investigation revealed, was never supplied.

PW12, Chief Superintendent of Police Ishaq Salihu Ismael further corroborated the above by stating that the Cheque in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) given to Salman Global Ventures Nigeria Limited was contrary to the Explicit Request of the Commissioner of Finance to Purchase Stationeries through Direct Purchase.

As resolved earlier, the rendition of **PW9** and **PW12** does not inform Hearsay Evidence as what they rendered was as a result of positive and direct steps through Interviewing and Visits etc., in the course of their Investigation, and they only came to the Court to testify as to the outcome.

At this juncture it is important to exhume again **EXHIBIT VV1**, the Secret Letter dated 30th March 2005 from the Headquarters of the Ministry of Finance, written on the behalf of the Permanent Secretary by Mr. Jonah Mamman to Mallam Mohammadu Juli, the Chief Stores Officer.

The Letter is a Query and on **Page 1**, it states:

"It has been observed that you disclosed Official Information on the Purchase of Office Equipment and Stationery to unauthorised Persons by way of typing and circulating typed figures, which is contrary to the Public Service Rule 04401, Sub-section 10 and the Oath of Secrecy which you swore to".

At Page 2 of Exhibit VV1, Mallam Mohammadu Juli wrote his Name and Designation, and stated thus: -

“PERMANENT SECRETARY

I as the Chief Stores Officer of this Ministry under whom Central Stores Division is, have a Duty to enlighten you on anything that affects the Division in particular and this Ministry generally.

You may not be aware perhaps, that I am aware that you have written a Memo to Government House for the Purchase of Office Equipment and Stationeries worth N250Million.

Under normal circumstances, that memo should have emanated from my office though you made it a point that i should be side lined. I am also aware that H.E. has approved the memo.

Today, you are asking the Secretary to constitute a Committee to Purchase Stationeries and Office Equipment worth N20Million and that I be a Member of that Committee.

Here are my Observations: -

- 1) What Stores and Civil Service Regulations are the Committees going to apply?*
- 2) What relevant purchasing documents are we going to use?*
- 3) Has this Committee any Governmental Regulatory Backing to undertake any such BulkPurchase?*
- 4) Where is the source of this N20Million?*
- 5) Is it from the Original N250Million approved by H.E? If so,*
- 6) What happened to the balance of N230Million?*
- 7) Unless and until these questions are answered, please count me out of this Committee*

After sometime, the Permanent Secretary met some of the Committee Members and told them that it is advisable to dissolve the Committee and allow a Contractor to undertake the Purchase. She went further by informing the members that she has contacted nine (9) Contractors and one of them has agree to supply.

One morning we saw trucks loaded with some papers and equipment at the Ministry of Finance with instructions from the Permanent Secretary

that I should receive them into the Store. I went to the Secretary and told him this:

a. I cannot receive these goods whose source I do not know

b. There is no documentary evidence on the mode of Purchase

On hearing this, the Secretary being an experienced Admin Officer directed me to get a Subject File so that we can start at lease from somewhere. (Sic)

This Query, its Answer and the Observations made by Mallam Mohammadu Juli, the Chief Stores Officer of the Central Stores Division, a Department under the Ministry of Finance is a Box Loaded with Fireworks and perhaps, in a Fury, he decided to light them up. His fury was because he leaked out Official Information meant to be kept Secret and did not deploy the appropriate channel to express himself.

Well! What can the Court say as to the fate of Mallam Mohammadu Juli, a Civil Servant in Employee of Taraba State Government other than to say that the Fireworks he lit, had Different Flashing Colours, seen and heard by not only the Ministry of Finance but by All and Sundry, both in Taraba State and the Whole World.

There was an eventual supply of Stationeries and Office Equipment, but CERTAINLY, this Supply DID NOT emanate from Salman Global Ventures Nigeria Limited, the CHOICE Contractor, who received the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) and the whole idea of instructing Mallam Juli to open a Subject File in order to deliberate in a Committee and receive Stationery worth Twenty Million Naira as opposed to the Two Hundred and Fifty Million Naira allocated for, and to further ask him to start from this Smaller Amount than was initially provided for, was utterly preposterous.

The Defence, for the purposes of showing that the BulkPurchase for which a Payment Voucher was raised and payment made thereto, had a Check and Balance Mechanism through the Issuance of an Audit Query.DW3, Mr. Aminu

Ayuba, the Present Acting Accountant General of Taraba State Government was subpoenaed to establish this fact and also tendered Published Reports from the Office of the Accountant General of Taraba State. According to him, in the absence of Audit Queries, and no anomalies in the Payment Process, certain salient points shoot out. He noted that the Payee who spent the Monies collected, is the only person to explain the expenditure.

Further, the Audit Query as narrated by this Witness, is certainly porous, as the Acting Accountant General could not guarantee the fact that the Audit Query could capture instances such as Overhead Cost, Ghost Workers, Failure to Implement Projects, Diversion of Funds, Non-Procurement of Goods and Services, etc. Assuming the function of the Internal Audit Accounting Officer of the Ministry of Finance and the External Audit Accounting Officer from the Auditor General of Taraba State is simply to Pre-Audit and Post-Audit Payment Vouchers, then this is not good enough. The Central Stores Division is accountable for what it receives in its Stores, as the Monetary Cost of Stationeries and Office Equipment are inventoried and documented by it. Therefore, the Audit should have also been extended to the Central Stores.

The evidence led showed that the Stationeries and Office Equipment worth Two Hundred, and Fifty Million Naira (N250, 000, 0000) were never supplied, so what was to be audited?

PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, had stated in **Exhibit U1**, her Extra-Judicial Statement to the EFCC dated the 16th of November 2005, she explained the Sharing Formula to also include the Auditor General of Taraba State in the person of Mr. Illiya Wanapiya, who **collected the Sum of Three Million Naira to share with his boys**. In other words, the Auditor General and his Boys collected Hush Monies, thereby blinding their eyes in the course of conducting their Audit Responsibility in the Ministry of Finance.

PW14, Dandison Akurunwa Esq, the Company Secretary of Salman Global Ventures Nigeria Limited, when confronted in Court with **Exhibit FF**, the Statement of Account of his Company, he identified the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000), stating that from the available Records, there was NO Contract awarded or executed by his Company in this Sum and he was not aware of any Supply of Stationeries and Office Equipment even though his Company was involved in Contracts with the Government of Taraba State.

From the above, it can be seen that Salman Global Ventures enjoyed a Special Relationship with Taraba State Government because the Company was neither a Registered Contractor for the Supply of Stationeries and Office Equipment, nor did they place any Tender for the Supply, and were not awarded a Physical Contract in writing. From their Memorandum and Articles of Association, the Supply of Stationeries and Office Equipment are not listed as one of their Objectives. Even though they had previously performed at least one Contract on Record, their nomination to supply these Goods was strange to say the least. This strangeness has to be explained one way or the other, as it runs contrary to reason and especially contrary to the Terms of the Approval in the Memo.

It is only when this Reason is discovered that the Case can be established **DIRECTLY** against the Defendant, as Governor, and the Court would have to place the Evidence adduced on both sides on a Proverbial Veritable Scale, to determine whether the preponderance of evidence heavily tips the Scale, and is found to be so substantial as to compel a Belief Beyond Reasonable Doubt.

There was an arrant departure from Established Procedure, and Officials of the Ministry of Finance in the Taraba State Government, such as Alhaji Tutare, Mrs. Asabe Maiangwa, Mr. Abdulkadir Nagari Umar, Mr. Jonah Mamman and a Host of other Officials who took active part in the Transaction committed Administrative Breaches. The fact of Departure only begs the question of how on earth they were able to ascend the Level of Civil Service, and also shows that between the Years of 2004 to 2005, the Ministry

of Finance was especially an Enclave/Den of Criminal Activities, best illustrated in the Tale, “Ali Baba and the Forty Thieves”.

However, what the Court is being called to determine is not the Fate of these hapless individuals, but what EXACTLY was the part played by the Defendant in all of this. The Defendant is the BULLSEYE and all the Evidence should show the Prosecution’s Arrow hitting the Target right in the Eye.

It is important to point out that aside of the Memo bearing his Approval, there are no other Written Documents bearing any DIRECTIVES of the Defendant as Governor. Therefore, Circumstantial Evidence that is positive and unequivocal must be weighted on the Proverbial Scale.

If Salman Global Ventures Nigeria Limited had no history, no antecedents of Supplying Stationeries to Taraba State Government, then their injection into the Mix has to be queried. The question therefore is, ‘**WHO**’ injected them into the flow? Here, the Answer to this Question, basically lies at the doorstep of Alhaji Tutare and the Defendant, as he was the ONLY SINGLULAR PERSON to have DIRECT contact with the Defendant.

It is now a Case of Rev. Jolly Nyame’s WORDS against the WORDS of Alhaji Tutare.

Alhaji Tutare positively asserted that he was directed by the Defendant to pay One Hundred, and Eighty Million Naira (N180, 000, 000) and he in turn directed others to comply with this Oral Directive. He had already stated that Directives, whether Oral or Written, would be obeyed by him.

The Defendant, on the other hand, asserted positively that he never made such Directions and never knew Salman Global Ventures Nigeria Limited, further stating that it was the Department concerned that usually selects Contractors and he had no part to play in their selection and also never had any part to play in the Direction to pay a certain Sum to Salman Global

Ventures Nigeria Limited. From the Documentary Exhibits before the Court, he was not a Director, Shareholder or Owner of the Company.

The Golden Question therefore is, who is LYING amongst them?

This is then why Circumstantial and Positive Documentary Evidence is needed to determine the truth. The Defendant on this contention called Three Witnesses aside of himself. They were his Orderly and two Officials, one serving and the other retired, both of whom were Accountants. As their testimonies revealed, they had no Particular or Special Knowledge about the Two Hundred, and Fifty Million Naira (N250, 000, 000) meant for the Purchase of Stationeries.

DW1, Mr. Yakubu Bulus was in Court to testify as to Due Process and Audit Queries in general. **DW2**, the Orderly did not feature or participate, and was also not specifically mentioned by the Defendant or anyone else as having a part to play in this Transaction. However, he denied the incidence at the Jalingo Hotel Annex. **DW3**, was another Accountant whose Evidence was also to validate the Financial Processes, but had nothing to do with this Particular Transaction. Therefore, the Defendant stands alone in Defence to the allegations regarding the Offence of Two Hundred and Fifty Million Naira (N250, 000, 000.00). He, and of course, his Extra-Judicial Statement tendered before the Court as **Exhibits Z4 to Z6**.

Alhaji Tutare spoke to the relationship he knew of as regards the Defendant and the Managing Director of Salman Global Ventures. He had met him at the Defendant's Residence and was introduced to Alhaji Ibrahim Abubakar by the Defendant. He testified that anytime he was called upon to make Payments, the Defendant would direct him to pay into Salman Global Venture's Account, and he would then call Alhaji Ibrahim in order to obtain his Bank Account Details and then pay. This Piece of Evidence remained unchallenged by the Defendant throughout the Proceedings, and was not a One Off Transaction.

PW14, Mr. Dandison Akurunwa Esq., the Company Secretary also spoke of the Defendant's Relationship with Salman Global Ventures and had stated that his Managing Director/Chief Executive Officer knew the Defendant well. He also had met the Defendant in the course his Company's other Transactions with the Taraba State Government. It is to be presumed that he had nothing to lose by this assertion.

The Documentary Exhibits before the Court also speaks to this relationship, as seen in the **Exhibit Z7**, the Extra-Judicial Statement of Alhaji Ibrahim Abubakar, tendered strangely by the Defendant through one of the Prosecution Witnesses, where he spoke of an intention of the Defendant to Purchase his Personal House, which was confirmed when Alhaji Tutare said the Defendant told him that Alhaji Ibrahim Abubakar had persistently worried him over the Payment, and the Injection of 'Alhaji Imam' was made in this Statement, and also made by the Defendant in his Statement as well.

The Bank Statement of Salman Global Ventures, in **Exhibit H** also validates a Steady Relationship between Salman Global and Taraba State Government as Payments can be seen from Taraba State Government therein.

The Defendant in his Extra-Judicial Statement, **Exhibit Z6**, had succinctly admitted that he had received benefits, when he offered to discuss with Alhaji Tutare and make necessary repayments and when he later said Alhaji Tutare informed him that refunds were made. Also, when he threw the proposition of Plea Bargain. It is difficult to imagine that Plea Bargain moves would be suggested if there was no Element of Guilt. Circumstantially, there was Alhaji Tutare, Mrs. Asabe, and the IPOs, who testified in regard to their Investigative Activities. There was no challenge on their ability to do a Competent Job, and they were independent of not only the Transaction, but, of Taraba State Government. As earlier held, their Testimonies before the Court do not constitute Hearsay and it could only therefore be shaken by an effective Cross-Examination.

It is clear that this Sum of Money left the coffers of Taraba State Government by the evidence of Alhaji Tutare, Mrs. Asabe and Mr. Abdulkadir Nagari, and even by the Defendant, who did not dispute this fact.

The fact of the Bypass of the Administrative, Financial and Delivery Steps, as well as the fact that the Entire Sum was paid, instead of an initial 30% with the subsequent Balance of 70% paid at a Later Date, and the fact that the Standard Procedures were not followed, could only be excused by the Fact of Direct Labour actually taking place in the short time they had to complete the Job, evidencing an Emergency.

By the mere fact that the Defendant knew of the short time for performance, he ought to have kept a keen Eye on the details, and ought to have directed that a Committee be set up, for Delivery of the Items. He had what is best typified as a "NEED TO KNOW". If PW6, Mr. Abdulkadir Nagari Umar, had noticed the fact that the Payee of the Funds was not indicated in the File, then the Defendant ought to have requested to know this fact. There was also the visit to Jalingo Hotel Annex, where the Defendant was said to have directly addressed the Official from Salman Global Ventures as to why he did not take along the Company's Receipt when he went to pick up the Cheque, which shows a familiarity with the Events subsequent to his approving the Memo. This belied the fact that he knew nothing about the implementation of the Contract, and this piece of evidence was never challenged during Cross-Examination.

There was also the Defendant's Silence about the Complaint made by Mrs. Asabe, on the activities of the Commissioner of Finance and he did nothing to uphold the trust placed on him. However, it must be added that he denied hearing about any Complaint from Mrs. Asabe.

Further, by the Terms of the Memo, which was for Direct Labour, a Breach of Procedure was occasioned. It was not his place to direct, and this direction showed ownership, or at best Control. By him, directing the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000.00) he could actually

have been sued by Salman Global Ventures for tampering with their Funds. The Sum of Two Hundred and Fifty Million Naira (N250, 000, 000.00) was for a specific NEED, and there is not doubt that if the enablement of performance is shortened or curtailed, certain aspects of the purchase would have been affected. Funds could only be released by the approval and direction of the Defendant, who addressed his approval, not to the author of the Memo, but to a Party that he ought to have known was not his direct Assignee.

It was only the IPO's Evidence that stated that the Cheque released to Salman Global was paid into Salman Global's Account, and then the Sum of Two Hundred and Fifty Million Naira was paid back. This piece of Evidence remained unchallenged by the Defence throughout.

The evidence before the Court as rendered through **PW6, PW7, PW9 and PW10**, which remain unchallenged is that Salman Global Ventures Nigeria Limited DID NOT Supply any Stationery and Office Equipment to the Government of Taraba State.

It was proved by the Prosecution beyond reasonable doubt that what was issued to Salman Global Ventures Nigeria Limited was a Cheque in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) belonging to the Government of Taraba State, which the Defendant, as Governor of Taraba State, approved the Sum. The Sum only had to be issued on the basis of an Existing Relationship between the Government of Taraba State through the Ministry of Finance and Salman Global Ventures Nigeria Limited.

Had there been a Contractual Agreement, then by the Date of Depositing the Cheque into Salman Global Ventures Nigeria Limited's Account with Pacific Bank on the 24th of January 2005, which was liquidated on the 28th of January 2005, Salman Global needed to have delivered the Stationeries and Office Equipment ON or BEFORE this Date of Liquidation.

The Commissioner of Finance, Alhaji Abubakar Tutare indicated that Salman Global Ventures Nigeria Limited had a Private Arrangement with the Defendant, and he knew that those Equipment said to be already 'warehoused', were expected to be delivered within Two Weeks. He also knew that a Cash Receipt dated the 7th of January 2005 was issued out to the Ministry of Finance, and ought to know that the Truck or Trucks should deliver the said Stationeries and Office Equipment to the Chief Stores Officer, Ministry of Finance, Taraba State.

However, Salman Global Ventures Nigeria Limited **never** delivered the Stationeries and Office Equipment worth Two Hundred, and Fifty Million Naira (N250, 000, 000) or any Item worth One Hundred, and Eighty Million Naira (N180, 000, 000) or worth One Naira (N1.00) on the 28th of January 2005, or so soon thereafter. Salman Global Ventures Nigeria Limited did not even supply the Stationeries and Office Equipment prior or after the 30th of March 2005, when the Query was sent out to the Chief Stores Officer, Mallam Muhammad Juli.

By the Directive he received, Alhaji Tutare knew that Stationeries worth Two Hundred and Fifty Million Naira would not be delivered by Salman Global Ventures within Two Weeks or any other Time Frame.

Salman Global Ventures Nigeria Limited breached the Agreement with the Ministry of Finance. It was therefore for the Permanent Secretary of the Ministry of Finance, as the Accounting Officer, to wave a Red Flag but the filthy lucre were in her hands, so with what would she wave the Flag? The Commissioner of Finance, Alhaji Abubakar Tutare, on the other hand, influenced the hands of the Permanent Secretary, Mrs. Asabe Maiangwa's and all other Relevant Staff who participated in the sharing of the Sum of Eight Million Naira, grubby with lucre.

As for the Defendant, as Governor, he doubled as the Chief Executive Accounting Officer.

As a balance to the above evidence, the only Witness that could testify in favour of the Defendant was the Defendant himself. All **DW1** and **DW3** could only testify about was the Procedure, the Absence of Queries, Due Process and such like, but, and a very big BUT, they could not testify as to the specifics of this Offence. The Defendant distanced himself away from anything that happened after he approved the Memo, and renounced any Friendship, whether Official or Personal with the Key Actors on this issue. He denied conversing with Mrs. Asabe, he had no contact with the Accountant, did not meet with the Representative of Salman Global Ventures at the Jalingo Hotel Annex, did not know Alhaji Ibrahim Abubakar the Managing Director of Salman Global Ventures, who enjoyed unusual favour with the Taraba State Government, and denied directing Alhaji Tutare to take any action in regard to the Memo once he signed it off. The Account of Salman Global Ventures did not bare his Name and neither was he a Member of the Company in any form. He finally denied benefitting directly or indirectly from the Bulk Purchase of Stationeries and Office Equipment.

But from the totality of the facts presented before the Court, the Defendant, as Governor of Taraba State, was the Approver of the Release of the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) worth of Stationeries and Office Equipment, and at the get go, is found to have had no intention to fulfil the Purpose of the Memo. The Approved Memo was a Guise, as when it was conceived, no attempts whatsoever were made to allow the Direct Labour to proceed. Rather, immediately this Sum was released from the Office of the Accountant General and paid into the Ministry of Finance, his Verbal Instruction was carried out, which is that Salman Global Ventures Nigeria Limited be paid the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000).

The Audacity of the Defendant to direct One Hundred, and Eighty Million Naira (N180, 000, 000.00), shows that he had more than a Casual Interest, and cannot run behind a Screen to avoid Liability. The Defendant, by the preponderance of evidence, likely knew Salman Global Ventures Nigeria Limited was not meant to Purchase any Stationery and Office Equipment,

and by his Conduct of Inaction, this could mean he had a private arrangement dishonestly agreed to, at the out set.

The implication of the Defendant, as Governor, Minuting and Signing his Approval, demonstrates that he saw, read and digested the Contents of the Memo, which positively and expressly informed him that the Purchase of Stationeries and Office Equipment was only through Direct Labour. Further, in granting the Approval, it could only mean that he ratified or validated the Administrative Flaws in the Ministry of Finance and the financial recklessness of his Commissioner of Finance. This certainly is blight on the Memo.

All in all, the Defendant being a Public Officer, with Dominion and certainly Control over the Funds of allocated for the Purchase of Stationeries and Office Equipment worth Two Hundred and Fifty Million Naira was entrusted by the People of Taraba State to ensure proper execution of their State Funds, and it is shown that by his Approval of the Memo, and by his Directive, which interfered in the Effective Performance of the Purchase of the Office Equipment and Stationeries, did intentionally cause the Misappropriation and then Disposal of the Sum of Two Hundred and Fifty Million Naira. All this he did in Violation of the Oath of Office, enshrined in the **1999 Constitution**, the Financial Rules and Regulations of Taraba State, and the Trust bestowed upon him by the Electorate.

The manner in which the Money was approved, and processed, the fact of non-delivery of the Items and his familiarity with Alhaji Ibrahim Abubakar, point irresistibly to a Dishonest Intent on his part, and the Court without further ado finds him Guilty as Charged on this Count of Offence.

AS REGARDS THE 1ST SET OF CIRCUMSTANCES UNDER CRIMINAL BREACH OF TRUST: -STATIONERIES IN COUNT TWO FOR THE SUM OF ONE HUNDRED, AND EIGHTY MILLION NAIRA (N180, 000, 000)

As regards, **Count 2**, the Defendant, **Jolly Tevoru Nyame**, is said to have committed Criminal Breach of Trust in respect of the Sum of **One Hundred and Eighty Million Naira (N180, 000, 000)** meant for the Purchase of Stationeries by the Taraba State Government, for his Personal Use.

The facts and surrounding circumstances of this **Count 2** is an Offshoot of the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000). The Witnesses and the Procedural Steps to be taken are the same. The Dates, Location, Venue, Participants and Documentary Exhibits are the same except of the Testimony of the Defendant and few Exhibits.

The Defendant in his Examination in Chief, stated that his involvement with the Two Hundred and Fifty Million Naira (N250, 000, 000 .00) only came by way of signing a Memo from the Ministry of Finance requesting Funds to buy Stationeries for onward distribution to the State Ministries, Department as the needs may arise. He had never collected the Sum of One Hundred and Eighty Million Naira (N180, 000, 000. 00) from any one regarding the Two Hundred and Fifty Million Naira (N250, 000, 000.00) Contract for the Purchase of Stationeries.

As earlier seen, a Memo needs to be raised and Approved before a Job is awarded and Funds paid.

DW4, Rev. Jolly Tevoru Nyame, stated that during the course of the investigation at the EFCC, he was never at any time confronted with any documents that showed that he received the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000.00), whether he signed personally, or delegated someone to sign for him. There were no Documents to that effect, and neither were there Documents showing any Fundswere released to him, and also noFunds were traced to his Account, and no person was brought before him during the course of the investigation to challenge or to assert that he/she gave him the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000).

According to the Defendant, he had a cause to challenge the EFCC Operative when he gave his Statement that if any Government Official could prove to him that he was given the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000), he would refund the said Sum, because he knew no such Funds was given to him. This was his position. No one was brought before him, and he only knew about the allegation in Court. Further, no document was presented to him at the EFCC, showing the movement of Funds from Salman Global Venture Limited to him. He had no share in the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000).

He was not even confronted at the EFCC, by any Official of Salman Global Ventures stating that they received the Sum of One Hundred and Eighty Million Naira Funds on his behalf or for his benefit. Rev. Jolly Nyame maintained the point that he never had any dealings with the Managing Director of Salman Global Ventures Limited regarding the One Hundred and Eighty Million Naira, and claimed that this was the figment of Alhaji Tutare's imagination.

Rev. Jolly Tevoru Nyame, under Cross-Examination and when confronted with his Extra-Judicial Statement in **Exhibit Z4 at Page 3**, maintained the point that he did not refund the One Hundred, and Eighty Million Naira (N180, 000, 000) till date because no Money was given to him.

The Court will therefore have regard to the other Documentary Exhibits in regard to the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000).

Before the Court are **Exhibits U1, Z4, Z6, Z8, Z12, Z14 and CC** in support of this Count of Offence.

EXHIBIT U1, is the Extra-Judicial Statement of Mrs. Asabe Maiangwa, the Permanent Secretary of Ministry of Finance dated the 16th of November 2005 whose address now reads "care of Poverty Alleviation Governor's Office Taraba. She stated inter alia that: -"***The rest of the Money I cannot***

explain but on further enquiry I was told that a Cheque of One Hundred and Eighty Million was sent to Abuja.”

Apart from **Exhibit U1**, there is also **EXHIBIT Z8**, the EFCC Extra-Judicial Statement of Abubakar Tutare, Commissioner For Finance, dated 17th November 2006. Abubakar Tutare filled in his Name and Signed and Dated the Cautionary Words on the 17th of November 2005. The Cautionary Words included the phrase, “**VOLUNTARILY ELECTS TO STATE AS FOLLOWS**” and he stated inter alia that: -***“Memo was raised by me to the Governor seeking Approval to Purchase of Stationeries worth Two Hundred and Fifty Million and Approval was given by the Governor. The Money was release to Ministry of Finance for Direct Purchase. Before the Direct Purchase, N180Million was given to the Governor and Ten Million was shared to Politicians, Forty Million was use for the Purchase, Ten Million was given to the Permanent Secretary for sharing among themselves and Ten Million was given to me. Out of the Two Hundred and Fifty Million withdrawn only Forty Million was utilise for the purpose, which was given to Perm Sec Asabe Maiangwa, and Committee was set up to handle the Purchase. It was the Accountant to the Ministry that handled that of the Governor, Mr. Abdulkadir Nagari. The Governor directed that the Money be paid to the Company for the Purchase of some items for the him.”(sic)***

Further, Alhaji Abubakar Tutare, made **EXHIBIT Z14** dated the 12th July 2007 tendered by the Defence, wherein he stated inter alia that: -***“Further to my Statement made on the 6/3/06 I wish to state that I am making these Statement voluntarily (in full control) that I still stand to the Statement I made earlier that on the issue of the stationery is N250Million was approved for Purchase and N180M was given to Salman Global Ventures, while N10M to Politicians, N10M to myself and N10 to rest of the Staff of the Ministry. The N180Million given to Salman Global Ventures was meant (to given) to be given to the Governor Rev. Jolly T. Nyame. I don’t know whether the Money is given to him or not by Salman Global***

Ventures. The directive was given by the Governor at his Jalingo Residence verbal.”(Sic).

Now, from the evidence rendered above, this Sum of One Hundred, and Eight Million Naira (N180, 000, 000) was birth from the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) meant for BulkPurchase of Stationeries and Office Equipment, Approved by the Defendant, as Governor in a Memo contained in **Exhibit CC**. Apart from the Memo, Alhaji Tutare stated that there was a follow up Directive from the Defendant that the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000) be paid to Salman Global Ventures Nig. Ltd.

Also, before the Court is **Exhibit Z6**, the Defendant’s Extra-Judicial Statement to the EFCC dated the 11th of July 2007, wherein he stated inter alia that: **“On the issue of Purchase of Stationeries worth Two Hundred, and Fifty Million and the alleged One Hundred, and Eight Million Naira given to me by then Commissioner of Finance Alh Abubakar Tutare I wish to say that after due consultation I will report with Alh Tutare tomorrow being 12th of July 2007 for final resolution on the matter. I want to state voluntarily to ask for plea bargain so that whatever is alledged to have been misappropriated by me personally will be refunded back to Government. I will request my lawyers and EFCC to set the process in motion.”(sic).**

It important to state yet again that the Memo as approved by the Defendant was not only in regard the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) but he approved the Mode through the BulkPurchase of Stationeries and equipment would carried out, that is, by Direct Labour. Salman Global Ventures Nigeria Limited had no business with this BulkPurchase. In order to carry out the Defendant’s Verbal Directive, which accompanied the Approved Memo, Alhaji Abubakar Tutare directed that Entire Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) be paid to this Company on the basis that the Cheque issued by the Ministry of Finance could not be split, as it was a Direct Purchase Order.

Salman Global Ventures Nigeria Limited received the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000) and receipted this Sum to the Ministry of Finance and subsequently, through the evidence, the Sum of Seventy Million Naira was paid back to the Ministry of Finance to procure the BulkPurchase of Stationeries and Office Equipment.

Where then did the One Hundred, and Eighty Million Naira (N180, 000, 000) go?

Alhaji Abubakar Tutare, the Substantive Commissioner for Finance, made an Extra Judicial Statement to the EFCC with his New Address Location as Ministry of Water Resources and this is contained in **EXHIBIT Z12** and it is dated 6th March 2006. He filled in his Name in the Cautionary Words administered, which included amongst others, the Clause, "**I FREELY ELECT TO STATE AS FOLLOWS.**" After this Clause, he signed and dated it and thereafter he stated thus: - *"Further to the statement I gave on the 4th of November 2005, I wish to add that on the issue of One Hundred and Eighty Million, that I have collected back the said amount from Alh. Ibrahim Abubakar and was given to my Governor by myself at Abuja. The Money was collected in cash (wish) is part of the Two Hundred and Fifty Million main for Purchase of Stationeries N250 Million for the Purchase of Stationeries."(sic)*

Now, during Trial Alhaji Abubakar Tutare stated that ALL his Extra-Judicial Statements to the EFCC before the Court were Voluntarily made by him except for **Exhibits Z9, Z10, Z12, and Z13**. According to him under Cross-Examination by the Defence, he stated that **Exhibits Z9, Z10 and Z13**, including **Exhibit Z12**, referred to above, were obtained under Duress adding that the facts were not fresh in his mind.

It is important to state that when he authored **Exhibit Z12** on the 6th of March 2006, the facts set out therein were at the Freshest Moments, as the transaction of the Sum of One Hundred and Eighty Million (N180, 000, 000)

took place approximately a Year and a Month ago and his testimony rendered in Court approximately Eleven Years were no different. At the time of making this **Exhibit Z12**, he was not only cautioned by the EFCC when he wrote the Statement but he freely and of his own volition, divulged the content of his Extra-Judicial Statement and signed it.

Exhibit Z9 that was mentioned by this Witness, as having been obtained under Duress, does not have any bearing on the Case against the Defendant. This is because the content of the Statement does not state any fact material to the essential evidence, or narrative this Witness rendered before the Court, with regard to the Purchase of Stationeries. It is only evidence of the Corrupt Over or Under Payment of the Proceeds of Crime, and as can be seen therefrom, Alhaji Tutare undertook to refund the Sums. During his Evidence in Chief, he confirmed this Evidence, further stating that when he was confronted with the Permanent Secretary, Mrs. Maiangwa at the EFCC, she denied receiving the Sum of Forty Million Naira he allegedly gave her, insisting that all she received was the Sum of Eight Million Naira. He therefore had to undertake to refund the Balance.

When this Statement was taken, it is observed that this Witness did not immediately challenge the Undertaking he made to be obtained by Duress, and it curious that the other Statement made by him on the same day, the 17th of November 2005, in **Exhibit Z8**, wherein he narrated how the Funds of Two Hundred and Fifty Million Naira was spent, but did not complained to have been made it under Duress. He was clearly comfortable, and was with his faculties when he made it, and therefore did not query it.

Another Challenged Exhibit is **Exhibit Z10**, which is dated the 24th of November 2005, wherein he stated inter alia, as follows “*...I freely elect to state as follows: -... 24/12/05 Further to the Statement I gave to the EFCC on the 18th of November 2005 I wish to add as follows; that I have paid the sum of Seven Million Naira in Zenith Bank Draft No. 01615868 being part of the Thirty Two Million Naira I am supposed to refund. The Cheque is in favour of the EFCC...*”

This Statement is proof of the Refund he began making, and he clearly under Cross Examination before the Court, made reference to the Payment of Seven Million Naira Bank Draft he made. This Witness has in so many words, whilst giving evidence regarding his remorse and repentance, stated that he made refunds, because he knew he committed an Offence and had wronged God and Tarabans. To now state that Exhibit Z10 where he made a refund was made under Duress conflicts with the Character he has painted to the Court;

This Exhibit has absolutely no bearing on the Case against the Defendant and he did not challenge its admissibility when the Defence Counsel tendered it through him.

Exhibit Z12, which is dated the 6th of March 2006, was made "***Further to the Statement I gave on the 24th of November 2005***", and in this Statement this Witness still narrated facts as regards the Purchase of Stationeries and before he began writing it stated "***I freely elect to state as follows...***".

When asked under Cross-Examination whether he was cautioned before he made this Statement, he answered in the affirmative.

The Court notes from the Oral Testimony of this Witness that he contested Elections with the Defendant, he was also the Deputy Speaker of the Taraba State House of Assembly in 1992, he was a Commissioner between 2003-2007 and at the time of his Testimony he was a Serving Senator. More important is the fact that as at the 6th of March 2006 when he made this Statement, he was STILL a Serving Commissioner under the Defendant as Governor. The Factor of his Statement being made under the conditions of ill Health, lack of Fresh Facts or a Sound Mind or that he was even threatened, conflicts heavily with the Character of a Witness who has stated with a lot of remorse, that when he was invited to the EFCC, he TRUTHFULLY told them what transpired, and did not lie.

If the facts told to the EFCC were not lies, then they most probably were truths. This is rather baffling, then where do the issues of duress, threat, sound mind, or fresh facts fit in?

As regards **Exhibit Z13**, which was also dated the 6th March 2006, meaning it was made on the same date as **Exhibit Z12**, the same deductions apply. The Court notes that this Statement did not color the evidence any different from what the Witness orally stated before the Court.

Further, during his testimony in Chief, Alhaji Abubakar Tutare stated that the Defendant knows that he does not lie, and he, Alhaji Tutare also knew that when he dies, he would face his God, so he would not lie.

Under his **Cross-Examination**, he stated that he was investigated but not arrested by the EFCC, and acknowledged that he made Statements to the EFCC.

He also confirmed that he made Statements on the 17th of November 2005; 24th of November 2005; he made two Statements on the 6th of March 2006, and stated that he **read** all these Statements and **signed** them as understood.

The Statements confirmed by him are **Exhibits Z8, Z9, Z10, Z11, Z12 and Z13**. He clearly had no problems with **Exhibit Z8**, which was made on the same date as **Exhibit Z9**, or **Exhibit Z11**, which was made on the same dated as **Exhibit Z10**!

He was then shown all his Statements made to the EFCC, which he confirmed were all his Statements, and then he was referred to his Statement where he agreed to refund Thirty-Two Million Naira (N32, 000, 000.00) and Two Million Naira (N2, 000, 000.00), being part of the Ten Million Naira (N10, 000, 000.00) which was given to him, and he denied stating such.

He explained that from the Forty Million Naira (N40, 000, 000.00), he gave the Permanent Secretary permission to buy Stationeries, but she refused when confronted, stating that it was only Ten Million Naira given to her. So he was forced to take the Two Million Naira (N2, 000, 000.00) and the Twenty Million Naira as part of the Monies he was to refund.

This appears to be the contention he did not agree with, but he confirmed during his Testimony that as the Political Head of the Ministry he was made to take full responsibility, which he did, and he even began refunding the Money.

Alhaji Abubakar Tutare, being repentant told this Court that he knew that he committed an Offence, and made a Mistake, had begged for Forgiveness from the EFCC and bluntly narrated the Truth of what transpired to them. He refunded what was given to him and freed himself.

The only Specific Issue stated in writing was on how they shared the Money, which according to him was not fresh in his mind, because he was battling with Diabetes and his Sugar Level was almost 500, and had only come from the Hospital to the EFCC Office.

The question of how much was ascribed to whom or when, is rather inconsequential to the Charge, and whether he got more or less is not an issue before the Court.

More importantly, this Witness maintained that he was telling the Truth about what he knew, and did not mind if he would be charged, he even insisted to be charged alongside his Boss. He even stated that he made the refunds even before Lamorde became the Chairman of the EFCC, and was called to testify two years prior, but he had told them that he could not bite the Finger that fed him, and he was brought to the Court on a Subpoena.

Now, it is important to note from the Proceedings, that this Witness prior to the Defence Counsel tendering his Statements, did not object to their tendering or to any part of the Statements, which the Defence applied to tender. During the Application to tender these Documents and when shown the Documents, he identified them but failed to state any of the following: - 1. That some were obtained under Duress; 2. That some of the facts were given after he had left the Ministry of Finance; 3. That he was Threatened; 4. That he was told what to Write; 5. That the Facts were not fresh or that he

suffered Memory Issues; and finally, 6. That his Sugar Level was almost 500, which affected the Statement. None of these issues were raised at the first instance before the Defence tendered these Statements, meaning he was satisfied with them being tendered.

In the case of **ISA V. STATE (2016) LPELR-40011 (SC), OGUNBIYI J.S.C** held that if an Accused Person does not object when his Confessional Statement is being tendered, the only reasonable conclusion is that it was made voluntarily, reference was made in this Case to **BELLO SHURUMO V. THE STATE (2010) 19 NWLR (PT 1226) 73**, where it was held that the failure to object to the Two Confessional Statements when they were tendered and admitted as Exhibits was held as Conclusive Evidence that they were both made Voluntary. This is more so when a Counsel stands by and allows exhibits to sail smoothly through without any Objection.

This Witness must be remembered to be a Commissioner at the relevant time, and in fact been a Commissioner that headed Four Separate Ministries. The Question that must be asked, what manner of Duress would operate in his Mind to force him to write what he wrote? Further, he is presumed to be literate enough as to know his Rights, and if indeed he had been forced, he would have known the Mechanisms to complain about any Duress. He could have filed a Complaint before the Chairman of the EFCC after he left the environment of Duress. He could have reported to another Law Enforcement Agency, Human Right and such like. And when he became Senator during the pendency of this Case, he could have petitioned the Senate on the conduct of the EFCC. There is no Evidence on the Court on this, and therefore, it is rather late in the day for both the Defence and himself to challenge these Statements. See the Case of **EKPO VS STATE (2018) LPELR-43843 (SC) per GALINJE J.S.C.**

Further, the Court notes that whilst giving his Evidence in Chief, Alhaji Abubakar Tutare stated that his Statements had Contradictions. This fact was elicited before the Statements he made were tendered into Evidence. Had they not been tendered, this fact would have just been waived away, but

since the Defence tendered these Statements, and both sides of the Divide have canvassed arguments in this regard, it is imperative for the Court to take a cursory look at the Evidence of PW10 contained in his Extra-Judicial Statement. It is pertinent to note that at this juncture in his evidence, Alhaji Abubakar did not state specifically what Statements he made to the EFCC that had contradictions, and it was only after they were tendered that he mentioned that fact of Duress. He did not state again that those Statements he claimed to have made under Duress had in them Contradictory Statements, or that all his Statements made to the EFCC were contradictory.

In the absence of a specific pointer to the Contradictions, the Court cannot embark on a Voyage of Discovery, to discover the Contradictions referred to, and would be guided on the earlier Principles on Contradictions stated above.

As earlier stated, this is an Offshoot of the Offence of Criminal Breach of Trust in regard to the Sum of Two Hundred and Fifty Million Naira meant for Purchase of Stationery and Office Equipment. The Circumstances and the deductions arrived at cannot be divorced from the Circumstances in regard to the Sum of One Hundred and Eighty Million Naira.

Therefore, the Defendant, having been determined to be a Public Servant, as Governor of the State of Taraba, and by virtue of his Office, had Executive Powers conferred on him by the Provisions of **Sections 5 (2) (a) and (b) of the 1999 Constitution**, and had unquestioned Control and Dominion vested in him over the Funds of Taraba State. As the Chief Executive of the State, the Electorate of Taraba State entrusted him with the Proper Management of State Funds, and he caused the Sum of One Hundred and Eighty Million Naira to be Misappropriated and Disposed off contrary to the Mandate in the Memo, and contrary to the Financial Regulations and Directives of Taraba State. The manner, in which these Funds were misappropriated, evidenced Dishonest Intent. Whether the Funds were to be held temporarily with Salman Global or Permanently with them, or even returned to the State Government, has not taken away from the fact that Money was Misappropriated and unaccounted for till date. The clear purpose of the

Money was diverted, as there is no evidence of Supply. The Defendant stood alone in defence of this allegation and aside of a Blunt Denial and that he did not give any written instruction to Alhaji Tutare to pay, and led no evidence to dispel the doubt. This is similar to the saying that “What you can do, you can also do through another, but what you cannot do...”

Therefore, the Defendant is found guilty of the Offence of Criminal Breach of Trust in **Count 2**.

AS REGARDS THE 2ND SET OF CIRCUMSTANCES UNDER CRIMINAL BREACH OF TRUST: -STATIONERIES AND OFFICE EQUIPMENT IN COUNT SIX FOR THE SUM OF ONE HUNDRED AND SIXTY-FIVE MILLION NAIRA (N165, 000, 000)

Count 6 relates to the allegation that the Defendant, Rev. Jolly Tevoru Nyame, while being Governor of Taraba State committed the Offence of Criminal Breach of Trust in regard to the Sum of **One Hundred and Sixty-Five Million Naira (N165, 000, 000)**, which from the evidence adduced hereunder, formed part of the Sum of Two Hundred Million Naira (N200, 000, 000) meant for the Purchase of Office Equipment and Stationeries.

The Prosecution in proof of this Count of Offence called **PW3**, Mr. Olubunmi Ogunode, a Banker with Zenith Bank Plc.; **PW6**, Mr. Abdulkadir Nagari Umar, the Assistant Chief Accountant of the Ministry of Finance; **PW7**, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance; **PW9**, Assistant Superintendent of Police Ibrahim Galadima, the IPO; **PW10**, Alhaji Abubakar Tutare, the Commissioner of Finance for the Taraba State Ministry of Finance; **PW12**, Mr. Ishaq Salihu Ismael, Chief Superintendent of Police, seconded to the EFCC, the 2nd IPO; and **PW14**, Dandison Akurunwa Esq., the Company Secretary of Salman Global Ventures Nigeria Limited.

In Further Proof, the Prosecution through **PW3** tendered the Zenith Bank Statements of Account of Salman Global Ventures Nigeria Limited as **Exhibits H, J and K**; **PW6** tendered a Cheque and a Zenith Bank Plc. Deposit

Teller, both in the Sum of One Hundred and Sixty-Five Million Naira (N165, 000, 000) as **Exhibits S1 and S2** respectively; The Extra Judicial Statement of **PW7** to the EFCC, dated the 12th of July 2007 admitted as **Exhibit V**; and the Two Extra-Judicial Statements of **PW10** to the EFCC, both dated the 6th of March 2006 admitted as **Exhibits Z12 and Z13**.

In **Defence**, the Learned Counsel called Mr. Yakubu Bulus, a Retired Civil Servant from the Taraba State Ministry of Finance, who testified as **DW1**, Mr. Aminu Ayuba, the Present Acting Accountant General of Taraba State as **DW3**, and the Defendant, Jolly Tevoru Nyame who testified as **DW4**.

In further **Defence**, **Documentary Exhibits** were tendered during the **Cross Examination** of **PW6 and PW10**, and they are: - **Exhibit T2**, the **Extra-Judicial Statements of PW6, Alhaji Abdulkadir Nagari Umar**, the Assistant Chief Accountant, Ministry of Finance, Jalingo, which is dated 11th of May 2010; **Exhibit Z12 and Z13**, the **Extra-Judicial Statements of PW10 Alhaji Abubakar Tutare**, the Commissioner for Finance, both dated the 6th of March 2006.

Now, from the Evidence, it is important to note that the Procedure as rendered by **PW7**, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, for purchasing Stationeries through a Memo and the Payment Process after the Memo has been approved by the Governor, remains **SACROSANCT, UNCONTRADICTED** and **UNCHALLENGED**. It is needless therefore to rehash this Procedure but to subsume this Procedure in the consideration of **Count 6**.

The Defendant, Rev. Jolly Tevoru Nyame, had himself stated that he granted an Approval for the Purchase of Extra Stationeries and therefore, the evidence rendered hereunder would be the Litmus Test of whether or not purchasing the Extra Stationeries followed the Administrative Channel and Due Process established by the Government of Taraba State.

It is important to state that the Proof of the Allegation in **Count 6** revolves around **PW6**, Mr. Abdulkadir Nagari Umar, **PW7**, Mrs. Asabe Maiangwa and **PW10**, Alhaji Abubakar Tutare. By their respective testimonies made in regard to **Count 6**, there are Three Sets of Communications between them. The First Communication involved the Alhaji Abubakar Tutare, the Commissioner of Finance, and Mr. Abdulkadir Nagari Umar, the Assistant Chief Accountant of the Ministry. The Second Communication had to deal with Alhaji Abubakar Tutare, the Commissioner of Finance, and Mrs. Asabe Maiangwa, his Permanent Secretary and Thirdly, between Mrs. Asabe Maiangwa and the Assistant Chief Accountant, Mr. Abdulkadir Nagari Umar.

The implication of these Three Sets of Communications is that it has narrowed down the Principal Players to **WHAT** they knew about **HOW** the transaction was carried out. It has also narrowed down **WHAT** is to be considered by when determining Criminal Breach of Trust alleged against the Defendant.

From the Documentary Evidence in **Exhibit CC** at **Pages 2, 3 and 8**, are Two Memos requesting for Stationeries and Office Equipment on the one hand, and Stationeries alone on the other hand. The Defendant, as Governor, upon receipt of these Memos, minuted to the Permanent Secretary and **NOT** the Commissioner of Finance, his Approval of the Sums of Money as stated in the Memo and he signed and dated them. The Defendant, with his own Hand has set out a Modus or Pattern, which is that where there is a Request for Stationeries or Extra Stationeries, he must Endorsed his Approval, Sign it and Date it and the Approval is communicated to the Permanent Secretary.

It is important at the get go to state that **PW7**, Mrs. Asabe Maiangwa, as in this case of One Hundred and Sixty Five Million Naira, doubled as Permanent Secretary as well as the Chief Accounting Officer for the Ministry of Finance. She was saddled with the Sole Mandate for making Payments through an Instruction to the Accountant of the Ministry of Finance, who would collect a Cheque from the Accountant General of Taraba State and then pay into a Bank Account of the Ministry of Finance. In this instance, Alhaji Abubakar

Tutare, the Commissioner of Finance, as his Modus Operandi is, **SHORT-CIRCUITED** Mrs. Asabe Maiangwa, the Permanent Secretary and Mr. Abdulkadir Nagari Umar, the Assistant Chief Accountant of the Ministry. From the evidence before the Court, Alhaji Abubakar Tutare's direct link was to be Mrs. Asabe Maiangwa, to whom he gives Directives, when Payments are involved.

Alhaji Tutare **cannot** bypass the Permanent Secretary for the purposes of relaying any Instruction or Directive to the Accountant of the Ministry of Finance. Further, he usurped the Role of the Accountant, who ought to be the Custodian of any Monies, whether in Cash or Cheque, released from the Accountant General and to await any Instruction from his immediate Boss, the Permanent Secretary of the Ministry of Finance. However, Alhaji Abubakar Tutare already had the Cheque in the Sum of Two Hundred Million (N200, 000, 000), sitting cosily and relishing the moment in his Office Drawer. He then instructed Mr. Abdulkadir Nagari Umar, the Assistant Chief Accountant of the Ministry, to pick up the Cheque in his Office Drawer, lodge it in the Ministry of Finance's Account and then liaise with Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance. How he got the Cheque is a Mystery as all the Concerning Officers displayed ignorance on the emergence of this Cheque.

According to Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, she stated that she received a Payment Directive from Alhaji Abubakar Tutare contained in a Note, which she handed over to Mr. Abdulkadir Nagari Umar to pay Two Beneficiaries namely Salman Global Ventures Nigeria Limited, whose Account Number was included in the Note and also to pay the Deputy Speaker of Taraba State House of Assembly. This Note is not before the Court as an Exhibit.

What stands out from the testimony rendered by Mrs. Asabe Maiangwa, is that the Commissioner of Finance directed that Salman Global Ventures Nigeria Limited was to take benefit of the Sum of One Hundred and Sixty-

Five Million (N165, 000, 000), and the Deputy Speaker, Honourable Marafa Bashiru Abbah, was to take benefit of Fifteen Million Naira (N15, 000, 000). Twenty Million Naira (N20, 000, 000) was for the Commissioner of Finance, out of which only Sixteen Million Naira (N16, 000, 000) from the Cheque of Two Hundred Million Naira Only (N200, 000, 000) was used to Purchase Stationeries while Four Million Naira (N4, 000, 000) was given to Alhaji Abubakar Tutare, through his Aide, a fact he denied.

A holistic overview of the evidence rendered by these Participant Witnesses is the fact that, the Communications, whether as an Instruction or Directive, were **ALL VERBAL**. What crystallized as **MATERIAL EVIDENCE** that can be seen with the eyes started off with the Zenith Bank Limited Cheque for the Sum of Two Hundred Million Naira (N200, 000, 000), admitted into evidence as **Exhibit S1**.

From a careful look at this **Exhibit S1**, the Court can see that it is a Ministry of Finance Cheque with an Order to Pay, "**PERM. SEC (MOF) (A.N. UMAR)**". It is dated the 14th of February 2005 and was signed by Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance and Mr. Abdulkadir Nagari Umar, the Assistant Chief Accountant of the Ministry.

On the Reverse Side of this Cheque is handwritten, the words "**DP A/C: 6013407822- 165.0M CASH.**" The Signatures of Mrs. Asabe Maiangwa and that of Mr. Abdulkadir Nagari Umar were directly below it and underneath their Signatures were Other Figures in Denominations totalling Thirty Five Million Naira (N35, 000, 000). Zenith Bank Stamped "**CASH COUNTED AND COLLECTED BY ME**", which Mr. Abdulkadir Nagari signed, initialled his Name and dated, under his name.

Further, down the line is **Exhibit S2**, a Zenith Bank Plc., Deposit Slip dated the 14th of February 2005, and the details it captured were as follows, namely: -

- 1) "Title/Name of Account": "**MESSRS SALMAN GLOBAL VENTURES LTD ABUJA**;
- 2) Name of Depositor: "**A.N. UMAR**";
- 3) Total Amount in Words: "**One Hundred and Sixty-Five Million Naira**"
- 4) Account NO: "**6013407822**"
- 5) Zenith Bank Plc., **Jalingo Branch** Stamped **Received** and dated "**14 Feb 2005**".

PW3, Mr Olubunmi Ogunode, a Compliance Officer working with Zenith Bank Plc. testified that his bank received an enquiry from the EFCC regarding Three (3) Customers namely Salman Global Ventures, Alusab Nigeria Limited and Taraba State Liaison Office and were to provide Copies of the Account Opening Documents, Statements of Account as well as Certain Instruments. He went through the Bank Records, where he made Copies of the Account Opening documents for the Three Accounts as well as testifying on the veracity of the Bank's Computer System. The process was that, he checked the Bank's System Records showing the day to day transactions, and thereafter checked the System Records, printed out the Statements from the System Records, crosschecked what was printed out against with what obtained from the Bank Records and he discovered they were exactly the same. Thereupon, he certified the Printed Out Copy to be a true reflection of the Customer's Dealings with the Bank.

He identified the Statement of Account of Salman Global Ventures and the Account Opening Package, which were admitted without Objection as **Exhibits H and J** respectively.

He also tendered into evidence a Copy of the Cheque, which he stated evidenced lodgment of One Hundred and Sixty-Five Million Naira (N165, 000, 000.00) into the Account of Salman Global Ventures sometime in February 2005, and Two Deposit Slips, with one of Slips covering the sum of One Hundred and Sixty-Five Million Naira (N165, 000, 000.00), which was lodged into the Account on the 14th of February 2005.

Under Cross Examination, **PW3**, Mr Olubunmi Ogunode, stated that since his employment he had always worked at the Bank's Head Office in Lagos and was not involved in any transactions in Jalingo and Abuja with regards to Alusab International Limited and Salman Global Ventures respectively.

When questioned whether Account Opening Formalities for Alusab International Limited and Salman Global Ventures had anything to do with the Defendant, he replied that to the best of his knowledge, the Instruments were paid to duly introduced Government Representatives and none of the Instruments had the name of the Defendant. Although his responsibility is to investigate activities within the Bank, he did not personally take part in the investigation in regard to these transactions, as all he did was to print out the requested documents from the Records.

According to him, the Banking Procedure in all Government Transactions is that where an Amount is stated on an Instrument, it is to be duly signed by Signatories to the Accounts and Payment would be made to the Person introduced to the Bank.

The gamut of his evidence was a Corroboration of the Payment of the Sum of One Hundred and Sixty-Five Million Naira (N165, 000, 000) to Salman Global Ventures Nigeria Limited.

Now, after a careful consideration of the above evidence, submissions and arguments across the divide, it is important to state that MOST of the Officials of the Government of Taraba, who came to Testify or who were Summoned to Testify, attested to the fact that when they carried out their Administrative Functions, involving Government Funds either through Purchase or Performing a Certain Task, Job or Project, the release of those Funds, to them or to their Office, would be **GENERALLY** through a **MEMO**.

PW4, Mr. Dennis Orkuma Nev, a Civil Servant and Permanent Secretary (Administration) of Government House, stated that in the normal course of

carrying out instructions, he used his discretion to prepare a Memo. He defined a Memo to be a Request for Approval from the Governor, who will grant the Approval on the Memo and after the Approval is given, a Cheque would be raised, and a Payment Voucher, serves as an Authority to the Payee to collect the Funds.

In regard to his own Office, he presented Memos to the Governor, that is, the Defendant, who approved them, with a Directive to the Commissioner of Finance to release the Funds to him. The Commissioner releases the Money through a Cheque covering the amount approved and then he, as Permanent Secretary, lodges the Cheque into his Department's Account from which Account, a Cheque is raised.

PW5, Mr. Japheth Wubon, a Permanent Secretary in the Office of the Secretary to the Taraba State Government stated that after receiving a Purchase instruction, he prepared a Memo.

DW1, Mr. Yakubu Bulus, a Retired Civil Servant from the Taraba State Ministry of Finance, explained that there are Two Types of Memos, namely: Departmental Memo and Executive Memo. Departmental Memo usually emanates within the Ministry, from a Department to the Honourable Commissioner for Approval. These Memos are signed by the Permanent Secretaries of the Ministries and Parastatals who are the Accounting Officers.

The Executive Memo goes to the Governor of the State for Approval, which are usually raised by various Ministries, Departments and Parastatals. Further, there are Memos to the Executive Council, which would arise where Executive Memos are written to the Governor and he discovers he has no Power to approve Certain Sums. For this purpose, the Governor prepares his own Memo to the Executive Council for Approval and later on, the Governor gives Assent. Consequently, the Governor does not approve all Executive Memos. The Governor has limited powers to approve some Amounts, which powers are given to the Executive Council.

Before any Ministry raises Memos, the Ministry must ensure that there is a Budget Vote for it, which is under a Subheading. After the Memo is raised

and approved by the Governor, the Department then takes it back and submits it to the Office of the Accountant General for the release of the Funds. The Cheque is issued to the Department that wrote the Memo, and the purpose for the Memo as requested for by the Department, will be stated, and it must be in line with the Approved Budget of the House of Assembly.

DW3, Mr. Aminu Ayuba, the Acting Accountant General of Taraba State stated in evidence that a Memo would come first before the Accountant General raises the Cheque. He gave examples of Personnel Staff Payment, Overhead for Security Votes, Crisis and Fuel Maintenance, which needed a Memo to be first prepared.

The Defendant, Jolly Tevoru Nyame, himself as **DW4**, generalized the fact that whenever there was a need for a Budget to be executed, a Memo **HAS** to be raised to that effect and he, as Governor of the State, gives the Approval **depending on the needs and requirements** of the Particular Ministry. After the Approval, the Ministry of Finance will release the Funds to the particular Ministry that raised the Memo. The Commissioner of the said Ministry, who is the Chief Executive of the Ministry, alongside the Permanent Secretary, who is the Accounting Officer of the Ministry, will execute the Job based on what they require in the Memo.

Further, Rev. Jolly Nyame stated that Government Funds are meant for Government purposes and once the Money is released, **it has to be accounted for**. The Accountant that received the Funds must sign the Monies for any Project, and when received, it is disbursed to the Recipient, who must sign when receiving the Cash. This is for accounting purposes, and as far as Government Funds are concerned, there is no exception to the SIGNING REQUIREMENT, as every Recipient must sign before receiving the Funds.

All these above oral evidence adduced by both the Prosecution Witnesses and Defence Witnesses synchronize the fact that for a Release of Funds by

the Government of Taraba State, once it is a Memo addressed to the Governor, he **ALONE** either Approves or Assents depending on the circumstances. In the absence of any evidence to the contrary, it is presumed to the benefit of the Defendant that the Sum of Two Hundred Million was within his Threshold, which Approval he vividly claimed was granted by him and therefore, there was no need for him to present it, to the Executive Council for Approval.

Having established the significance of a Memo, the First Step is the Request from the Central Stores in the Ministry of Finance for the Purchase of Extra Stationeries to the tune of Two Hundred Million Naira (N200, 000, 000). The Second Step is the Approval from the Governor, and the Third Step lies with the Permanent Secretary, to disburse the Funds. According to the Defendant, he had no business with what transpires after his Approval has been despatched to the Permanent Secretary, who administratively as the Accounting Officer was responsible for Payment as per the Sum Approved in the Memo.

The Oral Evidence rendered by the **PW6, PW7 and PW10** identified Salman Global Ventures Nigeria Limited as the recipient of the Sum of One Hundred and Sixty-Five Naira (N165, 000, 000). **PW3**, Mr Olubunmi Ogunode, the Banker who accessed the Statement of Account of Salman Global Ventures Nigeria Limited, corroborated their testimonies on a SINGULAR FACT, which is that Salman Global Ventures Nigeria Limited actually received the Sum of One Hundred and Sixty-Five Million Naira on the 14th of February 2005.

By this date of 14th of February 2005, barely Five (5) Weeks after Salman Global Ventures Nigeria Limited had received the Sum of Two Hundred, and Fifty Million (N250, 000, 000) for the Bulk Purchase of Stationeries and Office Equipment, this Sum of One Hundred, and Sixty-Five Million (N165, 000, 000) was again paid into the Account of Salman Global Ventures Nigeria Limited.

The Court is startled by the blasé attitude displayed by **PW6**, Mr. Abdulkadir Nagari and **PW7**, Mrs. Asabe Maiangwa Permanent Secretary, who are Staff in the Ministry of Finance who saw abuses of their Offices perpetrated by their Honourable Commissioner without making a Formal or Informal Complaint. **PW6**, Mr. Abdulkadir Nagari, the Assistant Chief Accountant of the Ministry of Finance through whom the Processing of Payment begins, did not raise any Query but raised an Alarm. He was only alarmed at the fact that the purpose of the Two Hundred Million Naira was yet again for Stationeries.

PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, who acts as the Middleman between when a Monetary Request is sent through her and when a Payment Directive is made through her, simply stated that she aware of the Sum of Two Hundred Million Naira (N200, 000, 000) and knew that the Ministry's Account would be used as a Transit Account. She clearly saw a breach and her insensitivity is quite alarming.

Despite their passivity, it is on Record that Mr. Abdulkadir Nagari did not see a Memo of Approval from the Defendant, as Governor. In his Extra-Judicial Statement to the EFCC dated 11th of May 2010 admitted as **Exhibit T2**, he stated that he did not know what the Money was meant for and had carried out the instruction of paying the Sum of One Hundred, and Sixty-Five Million Naira (N165, 000, 000.00) into the Zenith Bank Account of Salman Global Ventures Nigeria Limited.

PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, who kick-starts the Payment Ignition, stated that she did not receive any such Request or see any Request in a File. As a matter of fact, it was for her to make the Request and she did not make any. As Permanent Secretary of the Ministry, she and the Chief Stores Officer would have known of any Request for the Stationeries, had a request been made, as it was her responsibility to notify the Commissioner of Finance, where there is a Request.

PW10, Alhaji Abubakar Tutare, the Commissioner of Finance, the Head of the Ministry of Finance who tactically knows the business of short-circuiting the Administrative Flow in his Ministry, did not mention anything about the Memo in regard to this Sum.

The Sum of Two Hundred Million Naira (N200, 000, 000) in Cheque Form, simply **MUSHROOMED** in his Office Drawer and was made ready for collection by his Ministry's Assistant Chief Accountant.

The presence of the Memo would have **concretized** the **PURPOSE**, which is that, it was meant for the Purchase of Extra Stationeries as claimed by the Defendant. More particularly, the Memo would also have set out the **MODE** through which the Stationeries would be purchased. The Memo would have determined whether or not Salman Global Ventures Nigeria Limited legitimately or otherwise was entitled to the Entire Sum of Two Hundred Million (N200, 000, 000) but was only given the Sum of One Hundred and Sixty-Five Million Naira (N165, 000, 000).

Moreover, even if it was so entitled to this Sum, then by the narration of Mrs. Asabe Maiangwa, of the Government's Regular Mode of Payments to Contractors, which is 30percent Mobilization and 70percent thereafter upon Completion, this Payment was contrary to the Regulations.

There is no evidence on Record to show that Salman Global Ventures Nigeria Limited eventually Bidded for the Extra Purchase of Stationeries, as had there been a Bidding Process, it would probably have been impossible to perform on the Job within 5Weeks, from the Date of Collection, the 14th of February 2005. Further, there would have been Procedures to be followed before a Contractor could take the benefit of any Funds meant for Procurement or Purchase.

The unlikelihood of this Bidding Process taking place was as rendered by **PW11**, Mr. Joel Andrew Gilenya, a one time Staff in the Ministry of Finance (Contractors), who stated that when the Requesting Ministry receives the Approval, his Office would issue the Cheque. He further explained that the

Role of the Due Process in regard to Contractors is to check that all the Prices in the Quotation reflects a Fair Market Value and the Due Process Department then recommends the Prices for Approval, based on the Quotations received from the Head of Department.

According to him, Contractors are selected based on a Bidding Process, and before the Contractor would bid, there would be a Public Announcement in regard to the Purchase, either via Radio or Newspaper, and the Contractors are paid via Cheque, but he could not say whether they had begun using E-Payments.

Further, had there been a Memo, it would have been practically impossible for the Sum of Money approved by the Governor to find its way into the Office Drawer of the Commissioner of Finance, who by his virtue of his Office and the evidence rendered, DOES NOT physical handle Cash or Cheque once it is disbursed into his Ministry's Account. His Role simply stopped at giving Directives and no more!!!

It is logical then to assume that since the Cheque of the Sum of One Hundred and Sixty-Five Million Naira (N165, 000, 000) did not pass through any Administrative Channel to find either a Soft or Hard Landing in his Drawer, nothing and absolutely nothing would hinder the Cheque from being split or fragmented. The Officials of the Ministry of Finance did the splitting of the Cheque themselves and not Salman Global Ventures Nigeria Limited as was with the Case of the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000).

Logically, the existence of a Memo would have been chronicled in a Payment Voucher and other Ancillary Documents that would mandate the Accountant General to release the Sum of Two Hundred Million Naira (N200, 000, 000). It is worthy of note that this Sum was not PRIVATE MONEY since it emanated from the Accountant General's Office before it entered into the Account of the Ministry of Finance with Zenith Bank Plc., and therefore the ONLY person with the Master Key, was the Defendant. His Approval

certainly was not written in the Air Space of his Office at Government House but should have been upon a Memo wherein he would write few words and figures and then sign and date it.

The Defendant positively asserted that he gave his Approval, and had the Approval been in Writing, the burden was on him to produce it, and he could do so by summoning the Ministry of Finance to produce the Memo containing the Approval. However, his Approval could also have been orally given and whether it is a Written or Oral Directive, the point is he had not denied that he approved the Payment of Two Hundred Million Naira (N200, 000, 000).

Therefore, whether Mr. Abdulkadir Nagari Umar claimed he did not see any Memo and whether Mrs. Asabe Maiangwa claimed there no File with a Request from the Chief Stores Officer, this was totally irrelevant to the fact that the Defendant accepted that he took the responsibility of approving that Sum out of the Government Cooffers.

The evidence that there was an Approval in Transit is an affront to the Powers of the Defendant that the Accountant General of Taraba State would release the Money without seeing an Approval from the Governor. But the fact that the Cheque was in the Commissioner of Finance's Drawer with **NO** explanation on **HOW** and **WHAT** it was doing there in first place, positively and unequivocally shows that through a **CLANDESTINE** Medium, the Cheque simply Originated from the Office of the Accountant General, the Chief Treasurer of the Taraba State Government, and found refuge in the Drawer of the Commissioner of Finance.

Alhaji Abubakar Tutare, the Commissioner of Finance has said in his evidence in Court that **had henot been directed** by the Governor to pay such Huge Amounts of Money into Salman Global's Ventures Account, he could not possibly have stayed for a day, as he would have been sacked and neither would he have been reappointed by the Defendant. According to him,

the Defendant knew him not to be liar, and he knew the consequence of lying and so had no reason to lie.

Alhaji Abubakar Tutare, in **Exhibit Z12**, in his Witness Statement to the EFCC dated 6th March 2006, stated thus: -

“In regard to the cash deposit of One Hundred and Sixty-Five Million Naira made to Salman Global by my Staff A. N. Umar. I wish to state that the money was given to him by me and I (was) had collected the money from my Governor. H. E. Rev. J.T. Nyame. I don’t know what the Money was main for but he sent me to deposit the money in that Account.

The Money was not removed from Government Treasury. After some conversation, I came to remember what the Governor told when he was giving me the Money, that he owes Lawyers and some Party Members in Abuja and some Money he want Alhaji to pay them back but he did not mention the names of those owing him”(Sic)

Further, in **Exhibit Z13**, another Extra-Judicial Statement to the EFCC dated the 6th of March 2006, made Alhaji Abubakar Tutare, he stated thus: -

“Further to the Statement I made this morning, I wish to state that the N165, 000, 000 paid to Alhaji Ibrahim Abubakar was main for the Purchase of his house in Abuja by the Governor.

When I came back from Amarca the Gov told me that he has paid Alhaji Ibrahim Abubakar his N165, 000, 000. The Gov informed me of the payment because of the pressure Alh was putting on me.”(Sic).

Yet again, the name of Alhaji Ibrahim Abubakar featured and yet again, another basis of a relationship with the Defendant surfaced.

PW9, Ibrahim Galadima, the Assistant Superintendent of Police corroborated the above by stating that their investigation revealed that Stationeries and other Office Equipment were not purchased in 2004. In the following Year 2005, another request for the same purpose was made and this time around, for the Sum of Two Hundred Million Naira (N200, 000,

000), Five Weeks Later. A Memo was raised and approved by the Defendant and it was found that the Stationeries and Equipment were also not purchased. Rather, the Sum of One Hundred, and Sixty-Five Million Naira (N165, 000, 000) was given to the Defendant through the same personal friend, the Managing Director of Salman Global Ventures, Alhaji Ibrahim Abubakar. Of the balance, Sixteen Million Naira (N16, 000, 000) was given to Baban Gambo to supply the Stationeries and produce a Receipt covering the Two Hundred Million Naira (N200, 000, 000) awarded, but Baba Gambo refused to do so and only supplied Stationeries worth Sixteen Million Naira (N16, 000, 000). The Sum of Eight Million Naira (N8, 000, 000. 00) was given to the Permanent Secretary to share amongst Staff. The Defendant could not be reached for Comments at this time because he was still serving as Governor.

Under Cross-Examination Ibrahim Galadima regarding the lack of proof that the Sum of One Hundred and Sixty-Five Million Naira (N165, 000, 000.00) moved from Salman Global Ventures to the Defendant, replied that the Managing Director of Salman Global Ventures, Alhaji Ibrahim Abubakar, was the friend, brother and agent of the Defendant and all Monies meant for the Defendant went through him. Besides, the Defendant himself agreed that he would return the Money.

It is rather queer that **PW9**, the Investigating Officer, would state that there was a Memo, when the **PW6, PW7 and PW10**, Superior Officers of Ministry of Finance were silent on this fact. Since he investigated this fact and perhaps saw the Memo, he could have helped the Defendant who need not worry, by producing it before the Court.

PW12, Mr. Ishaq Salihu Ismael, a Chief Superintendent of Police stated that from the Sum of Two Hundred Million (N200, 000, 000) released, the Sum of One Hundred, and Sixty-Five Million (N165, 000, 000) was paid into the Account of Salman Global Ventures and Baba Gambo Purchased only Sixteen Million Naira (N16, 000, 000) worth of Stationeries. From this Sum of Two Hundred Million Naira (N200, 000, 000), Fifteen Million Naira (N15, 000,

000) was given to the Deputy Speaker of Taraba State House of Assembly, Two Million (N2, 000, 0000) went to Asabe Maiangwa, the Permanent Secretary, Ten Million Naira (N10, 000, 000) went to the Commissioner of Finance, Alhaji Tutare and other Staff also received payments.

PW12 testified that recoveries were initiated and part of the Monies were recovered from some of the beneficiaries and returned to the EFCC.

Under Cross-Examination, he queried these Payments, which totalled the Sum of Four Hundred and Seventy Million Naira (N470, 000, 000) in a Year, and added that even the Federal Government would find it difficult to exhaust such an Amount in One Year.

It is imperative to state that Salman Global Ventures Nigeria Limited initially received from the Government of Taraba State, the Sum of Two Hundred, and Fifty Million Naira (N250, 000, 000) but paid back the Sum of Seventy Million Naira (N70, 000, 000), which the Commissioner of Finance and his Staff devoured in their Cave. Salman Global Ventures Nigeria Limited collected the sum of One Hundred, and Eighty Million Naira (N180, 000, 000) but did not supply the Stationeries.

This was also a Company that never bided and was never in the contemplation of the Ministry of Finance, who had the responsibility to purchase these items through Direct Labour. Salman Global Ventures Nigeria Limited surfaced through the Defendant, collected the Sum, but never supplied. They were in breach both in regard to non-delivery and non-performance. There was no Contract Agreement between this Company and the Ministry of Finance but only a Cash Receipt, which by every stretch of imagination does not metamorphose into a Contract.

This time around there was no Memo, which would have dictated the Mode of Purchase either through Direct Labour or through a Contractor. What the Government of Taraba State had as Proof of this Relationship was the fact that this Company received this Sum of One Hundred and Sixty-Five Million (N165, 000, 000). There was no reason why the Government of Taraba State

paid this Money other than the Oral Testimonies adduced before the Court, which is that it was for the Purchase Stationeries. Salman Global Ventures Nigeria Limited, yet again did not supply the Stationeries.

It is important to recall the evidence of **PW14**, Dandison Akurunwa Esq., the Company Secretary of Salman Global Ventures who testified that he was not aware of any Contract awarded by Taraba State Government in the Sum of One Hundred and Sixty Five Million Naira (N165, 000, 000), and could not remember any discussion at any Board Meeting with regard to this Sum, as it had been a long time this Transaction took place. He identified the Payment in **Exhibit K**, the Zenith Bank Deposit Slip in the Sum of One Hundred and Sixty Five Million Naira (N165, 000, 000) issued in favour of Salman Global Ventures and confirmed receipt of the Money on the 14th of February 2005 in **Exhibit H**.

From the Statement of Account of Salman Global Ventures Nigeria Limited with Zenith Bank Plc., several payments into and from the Account can be seen by the Defendant's Chief Detail, Mr. Adamu Aboki, Mr. Japheth Wubon the Permanent Secretary Abuja Liaison Office, whose Names featured in the evidence hereunder, and several Individuals and Companies. These are Strange Incidences because it shows that Government Officials made Payments and received Payments from a Private Company.

In all, Salman Global Ventures Nigeria Limited collected the entire Sum of Three Hundred, and Forty-Five Million Naira (N345, 000, 000) within Five Weeks, without delivering any Stationery and Office Equipment to the Ministry of Finance, from the 7th of January 2005 to the 14th of February 2005.

Had the Taraba Ministry of Finance performed one of its Statutory Functions, which is to Purchase and distribute essential Office Equipment and Stationeries to Ministries, Boards and Parastatals, it is rather unlikely that the Secretary to the State Government would in the Month of October

2005, of the Same Year, make a FURTHER Request for Purchase of Stationeries in the Sum of Two Million Naira (N20, 000, 000).

Certainly, this should not have happened, as the Government of Taraba State was expected to be in **HOT PURSUIT** of Salman Global Ventures Nigeria Limited. The lethargy of doing so could only have been, that the invisible hand of the Defendant, who was the Governor of Taraba State was behind them, ratifying their breach.

The Progenitor of this Impunity is none else but the Defendant, as Governor of Taraba State, who has the Funds of the Government of his State entrusted to his care and he was accountable for ALL Funds approved by him. It is clear that the Government of Taraba State never prosecuted Salman Global Ventures Nigeria Limited during the Tenure of the Defendant, as Governor of the State. What then does that say?

The Defendant cannot feign ignorance of this Colossal Loss!!!

Had Salman Global Ventures Nigeria Limited continued with its pattern of securing Payments without Written Contracts and without Performance, only Heaven knows what would have happened to Taraba State in the long run.

Virtually ALL the Witnesses including the Defendant himself, asserted that he is the Approver of the Memos sent to his Office, as Governor of Taraba State and if so, he who approves, must be accountable for what he has approved. The Defendant had Dominion and Control, and he ALONE and NO OTHER Statutorily Empowered Body had the Secret Password to say, "**OPEN SESAME**", to the Vault of Taraba State. Unless perhaps, **PW10**, Alhaji Abubakar Tutare overheard Rev. Jolly Tevoru Nyame he utter it, and then went behind his back to utter the Magical Words!!!

On the assumption that Alhaji Abubakar Tutare goes to the Accountant General and says, "**OPEN SARSAPARILLA**", presuming that was the Magical Word certainly the Accountant General would not release the Sum of Two Hundred Million (N200, 000, 000) to him.

There is no way that the Defendant, having a sense of Responsibility would not have queried the Fact that barely Five (5) Weeks after he Approved the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) for Stationeries and Office Equipment meant for the benefit of Taraba State Government, yet another request in a Huge Sum could be made. Did he question, What the Extra Stationeries and Extra Equipment were for, and why so soon? Why were these Stationeries not purchased and delivered? Why was the Assignment given to Salman Global Ventures, who had shown beyond every Reasonable Doubt, their failure to perform on Contracts? Did the Defendant explain away yet another interference on how this Sum was to be distributed? Did he contemplate a Court Action for Breach of Contract and Unlawful Interference, if the Transactions were Legitimate? Did he convene a Committee of Inquiry into the apparent pilfering of his State's Funds?

These Questions have been invariably answered through the Evidence proffered across board. The **Golden Answer** is that HE DID NOTHING thereby betraying the Trust Tarabans placed on him, to ensure the Progress and Prosperity of the State.

His Oath of Office crystallized this Trust and his Shortcomings, was exposed by the Flagrant Breach of every Financial Rule and Regulations that ought to be rested in his Bosom.

Therefore, in conclusion, the Defendant as a Public Servant being Governor of Taraba State, and having Dominion and certainly Control over the Funds of Taraba State, was entrusted by the Citizenry of Taraba State to administer and execute Projects or Activities that would enhance and preserve the Progress of his State, especially the Economic Progress of his State. By the fact that this Funds had no Root Source and was only discovered in a Drawer in the Office of the Commissioner of Finance, and by the fact that upon being aware of the Cheque, ratified the mysterious appearance and then went on to distribute the Funds. He accepted that he approved these Funds but the manner and mode of his Approval was non-existent. Other Strategic Officers

were clueless and the expected Originators of this Request were in the dark and had probably caught the wrong bus.

He cannot escape Responsibility and cling only to the very Thin Flag of Approval, which does not cover up his Culpability.

He is found to have misappropriated and misapplied the Sum of One Hundred and Sixty Five Million Naira (N165, 000, 000), with the Dishonest Intention evidenced by the manner of the Use and Disposal of this Money belonging to the Taraba State Government by Salman Global Ventures, and is accordingly found Guilty as Charged on **Count 6**.

AS REGARDS THE PURCHASE OF GRAINS WORTH TWENTY FOUR MILLION, THREE HUNDRED THOUSAND NAIRA (N24, 300, 000.00) UNDER THE OFFENCE OF CRIMINAL BREACH OF TRUST: -

The Prosecution, amongst other Counts of Offences has alleged under **Count 8** that Reverend Jolly Nyame while he was Governor of Taraba State entrusted with dominion over Properties, committed the Offence of Criminal Breach of Trust with regard to the sum of **Twenty Four Million Three Hundred Thousand Naira (N24, 300, 000.00)**, which was meant for the **Purchase of Grains by the Taraba State Government, Abuja Liaison Office**.

In Proof of this Offence, the Learned Senior Counsel representing the Prosecution called a total of number of **Six Witnesses, who are; PW5**, Mr Japheth Wubon, the Permanent Secretary of the Taraba State Abuja Liaison Office; **PW8**, Mr. Abdulrahman Mohammed, the Accountant of the Taraba State Abuja Liaison Office; **PW9**, Mr. Ibrahim Galadima, the EFCC Investigating Police Officer; **PW10**, Alhaji Abubakar Tutare, the Taraba State Commissioner for Finance; **PW11**, Mr Joel Andrew, the Chief Accountant Taraba State Government House; and **PW12**, Ishaq Salihu Ismael, the Second EFCC Investigating Police Officer.

In **further Proof**, the Learned Senior Counsel tendered **Four Documentary Exhibits** namely: **Exhibit Q**, a Memo dated the 27th of June 2005, written by the Taraba State Liaison Office to Reverend Jolly Nyame as Governor, through the Office of the Secretary of the State Government for the Purchase of Grains, which was tendered **through PW5; Exhibits Z5 and Z6**, the Further Extra-Judicial Statements of Reverend Jolly Nyame, both dated the 11th of July 2007, tendered **through PW9**; and **Exhibit DD**, the Memo Requesting the Release of the Twenty-Four Million Three Hundred Thousand Naira (N24, 300, 000.00) for the Grains, tendered **through PW12**.

In his Defence, Reverend Jolly Nyame through his Legal Representation called a Total Number of **Four Witnesses**, who are **DW1**, Mr Yakubu Bulus, the Accountant from the Accountant General's Office; **DW2**, DSP Philips E. Akolo, his Orderly; **DW3**, Mr Aminu Ayuba, the Accountant (Salaries) Taraba State Government House; and Reverend Jolly Nyame, **the DW4**.

In further Proof of his Defence, he tendered **Two Documentary Exhibits** during the **Cross-Examination** of **PW5** and **PW8**, which are: - **Exhibit R2**, the Further Extra-Judicial Statement of Mr. Japheth Wubon, dated the 4th of July 2007; and **Exhibit X1**, the Extra-Judicial Statement of Mr. Abdulrahman Mohammed, also dated the 4th of July 2007.

In his Final Written Address, **Learned Counsel to the Defendant** submitted specifically on the issue of Grains, that the Testimonies of **PW5, PW8 and PW9** were nothing but Hearsay Evidence, as they merely informed the Court of what they heard and not a result of their own direct knowledge. Therefore they were inadmissible in Law and ought to be expunged. He placed reliance on the cases of **FRN VS USMAN (2012) 8 NWLR (PT.1301) 141 @ 160, PARAS B-C; ODOGWU VS STATE (2013) 14 NWLR (PT.1373) 74 @ 103-104, PARAS G-B; ZUBAIRU VS STATE (2015) 16 NWLR (PT.1486) 504 @ 524-525, PARAS G-A; IKARIA VS STATE (2014) 1 NWLR (PT.1389) 639 @ 651. PARAS F-H**

Apart from it being Hearsay, their evidence was also rigged with Contradictions.

PW8, Mr. Abdulrahman Mohammed, under Examination in Chief testified that he dropped the Money in the Defendant's Bedroom, but **PW5**, Mr. Wubon, in **Exhibit R2** stated that Mr. Abdulrahman Mohammed confirmed to him that the Money was delivered to the Defendant personally.

On another occasion, Mr. Wubon testified that he did not know whether the Grains were purchased or the Funds were embezzled, but in **Exhibit R2** he stated that there was no Purchase of Grains. Therefore, it is insufficient to conclude, based on the evidence of **PW5, PW8 and PW9** that the Defendant committed the Offences in **Counts 7 and 8** without the evidence of the Chief Detail, Mr. Adamu Aboki. His evidence was most crucial since the Defendant in **Exhibit Z4-Z6** controverted their evidence that his involvement was only to sign the Memo. The Prosecution's failure to call Mr. Adamu Aboki renders the Allegations unproven, and he urged the Court to so hold.

In **Response**, the **Learned Senior Counsel to the Prosecution** in his Written Address demonstrated the evidence led by both sides of the divide, and submitted that the Offence has been proved Beyond Reasonable Doubt.

In specific response to the Defendant's argument that the Prosecution deliberately failed to call Mr. Adamu Aboki as a Witness, Learned Senior Counsel referred the Court to the testimony of Two of the Prosecution Witnesses, who testified that they wrote to the SSS and the INEC, when they got wind that Mr. Adamu Aboki was contesting for the Elections, but their efforts yielded no result because the DSS informed them that he had retired.

However, the failure to call a Witness will only be fatal to the case of the Prosecution if it is shown that the Witness is available and the Prosecution wilfully failed to call the Witness. The Contention of the Defence that Mr. Adamu Aboki is a Necessary Witness has no merit, as the Prosecution's Duty, is to call such Witnesses as it would require establishing its case. He placed reliance on the Cases of **BUBA VS STATE (1992) 1 NWLR (PT.215) 1 AT 17-18, SAIDU VS STATE (1982) 13 NSCC 70, OGUALA VS STATE (1991) 2**

NWLR (PT.175) 509 AT 527, OJIOFOR VS STATE (2001) 2 NWLR (PT. 718) 371 AT 388 and urged the Court to discountenance the arguments of the Defence since the Defendant had direct communications with PW5 and not through Adamu Aboki and hold that the Prosecution has been proved **Count 8** Beyond Reasonable Doubt.

Also, the contention that the Prosecution also failed to call Mr. Dennis Bobo, who DW2 confirmed is deceased, is difficult to understand.

Further, the Prosecution argued that the Defendant's argument that the evidence of **PW5, PW8, PW9 and PW11** amounted to hearsay, and therefore should be rejected, is misconceived in Law.

The evidence of Mr. Wubon that Adamu Aboki informed him that the Defendant directed him to raise a Memo for the Purchase of Grains, but that Security Equipment will be Purchased instead of Grains, is not evidence to establish that Security Equipment were actually bought, but that Mr. Adamu Aboki merely said so. He stated further that a Statement made to a Witness who is not himself called as a Witness may or may not be hearsay. It will amount to hearsay and be inadmissible if the Witness reporting it intends to establish through it that such Statement is the truth. However, it will be hearsay and therefore inadmissible if the Witness proposes not to establish its truth but merely to show that such Statement was made. He placed reliance on the case of **UTTEH VS STATE (SUPRA), AROGUNADE VS STATE (2009) 6 NWLR (PT. 1136) 165 AT 181 - 182** and **Section 126 (b) of the Evidence Act, 2011**.

Also, according to Mr. Wubon, the Defendant had earlier warned him not to come to confirm any instruction passed through Mr. Adamu Aboki to him. After the Memo was prepared the Defendant signed it, thereby confirming the instruction. As a matter of fact, the Defendant did not deny that he instructed Mr. Wubon to raise the Memo and stated that he gave the instruction to him directly, and thereby confirming his Approval and Signature in the Memo. The Defendant in **Exhibit Z6** maintained that the

Grains were bought and the Supplier was paid the N24.3Million in cash. Therefore, the evidence of Mr. Wubon cannot be hearsay.

On the evidence of PW8, Mr. Abdulrahman Mohammed, that Adamu Aboki instructed him to bring the Money to the Governors Lodge, Abuja, and also that the information from the Governor through Mr. Adamu Aboki, is hearsay, the Prosecution submitted that the Defendant in his Extra-Judicial Statement confirmed how he received the Money from Mr. Abdulrahman Mohammed.

Also, Mr. Abdulrahman Mohammed stated that it was done in the same manner he usually handed over Funds transferred from Jalingo. This conversation between Mr. Adamu Aboki and Mr. Abdulrahman Mohammed did not amount to hearsay evidence.

The Defendant also contended that the evidence of the IPOs, **PW9 and PW12** were Hearsay Evidence. This is far from the truth as the IPOs gave evidence of what they saw and did during their investigation. Learned Senior Counsel then submitted that the Exception under **Section 126 of the Evidence Act** to the Rule against Hearsay, is the **Provision of Part III of the Evidence Act**, which relates to Relevance and Admissibility of Evidence. In other words, Hearsay Evidence would be admissible if such evidence can be tendered and admitted under **Section 14 to 36 of the Evidence Act, 2011**.

Particularly, **Section 30 of the Evidence Act** allows any information received from the Defendant to be given in evidence irrespective of the Rules against Hearsay. Thus, the argument of the Defendant is clearly weak and against the Law. The testimonies of the IPOs of what they saw and discovered during their investigation does not amount to Hearsay Evidence, and he placed reliance on the case of **UGWUMBA VS STATE (1993) 5 NWLR (PT. 296) 660, per Kawu JSC at page 668, OBATA VS STATE (2014) LPELR-CA/C/294C/2013 page 15** and urged the Court to so hold.

According to the Prosecution, once Documentary Evidence supports Oral Evidence, it becomes more credible as Documentary Evidence always serves

as a hanger from which to assess Oral Testimony, and he placed reliance on the cases of **KIMDEY VS MILITARY GOVERNOR OF GONGOLA (1988) 2 NWLR (PT. 77) 445 AT 473, OMOREGBE VS LAWANI (1980) 3-4 SC 108, FASHANU VS ADEKOYA (1974) 6 S.C. 83.**

In this instant case, there is Documentary Evidence that there was an Approval, a Written Admission that Cash was paid to a Contractor, and that the Grains were supplied. This Documentary Evidence is enough to support the Oral Testimonies of **PW5, PW8, PW9 and PW11.**

As regards the contradiction in the evidence of **PW5 and PW8** on how the Money was delivered to the Defendant, Prosecuting Silk submitted that according to **PW8**, when he got to the Governor's Lodge, he only met the Steward who opened the door to the Bedroom and he dropped the Money there, and PW5 in **Exhibit R1** stated that PW8 confirmed to him that the Money was delivered to the Defendant personally.

Finally on this point, Learned Senior Counsel submitted that this above-stated contradiction is laughable, as **PW8** cannot be contradicted with the Extra-Judicial Statement of **PW5**, as PW5's Statement only confirmed that the Money was delivered to the Defendant. Therefore, there is no Material Contradiction between the Evidence of **PW5 and PW8.**

In his **Reply on Points of Law, Learned Counsel to the Defendant** contended that the Prosecution's argument that the Defendant denied receiving or knowing anything about the Grains Money was an afterthought, based on **Exhibit Z6**, as the Entire Sum was paid to the Supplier in Cash, and the Grains were delivered.

Learned Counsel clarified that the Complainant failed to appreciate the entire evidence given by the Defendant, when the Defendant's attention was drawn to a Particular Statement under **Exhibit Z6**, vis-a-vis his denial of receiving Grains Money. The Defendant made it known that he was told that the Sum of Twenty Four Million, Three Hundred Thousand Naira Only (N24,

300,000) was paid to the Supplier in Cash and Grains were delivered. The fact that the Defendant did not mention this fact in his Statement did not make the fact an Afterthought, because the Defendant had explained that all the facts contained in his Statements, were based on what he was questioned on and the questions he was asked, were not couched in that manner.

Learned Counsel further contended that even in **Exhibit Z6**, there is nothing therein that showed that the Defendant admitted that he paid the Sum of Twenty Four Million Three Hundred Thousand Naira (N24,300, 000.00) personally to any Contractor to supply the Grains or that he received the said Money meant for the Purchase of the Grains or Rice.

An Essential Ingredient in the Offence Charged cannot be cured by a Confession, and must still be proved by the Prosecution, and he cited the Case Law Authority of **SURUJ PAUL VS R (1958) 3 ALL ER. 300**.

Submitting further, Learned Counsel argued that there is evidence on Record revealing that it is the Auditor-General that had the responsibility of making Enquiries as to whether Government Money released was used for what it was meant for. There is no Evidence on Record that there was a Complaint by anybody or that the Grains were not distributed.

The Evidence on Record through PW9 has established that Mr. Adamu Aboki is the only Witness that can link the Defendant to the Charge regarding the Twenty-Three Million Naira meant for Grains (sic).

There is nowhere in the Testimony of **PW5, or PW8** or any Witness at all that the Money in question, or any Part thereof, was given to the Defendant personally, or was to be delivered to anybody at any place upon the direct instruction of the Defendant. The Complainant attempted to supply a non-existent piece of evidence through Counsel's Address, which in Law is not proper or acceptable. He relied on the cases of **SUNDAY VS STATE (2018) 1 NWLR PT 1600 P.251 @ 272 PARA C-D and ARAB BANK VS FELLY KEME NIG. LTD & ANOR (1995) 4 NWLR PT 387, 100 @ 111**, and urged the

Court to hold that the Defendant was not established to have collected the Money meant for the Purchase of Grains, or to have Misappropriated same contrary to the submission of the Complainant.

In his further submission, he stated that the failure to call Mr. Adamu Aboki for any reason whatsoever, is a clear demonstration that the alleged Offence of Criminal Breach of Trust regarding the Sum of Twenty-Four Million Three Hundred Thousand Naira (N24 300, 000) for the Purchase of Grains is a mere speculation, and the Court has a Duty to Discharge and Acquit the Defendant. The Defence premised his argument on the Right to Presumption of Innocence in the 1999 Constitution (As Amended) and the cases of **ADENIYI VS FRN (2012) 1 NWLR (PT. 1281) 284 @ 295 and ALI VS STATE (2012) 7 NWLR (PT. 1299) 209 @ 236, PARAS A-D.**

Learned Counsel submitted with regard to the absence of Mr. Adamu Aboki, that the explanation given by Complainant is an explanation regarding the invitation of Mr. Adamu Aboki during the investigation, and not the explanation of his absence during the Trial. Even the said Letters of Invitation claimed to have been written by **PW9 and PW12** were not presented before the Court, and during the Trial no effort was made to serve him with a Summons. The explanation given by the Complainant for the absence of Mr. Adamu Aboki was rather weak, especially since he is a Public Figure who contested the election into the House of Representative. The cases of **BUBA VS STATE, SAIDU VS STATE, OGUALA VS STATE and OJIOFOR VS STATE** relied on by the Complainant are inapplicable to this case and he urged the Court to decline reliance on these Cases.

The Evidence of Mr. Wubon was challenged by the Defendant, therefore the fact that Mr. Wubon stated that the Defendant had warned him earlier not to seek clarification about any Instruction through Mr. Adamu Aboki, needs Further Proof. The Complainant did not provide this further proof, and therefore it cannot be said that there is proof Beyond Reasonable Doubt.

Finally, the Defendant did not in his Extra-Judicial Statements admit or confirm that he received the sum of Twenty Four Million, Three Hundred Thousand Naira (N24, 300, 000) meant for Grains. The fact that Mr. Abdulrahman Mohammed said that it was sent in the same manner in which he usually handed Monies over to the Defendant has not in any way changed the Nature of the Evidence regarding the Information received from Mr. Adamu Aboki as Hearsay evidence.

As regards the argument that Mr. Wubon's confirmed the Evidence of Mr. Abdulrahman Mohammed, Learned Counsel submitted that Contradictory Evidence, cannot be used to confirm or corroborate another Contradictory Evidence.

In view of the denial of such allegation by **PW5 and PW8** against him, was an essential Witness, and the mere fact that Mr. Adamu Aboki did not sign the Memo, and the fact that the Grains were not given to him, did not mean that he was not a Material Witness, because he was the Intermediary.

NOW, after a careful consideration of all the Oral Evidence led, as well as the Documentary Exhibits tendered in respect of the Charge on Grains, the Court finds that of the Six Witnesses called by the Prosecution to testify in this regard, Learned Counsel representing the Defence had contended that the evidence rendered by **PW5, PW8, PW9** and **PW12** were Hearsay Evidence narrated out of what they heard and not as a result of their own direct knowledge. It is also important to note that the Evidence of **PW9** and **PW12**, the two Investigating Police Officers were also challenged on the basis of the Fact that they were absent during the incidences they narrated on.

It is therefore important to initially treat these contentions in order for the Court to determine the quality and worth of their evidence before the Court. Learned Senior Counsel for the Prosecution had qualified Hearsay Evidence, urging the Court to place reliance on their evidence.

Now, in Conjunction with the Earlier Principles on Hearsay, the Basic Rule at Common Law is that Hearsay Evidence was inadmissible in Criminal

Proceedings. This Rule renders inadmissible “any Statement other than one made by a Person while giving Oral Evidence in the Proceedings...as evidence of any Fact or Opinion stated.” Reference is made to **Cross & Tapper on Evidence, Tenth Edition at Page 578, and R V SHARP (COLIN), 86 CR.APP.R AT 274 AT 278 HL.**

A Witness is expected to testify in Court on Oath on what he knows personally. If the Witness testifies on what he heard some other Person say, his evidence is Hearsay. If on the other hand his Testimony is to establish the Truth of an Event in question or as in this Case to establish the Truth of the rendition by one Witness to another, then it is Hearsay and inadmissible evidence. Hearsay Evidence is therefore Secondary Evidence of an Oral Statement, best described as Second-Hand Evidence.

What a Witness says he heard from another Person may be unreliable for many reasons. For example, he may not have understood the Informant/Interpreters, or he may say things that were never said. The Witness may even exaggerate or understate the evidence he heard. Such evidence remains Hearsay Evidence because it cannot be subject to Cross-Examination in the absence of the Informant/Interpreters and lacks probative value. See the Case of **FRN VS USMAN & ANOR (2012) LPELR-7818(SC) Per RHODES-VIVOUR, J.S.C(PP. 19-20, PARAS. F-C).**

Further Reference is made to **KAWU, J.S.C (P 11, PARAS C-E)** in the Case of **SYLVESTER UTTEH VS THE STATE (1992) LPELR-6239(SC)**, where **His Lordship**, referred to the **SUBRAMANIAM CASE**, which set the Rule against Hearsay. **See also Section 37 of the Evidence Act, 2011 particularly Sub-Section (b).** See **BUHARI V. OBASANJO (2005) 13 NWLR (PT.941) 1 @ 317; DOMA V. INEC (2012) ALL FWLR (PT. 628) 813 @ 829; KEKERE-EKUN, J.S.C (P. 55, PARAS. B-C).** See the Case of **OKEREKE V. UMAHI & ORS (2016) LPELR-40035(SC).**

Mr. Japheth Wubon had during his Examination in Chief testified that the Defendant had personally notified him to honour any Instruction he received

from his Chief Detail, Mr. Adamu Aboki, a Position he maintained throughout his Cross-Examination.

In sharp contrast, Reverend Jolly Nyame, denied ever sending Mr. Aboki to Mr. Wubon, and categorically stated that he only gave Mr. Wubon Instructions for the Purchase of Grains, which Mr. Wubon did by coming up with a Memo that he, Reverend Jolly Nyame, signed. According to him, Mr. Aboki's Job as a Security Aide was limited to only Security Circles. Mr. Japheth Wubon, a Seasoned Administrator knows very well that he ought not to receive Instructions from Mr. Aboki. Further, the Defendant claimed that he was not privy to the discussion between Mr. Aboki and Mr. Wubon.

The determination of which of the Witnesses' Statements is to be accepted as True by the Court, is not a factor for consideration on Hearsay. The Issue here is, To What End? To what end was the Statement by Mr. Japheth Wubon that Mr. Aboki told him that Reverend Jolly Nyame directed Mr. Aboki to instruct Mr. Japheth Wubon to raise a Memo for the Purchase of Grains? Did Mr. Japheth Wubon state that he heard from Mr. Aboki to prove the Truth of what he heard Mr. Aboki say? Or did he state that he heard the Instructions from Mr. Aboki to prove the fact that Mr. Aboki told him.

The other Challenge in regard to hearsay, is that concerning PW8, Mr. Abdulrahman Mohammed, the Accountant Liaison Office, who testified that Mr. Adamu Aboki called him, instructing him to bring the Money to the Governor's Lodge based on the Governor's Instruction. Mr. Abdulrahman Mohammed stated that he handed over the Funds transferred from Jalingo in the same Manner he usually handed over Funds.

The Prosecution submitted that the Defendant, in his Extra-Judicial Statement had confirmed how he received the Money from Mr. Abdulrahman and that the conversation between Mr. Adamu Aboki and Mr. Abdulrahman Mohammed did not amount to Hearsay Evidence.

The same set of questions as asked above, comes to play. To what end was Mr. Abdulrahman's Statement on the fact that Mr. Adamu Aboki told him to

bring the Money to the Governor's Lodge on the Instruction of the Defendant meant to achieve? Did Mr. Abdulrahman Mohammed state what he heard from Mr. Aboki to prove the Truth of what he heard Mr. Aboki say? Or did he state that he heard the Instructions from Mr. Aboki to prove the fact that Mr. Aboki told him?

The evidence of Mr. Wubon that Mr. Aboki told him that Reverend Jolly Nyame directed Mr. Wubon to raise a Memo for the Purchase of Grains, but that instead of Grains, Security Equipment would be Purchased is certainly not evidence that Security Equipment **were actually bought**. It is merely evidence that Mr. Adamu Aboki said so. The Truth in the Statement conveyed to Mr. Wubon will be Hearsay, but the fact of the Statement is certainly not Hearsay.

The evidence of Mr. Abdulrahman that Mr. Aboki told him that Jolly Nyame said he should deliver the Money to the Governor's Lodge is neither here nor there to the fact that the Money was actually delivered.

All in all, a Statement is Hearsay and inadmissible when the Object of the Evidence is to establish the truth of what is contained in the Statement. It is not Hearsay and is admissible, when it is proposed to establish by the evidence, not the Truth of the Statement, but the Fact that it was made.

As regards the Veracity of Mr. Japheth Wubon's claim that Mr. Adamu Aboki told him of Reverend Jolly Nyame's Instruction, which he complied with and the arguments, running contrary to this claim, and the Truth of Mr. Abdulrahman's claim that Mr. Adamu Aboki was told by the Defendant to instruct him, will be found in the facts surrounding the Purchase of Grains.

As regards the evidence of **PW9 and PW12** being Hearsay Evidence, as Earlier stated above, it is clear that they are the Investigating Police Officers and in the Case of **KAMILA VS THE STATE (2018) LPELR - 43603 (SC), SANUSI JSC, AT PP 22-23, PARAS D-A** held the view that the Evidence of an IPO does not amount to Hearsay Evidence because as an IPO, he narrates to

the Court the outcome of his Investigations or Enquiries, or what he recovered or discovered in the course of his Duty. He must have discovered or recovered some pieces of Evidence vital to the Commission of the Crime, which Trial Courts normally consider in arriving at a Just Decision one way or the other. Similarly, in the Case of **OLAOYE VS THE STATE (2008) LPELR - 43601 (SC), Per SANUSI JSC**, the same Dictum was stated.

See Further, the Case of **IJEOMAANYASODOR VS THE STATE (2018) LPELR - 43720 (SC), Per SANUSI JSC**, it was held inter alia that “the Testimony of what the Appellant told the IPO was positive and direct, which was narrated to him by the Appellant and other Witnesses he came into contact with in the course of the Investigation of the Case. Evidence of an IPO is never to be tagged as Hearsay. This Court, in a Plethora of its decided Authorities had adjudged such evidence as Direct and Positive Evidence, and therefore not Hearsay Evidence. See also the Case of **AROGUNDADE VS THE STATE (2009) ALL FWLR PT 469 AT 423, Per SANUSI JSC AT PAGE 20 - 21 PARAS E- C.**

A combined reading of **Sections 14 and 15 of the Evidence Act 2011**, which gives the Court discretion to exclude improperly obtained evidence and matters the Court should take into account in doing so under **Section 14**, shows that the Courts should be interested more in the relevancy of the Evidence than the manner in which the Evidence was obtained and the desire to do Justice than Technicalities.

The evidence of **PW9 and PW12**, the IPOs, by the Pronouncement of the Supreme Court is therefore not Hearsay Evidence.

Learned Counsel for the Defence had also contended that Mr. Adamu Aboki was deliberately not called by the Prosecution to testify as a Witness. The Prosecution responded by stating the efforts they had made to secure his attendance before the Court. According to the Prosecution, Letters were written to the State Security Service (SSS) and when they got information that Mr. Adamu Aboki was contesting for the Elections, a Letter was written to the Independent National Electoral Commission (INEC) to gather

information as to his whereabouts, but all their efforts to locate Mr. Adamu Aboki failed.

Now it is Trite Law that the Prosecution is required to call the Number of Witness or Witnesses who, in his assessment and considered opinion are necessary and sufficient to establish the Charges framed against the Defendant.

In the case of **ANSELEM AKALONU VS THE STATE (2002) NSCQR VOLUME 10 AT PAGE 1251, PER KUTIGI JSC at Page 1260** His Lordship held “how they get around achieving this, is entirely the business of the Prosecution. Whether they field one, two or more Witnesses in satisfaction of such proof, will surely depend on the circumstances of each case. But under no circumstances will the Accused Person dictate to the Prosecution regarding the Person or Number of Witnesses that they must field as Witness or Witnesses”.

In **ADESINA & ANOR VS THE STATE (2012) LPELR-9722 (SC) PER ADEKEYE JSC**, concurred with the above, when He held that, on the issue of Witnesses to call, it is the prerogative of the Prosecution to call Witnesses relevant to its case. He further held as Settled Law the fact that the Prosecution is not bound to call every Person that was linked to the scene of the Crime by his physical presence to give evidence of what he saw. Once Persons who can testify as to the actual commission of Crime have done so, it will suffice for the satisfaction of proof Beyond Reasonable Doubt in line with **Section 138 of the Evidence Act**. See also the Cases of **VICTOR ESSIEN VICTOR VS THE STATE (2013) 6 SCNJ PAGE 32;**

Her Lordship, **AMINA AUGIE (JCA) (AS SHE THEN WAS, NOW JSC), IN OSAZUWA & ORS VS ISIBOR & ANOR (2003) LPELR-7295 (CA), AT PARAS A-B** stated that there is no Rule Of Law or Evidence, which lays down that all Persons who know about a particular fact must be made Witnesses to testify on the issue before it can be proved. **SEE ALSO SIMON VS THE STATE (2017), (SC) LPELR-41988 PER MUHAMMAD JSC AT PARAS E-F.** See **SAMUEL ADAJE V. THE STATE (1979) 6- 9 SC 18 AT PAGE 28; E.O.**

OKONOFUA & ANOR V. THE STATE (1981) 6-7S.C 1 AT 18 AND OGOALA V. THE STATE (1991) 2 NWLR (PT. 175) 509 AT 527.

Now, therefore, guided by these Principles severally laid down by the Apex Court, the ability of the Prosecution to determine the Number and Quality of its Witness or Witnesses cannot be questioned by the Court and certainly not by the Defence. After all, it is its case and will swim or sink with its choice in the mode it applies in propagating the evidence it has against the Defendant. It is the quality of the evidence it leads that sustains its case.

Therefore, it remained the Prerogative of the Prosecution not to call the Chief Detail, Mr. Adamu Aboki, and whether the Prosecution proffered no sufficient proof of their attempt to locate him or not, is neither here nor there to the fact that it is the choice of the Prosecution to call which ever Witness he strategizes, would be adequate to prove its Case as severally held by the Apex Court.

Learned Counsel to the Defence had also referred to the failure of the Prosecution to call Mr. Dennis Bobo, the Late Steward of the Taraba State Governor's Lodge to testify in regard to the claim of Mr. Abdulrahman Mohammed that it was him that opened the Bedroom door to the Governor's Bedroom for him to drop the Money.

Had the fact of the death of Dennis Bobo been elicited from the mouth of a Prosecution's Witness, the contention by the Defence would have been pardonable. It is ludicrous and utterly preposterous to say the least, that the Defence Counsel is questioning the integrity of its own Witness, **DW2**, DSP Philips E. Akolo, the Defendant's Orderly who had stated very clearly that the said Mr. Dennis Bobo had passed on. Since the summoning of Mr. Dennis Bobo whose death was unchallenged, can only be sanctioned and approved by the Almighty God, the Defence Counsel would have to make a Trip to Heaven to ask for his release to appear before the Court.

The Third Contention on the Issue of Grains is that of the Contradictions drawn out by the Defence from the Prosecution's Witnesses Testimonies before the Court.

Learned Counsel to the Defendant had contended that PW8, Mr. Abdulrahman Mohammed, the Liaison Office Accountant had testified that he **dropped** the Money in Reverend Jolly Nyame's **Bedroom** at the Governor's Lodge. Mr. Japheth Wubon was said to have confirmed in Written Extra-Judicial Statement in **Exhibit R2** that Mr. Abdulrahman Mohammed, had informed him that the Money was delivered to Reverend Jolly Nyame personally.

In **IJEOMAANYASODOR VS THE STATE (SUPRA), Per SANUSI JSC AT PP 24-25, PARAS A-A**, it was held that it is not enough to show that there were contradictions in the Evidence of some of the Prosecution Witnesses, but it must be shown that the Trial Judge did not consider those Contradictions. His Lordship held *inter alia* that, "in this instant Case it is glaring from the Records that the Learned Trial Judge had meticulously pointed out and addressed each of their alleged Contradictions and commented on them, item by item as would leave no one in doubt, as to their effect or position and even none of the alleged Contradictions was material or had been shown to have occasioned a Miscarriage of Justice. It is settled Law, as I said, Supra, that for Contradictions to have any effect on the Case of an Accused Person, it must be Material, Substantial and must relate unequivocally to the Charge against the Accused Person. See the Case of **STATE VS ABDULAZEEZ (2008)**. In this present Case, the alleged Contradictions were not material and substantial to the Offence the Appellant stood trial on at the Trial Court. The Lower Court therefore had rightly found that they had no effect on the Trial. Moreover, some of the alleged Contradictions regarded as material by the Appellant's Learned Counsel were even not raised at the Trial Court but only on Appeal before the Lower Court."

In **IKPA VS STATE (2017) LPELR-42590(SC) Per AUGIE, J.S.C (Pp. 45-48, PARAS D-B)** held *inter alia* that "the position of the law on the issue of contradictions in the evidence of witnesses that testify in Court is pretty well

settled. It is not every minor contradiction that matters for a Trial Judge to disbelieve a Witness, the Contradiction in his Evidence must be on a Material Point - **KALU V. STATE (1988) 3 NSCC 1**. Thus, the Law allows room for Minor Discrepancies in the evidence of Witnesses, which may not be fatal to the Prosecution's case. The word "Contradiction" comes from two Latin words 'Contra' meaning opposite, and 'dicere', which means to say the Opposite. So, to contradict is to speak or affirm the contrary, and a piece of evidence is contradictory to another when it asserts or affirms the opposite of what the other asserts and not necessarily when there are minor discrepancies in the details between them.

As **NNAEMEKA-AGU, JSC**, said in **OGOALA V. STATE** "contradiction between two pieces of evidence goes rather to the essentiality of something being or not being at the same time, whereas minor discrepancies depend on the person's astuteness and capacity for observing meticulous detail" - **SEE AKPAN V. STATE (1991) 3 NWLR (PT. 182) 646 SC, DAGGAYA V. STATE (2006) 7 NWLR (PT. 980) 637 SC** and **OCHEMAJE V STATE (2008) 15 NWLR (PT. | 109) 57**, where in **TOBI, JSC**, explained - Contradictions definitely arise in evidence of witnesses in Court. That explains the human nature and the humanity in witnesses. Although witnesses see and watch the same event, they may narrate it from different angles, in their individual peculiar focus, perspective or slant. This does not necessarily mean that the event they are narrating did not take place. It only means most of the time that the event took place, but what led to the event was given different interpretations, arising from the senses of sight and mind dictated by their impressions and idiosyncrasies. That is why the law says that contradictions, which are not material or substantial, will go to no issue. The Main Interest of the Court is that the witnesses are in Union or Unison as to the happening of the event but gave different versions in respect of the peripheral surrounding the event.

As regards the Contention that there was a Contradiction between the Testimony of Mr. Japheth Wubon who testified that he did not know whether the Grains were Purchased or whether the Funds were embezzled, on the

one hand and the evidence contained in **Exhibit R2**, Mr. Japheth's Extra-Judicial Statement, where he stated that there was no Purchase of Grains, on the other hand, the Court is guided by the Principle of Law concerning the Duty of the Court.

Where there is a conflict between the Extra-Judicial Statement by a Witness and his Oral Evidence in Court, the Court will refer to the Restatement by **EKO, J.S.C** in the Case of **AMADI v. A.G IMO STATE (2017) LPELR-42013(SC) AT PAGE 14-17, PARAS F-B, where he referred to MADARIKAN JSC, in OSENI v. ATTORNEY-GENERAL SC. 202/1968 decided on 16th July, 1969, (see Digest of Supreme Court cases, Vol. 10 at p. 166)** where His Lordship held that "where there is a conflict between the written statement made to the police by a witness and his oral evidence in Court, the Trial Judge ought to resolve such conflict before deciding whether to accept the witness's evidence or not. To do that resolution between the Extra-Judicial Statement and the Oral Evidence both have to be legal evidence before the Court. In other words by dint of **Section 209 of Evidence Act, 1990 in pari materia with Section 199 Evidence Act. 2004 (now Section 232 of the Evidence Act, 2011)** the said previous statement in writing has to be, or must be, produced for the Trial Court's inspection, before "the Court may thereupon make use of it for the purposes of the Trial".

The Oral and Documentary Evidence in contention must violently and substantially contradict themselves. Where they are mutually contradictory in materia particular, it will not be safe for the Court to pick and choose which of them was reliable and which was the unreliable version of the incidence. **See: BOY MUKA v. THE STATE (1976) 10 SC. 305.** Where the contradictions and inconsistencies that exist are minor, peripheral, they cannot be found to materially affect the Case of the Prosecution. See **ESANGBEDO V STATE (1959) 4 NWLR (PT.113) 57 AT 83" Per PETER-ODILI, J.S.C (Pp. 31-32, paras. E-B) ISAH VS STATE (2017) LPELR-43472(SC).**

Now, the question that must be asked is whether there was really a Conflict? The summary of Mr. Wubon in his Oral Testimony before the Court and in **Exhibit R2**, his Extra-Judicial Statement, all point to one fact. That fact is simply that Mr. Wubon stated that the Grains were not purchased as represented in the Payment Voucher. Whether the Money was embezzled or not, or whether Security Equipment was bought or not has not changed the conclusion Mr. Wubon arrived at, which is that the Grains were not Purchased.

In **Exhibit R2**, the Position of the Witness is that the Grains were not Purchased and he could not say whether the Security Gadgets were bought or not.

In his Testimony before the Court, at the Stage of his Examination in Chief, he repeated the exact same thing, and justified his statement by stating that there ought to have been the Retirement of the Funds, which did not happen, and he categorically stated that Abuja Liaison Office **DID NOT** Purchase any Grains. The only thing he said different was that the Money for the Purchase of Grains was either embezzled or the Security Gadgets were bought. This last Statement is the only distinguishing factor between his pieces of evidence and to the mind of the Court, it is his Opinion, more so, as he did not expressly state what happened one way or the other.

This in the mind of the Court is not a Contradiction.

In **Exhibit R2**, the Further Statement of Japheth Wubon, dated the 4th of July 2007, he had stated that no Grains was actually Purchased and he could not also say whether the Security Gadgets were bought or not.

Although this is not the situation in this instant Case, there is also a likely possibility of a Witness committing mistakes, which can be termed as omissions, improvements and contradictions, when he is subjected to lengthy arduous Cross-Examination over a lengthy period of time. Such omissions, improvements and contradictions will have to be appreciated in the background of the ground realities, which make the Witness confused

because of the filibustering tactics of the Cross-Examining Counsel. See the case of **JAIL SHREE YADAV VS STATE OF UP 2004 CRLJ 4826 (SC) AIR 2004 SUPREME COURT 4443.**

Now, after considering the above Principles, the Court would determine through Oral and Documentary Exhibits, whether the Prosecution satisfactorily discharged the Legal Burden placed on it to establish the Offence of Criminal Breach of Trust in respect of the Purchase of Grains by the Taraba State Government in the sum of **N24, 300,000.00 (Twenty Four Million, Three Hundred Thousand Naira).**

The Oral Evidence of each of the Witnesses across the divide and the Documentary Exhibits tendered would be considered. The allegation made by the Prosecution through its Witnesses such as, the Permanent Secretary of the Taraba State, Abuja Liaison Office, the Accountant of this Office, the Investigating Police Officers and Mr. Joel Andrews, the Chief Accountant Government House, will be pitted against the testimonies of the Defence Witnesses who are: - Mr. Yakubu Bulus, the Accountant at the Accountant General's Office; Mr. Philips E. Akolo, the Defendant's Orderly; Mr. Aminu Ayuba, the Accountant in Charge of Salaries, Government House; and finally Reverend Jolly Nyame, the Defendant.

Mr. Japheth Wubon, had uttered a very far-reaching Statement, when he said that the Defendant as Governor, had told him that **any** instruction passed on to him from his Chief Security Agent, was authentic. As regards the Purchase of the Grains, Mr. Wubon stated that the Instruction to him from the Defendant was passed on through the Chief Detail, Mr. Adamu Aboki. He had also stated that the Defendant as Governor, called him on the Telephone shortly after he received the Instruction, confirming that the message passed onto him by the Chief Detail **was in order and he should go ahead to execute it.**

This singular fact was not challenged or controverted by the Defendant himself, or by his Legal Representation, and therefore must be accepted by

the Court as representing the true State of Affairs. See the Dictum of **OGUNBIYI JSC** in the Case of **GOYANG KAYILI VS ESLY YILBUK & 2 ORS (2015) LPELR-24323(SC)** where His Lordship enjoined the Court to act on unchallenged evidence. See also the case of **ESENE VS STATE (2017) LPELR - 41912 (SC)**

Mr. Wubon had acknowledged the Memo raised by him in **Exhibit Q** and upon being told that the main reason for the Funds was to procure Security Equipment, he had made up the justification for the Purchase of Grains “as convincingly as he could” to be that the Purchase was necessary to cushion the effect of the escalating food items for the people of Taraba State.

So, in other words, the Author of the Memo that requested for Grains, and obtained Money in regard to Grains, KNEW from the Start that no Grains were intended to be purchased. The Instructors, i.e., the Chief Detail and the Defendant, also KNEW that no Grains were to be bought. When questioned as to why he raised the Memo for foodstuff, he answered that he was complying with an Executive Directive but did not link up or make any enquiries with the Ministry of Agriculture, who were to keep Records of Purchase of Agricultural Products. If the Ministry of Agriculture had an Approval for the Purchase of Grains, they would have had to retire the Funds.

Mr. Japheth Wubon did not witness the delivery of the sum of Twenty Four Million, Three Hundred Thousand Naira (N24, 300, 000) by the Accountant to the Liaison Office to the Defendant and was only orally informed by the Accountant.

Further, Mr. Japheth Wubon categorically stated that he did not receive the delivery of the Goods of Grains at the Liaison Office of Taraba State and neither were the Funds RETIRED.

This is fundamental, as it is clear that all Government Expenditure **must** be retired.

Now, it is clear that there were Several Participants or Players in regard to this Count cutting across Three States of the Federation. There was the Defendant himself, his Chief Detail, his Orderly, Dennis Bobo, the Steward, Jerusha, the House Keeper, the Accountant and Permanent Secretary at the Taraba State Liaison Office, Abuja, the Accountant in Jalingo, the Officials at the Ministry of Finance, Taraba State, the Secretary to the State Government and of course, the Rice Supplier from Lagos.

Of all the above Participants, there could only be Six Eye Witnesses to the receipt by the Governor of the Money.

Now, the Chief Detail was not produced before the Court to testify because he had since left his Post, and was untraceable, the Steward, Mr. Bobo was reported dead, Jerusha was not produced and reported dead, the Accountant and other Officials from Jalingo were not produced, and the Lagos Rice Seller's details were not supplied by the Defendant, thereby leaving only Four Key Witnesses before the Court, who are the Defendant, Mr. Japheth Wubon, Mr. Philips Akolo and Mr. Abdulrahman Mohammed.

Mr. Philips Akolo denied any knowledge of this transaction and Mr. Japheth Wubon was informed of actions taken by Mr. Abdulrahman Mohammed. Therefore, the evidence of the Defendant is pitted squarely against that of Mr. Abdulrahman Mohammed.

The Defendant on his own part, contended that he had sat down with the Permanent Secretary (which one he did not say, whether it was Permanent Secretary Abuja Liaison Office, or the Permanent Secretary Jalingo) to discuss the need to Purchase Grains. This discussion arose because while in Abuja, he received different Requests from People in Abuja, in regard to their Supporters in Taraba State, who were Peasants experiencing hardship caused by drought and who did not have enough Produce to feed themselves.

He testified on the occasions during his Tenure, where he assisted Taraba State Citizens during Religious Occasions. Therefore, they required assistance from the Taraba State Government to alleviate their suffering in Five Local Government Areas. Based on this, he directed that “**they**” should make provision by way of a Memo to Purchase Grains. A Memo was indeed raised to this effect, and he gave his Approval. This Memo was sent to Jalingo and the required Funds were released to the Taraba State Liaison Office in Abuja.

The Defendant acknowledged his Approval on **Page 2** of **Exhibit Q** and the Payment Voucher in **Exhibit DD** but denied the fact that he received the Sum of Twenty-Four Million Three Hundred Thousand Naira (N24, 300, 000.00) in Cash. According to him, after executing the Memo through his Approval, the responsibility of executing the Project fell on the shoulders of Mr. Japheth Wubon. Further, he stated being aware of the Purchase of the Grains from a Supplier in Lagos, who was paid the Full Sum in Cash, but could not remember the Name and Details of the said Supplier. More importantly, the Defendant categorically stated that the “Rice” purchased was distributed to the People of Taraba State.

The Defendant also disputed, who the Custodian of the Keys to his Bedroom in the Governor’s Lodge, Abuja was, through the evidence of **DW2**, DSP Philips Akolo, his Orderly, who claimed to possess the Keys to his Bedroom. Mr. Philips Akolo had stated that the **ONLY** time he collected Money on behalf of the Governor, was when he signed for the Defendant’s Allowance and he did not see any Money for the Purchase of Security Equipment. According to him, it was impossible for a Government Official to gain access to the Governor’s Bedroom in his Absence.

Now, this Testimony rendered by **DW2**, Mr. Philips Akolo appears to corroborate the Defendant, when he stated that the Custody of the Keys to his Bedroom lies with his Orderly. However, the Orderly went on to say something relatively crucial...and that is that in the Governor’s absence, the Keys to the Lodge are kept with the House Keeper.

Further, Mr. Akolo had described his Duty as purely Security and therefore everywhere the Defendant went, there he went also. Logically, if the Defendant was in the Governor's Lodge, it is expected to see Mr. Akolo a Yard or two away from him. And if, the Defendant was **NOT** in the Governor's Lodge, then it was not expected that Mr. Akolo would be found at the Governor's Lodge. If, as Mr. Akolo testified, the Keys are handed to the House Keeper in the absence of the Governor, then there is a possibility that someone else, in this instance, the House Keeper would have the Key. The Orderly Mr. Akolo appears to speak from both sides of his Mouth when he described an impossible access to when he stated that in the Governor's absence, the House Keeper kept the Keys.

The Court has had a very careful look at **Exhibit DD at Page 2**, which is a letter, written by the Taraba State Liaison Office Abuja, and notes that the Memo for the Purchase of Grains, was curiously initiated from Abuja. It was addressed to the Governor in Taraba State and described the hardship of the people in Taraba. There is nowhere in this Memo it was indicated that the need for the Grains arose from the Complaints of Taraba State Indigenes in Abuja as stated by the Defendant. The Governor had testified that the Grains were meant for Five Local Government Areas in Taraba State and it is very curious indeed that it would take the Abuja Liaison Office to recognize and be concerned about the Poverty Level in Taraba State.

Even if Reverend Jolly Nyame was in Abuja during that period, there is uncontroverted testimony by Mr. Wubon that the Ministry of Agriculture and Natural Resources was responsible for all Agricultural Products. They were the Relevant Ministry, who had the Budget Votes such Agricultural Products and were to keep Records of Purchases.

PW8, Mr. Abdulrahman Mohammed, the then Accountant of Taraba State Liaison Office, under Cross-Examination, had stated that the Accountant General of any State is the Chief Custodian of Government Funds, and the Purchase of Grains was outside his duty as an Accountant.

The First Defence Witness, Mr. Yakubu Bulus, a Retired Civil Servant testified at great length about the procedure for raising Memos where financial transactions involved the Government House or the Government Liaison Office outside Jalingo. He had stated that to the best of his knowledge that the Liaison Office of the State Government is under the Office of the Secretary to the State Government by Budgetary Provisions.

According to him, in the case of the Liaison Office, the Secretary to the State Government is the Office responsible for raising any Memo for the Governor on behalf of the Liaison Office. In the case of the Government House, the Permanent Secretary, Mr. Nev will raise the Memo to the Chief Executive for his Approval. Usually, Mr. Nev would notify Mr. Wubon that he was sending Money from Taraba State to the Liaison Office for the Defendant's use in Abuja. Mr. Wubon would then instruct him to raise a Cheque, cash it for onward transmission to the Defendant as Governor.

According to Mr. Abdulrahman, he always went in the company of at least Two Mobile Policemen to escort him to the Bank, and then would take the Money to the Governor's Private Sitting Room, informing him that he had a message for him from Jalingo. The Defendant as Governor would then ask him to go upstairs and drop it in an open room, and he would go on his way. There were times he would meet the Governor in his room upstairs and drop it. There were also times the Governor was not around, so he would ask the Steward, Dennis Bobo Umar to open up the room and he would keep the Money there.

From this explanation, it is clear that Mr. Abdulrahman always had witnesses around him when he went to collect or drop the Money. He knew quite well the names of the Household Staff and their responsibilities and therefore had he not deposited the Funds as directed, the Funds would have been reported as missing and he would have been indicted. The Investigating Team of the EFCC would also have raised queries and he would have been required to produce hard evidence as to its whereabouts. It

is important to note that when Mr. Abdulrahman Mohammed testified, he did not say that the Defendant was in residence at the Lodge when he withdrew the Money for the Grains.

As a matter of fact, this Witness had stated both in Court and in **Exhibit R1**, that on this particular occasion, the Chief Detail had called him to notify him where to place the Money and he, in turn, called back to notify the Chief Detail that he had complied with the Instruction. This clearly shows that the Deposit of the Sum of **Twenty Four Million, Three Hundred Thousand Naira (N24, 300, 000)** was likely done when the Defendant was not in Residence. Otherwise, Mr. Adamu Aboki would not have needed a Delivery Confirmation from Mr. Abdulrahman.

This leads the Court to examine the Trail of Documentation from the onset to the receipt of the Money.

The Request for Funds to procure Grains was said by the Defendant to arise from a discussion he had with the Permanent Secretary. It is worthy of note, that the Defendant did not specifically state which of the Permanent Secretary he refers to. He was silent as to his exact location at the time of the discussion and could not remember any details of it.

The Evidence before the Court is as seen in **Exhibit Q**, the Memo written by the Taraba State Liaison Office Abuja's Letter to the Defendant, through the Office of the Secretary to the State Government, dated the 27th of June 2005, for the Purchase of Grains, tendered by the Prosecution through Mr. Wubon and the relevant details are as follows: -

“Based on the Defendant’s directive, a Market Survey was conducted for possible direct Purchase from areas where these Commodities are in abundance

- ***Maize @ N70, 000 per ton x 100tons=N7Million***
- ***Rice@N140,000 per ton x 60tons=N8.4Million***
- ***Beans@N150,000per ton x 20tons=N3Million***

- **Guinea Corn@N100,000 per ton x 20tons=N2Million**
- **Transportation/contingency=N3.9Million**
- **Sum total=N24.3Million**

Your Excellency may therefore, graciously consider approving the Sum of N24.3Million and direct Ministry of Finance to release same to the Permanent Secretary, Liaison Office Abuja to co-ordinate.”

It can be seen that the Defendant *Approved* the Memo *on the 3rd of July 2005*, and *Authorisation to process payment was given on the 4th of July 2005*.

On the 8th of July 2005, the notification of the Governor’s Approval was conveyed to the Accountant General, in Jalingo, the same day, the Payment Voucher was dated and reference is made to **Page 3 of Exhibit DD**.

Mr. Japheth Wubon had stated that he raised the above Memo in the Sum of Twenty Four Million, Three Hundred Thousand Naira Only (N24, 300, 000.00) on the instruction of the Defendant via the Chief Detail, Mr Adamu Aboki. He had, however, noted that the Chief Detail informed him that the Purchase of Grains was not the real intention, but that the Money was actually to be used for the Procurement of Security Gadgets. In other words, he was informed that the Purchase of Grains was a Ruse, a Cover Up, to conceal the true expenditure of the Funds. He therefore used all of his “Civil Service Knowledge” to come up with a Memo tailored to the amount needed and he reportedly conducted a Market Survey to validate the Prices.

NOW, Using Civil Service Knowledge does not equate to devising crooked ways of twisting facts and Mr. Wubon knew that the representation he was making in this Memo was a false representation. This witness testified that he passed on the Memo to the Chief Detail for onward transmission to the Defendant for his Approval. In **Exhibit R2**, the Further Statement of Mr. Wubon, dated 4th July 2007, the claim by him that the Grains were not actually purchased was also validated.

Subsequently, an Approval was received from the Defendant through the same Chief Detail, thereby confirming and validating PW5's assertion that he usually received instructions from the Defendant, through his Chief Detail. The Claim that the Chief Detail was the acknowledged Channel was therefore validated.

From the Evidence, it can be seen that it was Mr. Mohammed that was the Official who left Abuja for Jalingo on the 8th of July 2005 to officially collect a Cheque of Twenty Four Million, Three Hundred Thousand Naira Only (N24, 300, 000.00) for the Purchase of the Grains from the Accountant General's Office.

In **Page 6 of Exhibit DD**, it is noted that the Government of Taraba State issued a **Treasury Receipt No. 142731, TRT6**, acknowledging as received from Accountant General, the Sum of Twenty Four Million, Three Hundred Thousand Naira Only (N24, 300, 000.00) being Funds for Purchase of grains for the State, dated the 8th July 2005. Mr. Abdulrahman then lodged the Cheque into the Bank Account of Taraba State Liaison Office. He not only processed the payment of these Sums for Grains, but was also in Physical Custody of the Money.

His Testimony was to the effect that the Chief Detail called him and instructed him to withdraw the Sum of Fifteen Million Naira (N15, 000, 000) and then take it to the Governor's Lodge, which he did by asking the Steward to open the door of the bedroom. Mr. Abdulrahman then called the Chief Detail, notifying him of his compliance with the instructions, and the Chief Detail told him that the Defendant would be duly notified, and the Balance Sum of Twenty Four Million, Three Hundred Thousand Naira (N24, 300, 000) followed the same process.

His Statement before the EFCC in **Exhibit X1**, also corroborated the fact that he was told to bring the Money and keep it in the Defendant's Bedroom, under the custody of the Steward, Mr. Dennis Bobo, as this was the Usual Practice whenever he brought Money to the Defendant.

Under Re-Examination, Mr. Abdulrahman stated that whenever he was asked to bring Money to the Defendant as Governor, his Personal Staff, his Orderly, the Chief Detail and the ADC are always with the Governor at the Governor's Lodge and they usually stayed downstairs, while he takes the Money upstairs to the place he always kept it.

Now, if the Chief Detail and the Orderly are always with the Defendant, and if the Defendant was present at the Lodge, there would be no need for Mr. Abdulrahman to call the Chief Detail, informing him that he has visited the house, and placed it where instructed. This will be an unnecessary feedback.

The Defendant had also stated that after he gave the Approval for the Purchase of the Grains, he would not concern himself with what happened next, due to the fact of his busy Office Schedules and he expected the Mr. Wubon to process the payment and then ensure distribution of the Grains.

In one breath, the Defendant maintained the above position, and in another breath, he told the Court that the Money for the Grains was paid in cash to the Rice Supplier in Lagos and went even further to state that the Rice was distributed.

In his Statement dated the 11th of July 2007, which was admitted as **Exhibit Z5**, the Defendant admitted therein that the Purchase of Grains for onward distribution to the Local Government and also other Interest Groups was at his Approval. According to the Defendant, he stated that the Rice Product was purchased from a Lagos Supplier of Rice. In **Exhibit Z6**, the Defendant could not remember the Name of the Rice Supplier Company.

The Introduction of a Rice Seller and Distributor was an injection of New Evidence by the Defendant. This is because no one else mentioned a Rice Seller. The Payment Voucher in **Exhibit DD** did not indicate the Name of any Recipient of the Funds and the Name of the Company Seller in Lagos was certainly not listed. There is also the fact, that even if Rice was actually bought from Lagos, it is only simple sense that the Liaison Office in Lagos

should have been asked to write the Memo in the first place. Certainly not the Abuja Liaison Office.

The Claim by the Defendant appears to be in regard to a Rice Seller. A careful look at **Exhibit DD at Page 3**, the List of Grains set out by Mr. Japheth Wubon reveals that Rice was not the only Grain bargained for, and the worth of the Rice was projected to be the sum of N8, 400, 000.00 (Eight Million Four Hundred Thousand Naira) Only, which is a far cry from the sum of Twenty Four Million, Three Hundred Thousand Naira Only (N24, 300, 000.00) obtained.

If the Defendant was as detached from the transaction as he claimed, he ought not to have details of the Rice Supplier known to him or whether they were in Lagos or whether the Company or Individual was paid in Cash.

Further, at least one other Official ought to have known about or dealt with the Rice Seller and since this Contention is from the Defence, it was expected that the Official should have been called by the Defence to testify in this regard.

The Court will also have regard to the evidence of the 1st Defence Witness, Mr. Yakubu Bulus, the Retired Accountant from Taraba State Ministry of Finance, Office of the Accountant-General, when he stated in his Evidence in Chief that before Memos are raised by any Ministry, the Ministry must ensure that there is a Budget Vote for it, which is under a Subheading. After the Memo is raised and Approved by the Governor, the Department then submits the Approval to the Office of the Accountant-General for the release of the Funds. The Cheque is issued to the Department that wrote the Memo, and the purpose for which the Memo was written, would be stated. This Purpose must be in line with the Approved Budget Vote of the House of Assembly.

Here, there was NO evidence of any Budget Plan for the Purchase of Grains. This witness with unquestionable experience has aptly described the set

formalities. It is not clear whether the cries and pleas of the indigent citizens of Taraba State for the provision of Grains was echoed by the Governor to the House of Assembly or whether he took a unilateral decision to bypass the set process. At least the provision should be in one Budget Plan, either the State House of Assembly, the Abuja Liaison Office or the Ministry of Agriculture and Natural Resources in Taraba State.

No less is expected and is certainly the required minimum.

There is also the undisputed evidence from Mr. Yakubu Bulus under Cross-Examination that the Purchase of Grains is firmly under the Department of Produce, Ministry of Agriculture, who are saddled with the responsibility of Purchase of Grains. It is expected that this Ministry raise a Memo to the Governor for the Purchase of Grains because that **budget line** is under the Ministry of Agriculture. When the Approval is granted, the Ministry of Agriculture will get the Money and then execute the Project.

According to him, it is wrong by the Financial Instructions for the Abuja Liaison Office to collect the Grain. The Permanent Secretary, Liaison Office cannot collect the Money because it is not his Vote.

This piece of evidence supplied by the Defence, shows beyond doubt that the Abuja Liaison Office WAS NOT the Appropriate Department to raise such a Memo.

There is also the testimony of Mr. Philip Akolo, the Orderly, who testified that he did see nor sign for any Funds and was not aware of this transaction.

DW3, Mr. Aminu Ayuba, a Subpoenaed Witness and Acting Accountant General of Taraba State, had during his Evidence in Chief stated that in the case of a Contractor, the Contractor will sign the Payment Voucher and the Cheque Control Register and then will be issued with an Acknowledgment Receipt.

This Defence Witness did not know the Officers involved in the Purchase of Grains, despite the fact that he worked in the Government House till June 2005.

Now, from all the above, certain facts come to light. It is clear that it was the function of the Ministry of Agriculture to procure Grains on behalf of the State, but in this peculiar circumstance, the Governor directed a Permanent Secretary from the Liaison Office to prepare the Memo, which he approved for processing. The Defendant sought to maintain a distance from his Approval to the eventual purchase of the Grains but had known of certain facts that belie this fact.

In the first instance, he knew Mr. Japheth Wubon purchased or executed the Memo and then Viola! He suddenly recalled the Seller of the Grains was a Trader from Lagos, paid in Cash. He alone knew this detail, as there was no other corroborative testimony from all the records and from the Official in the State. One thing was clear, there was No Delivery of the Rice either in Abuja or in Jalingo because Officers who had to be in the know of this Supply were ignorant of even the Purchase.

The Defendant needed to have explained in greater detail, **WHO** paid the Supplier in Lagos; **WHEN** was this Payment made and **HOW?**

The evidence before the Court is that, the Money was delivered in Two Trenches, that is, Fifteen Million Naira (N15, 000, 000) and then the balance. So HOW the Supplier was paid became important.

In this instant, the Chief Accountant stated that anytime he made the trip to the Defendant's Bedroom, the Chief Steward would open the door and he would call Mr. Aboki to notify him of the delivery of the Cash as ordered. This raises a very strong presumption that the Defendant was not in the Residence at the time and furthers demonstrates that his Orderly could also not have been present at the Lodge.

Balancing the Chief Accountant's word against the Defendant would be to consider Bobo, Jerusha and Aboki. All of these Three Witnesses did not appear before the Court. Aboki's whereabouts was unknown, and the Two Domestic Staff attached to the Lodge, were said to be dead.

The only vindication therefore for the Defendant would be evidence of the Actual Delivery of the Rice Product to Jalingo from Lagos. The Invoice from the Rice Seller and/or Receipt acknowledging Payment would be sufficient to dispel this Offence.

There was also the fact that these Funds were not retired as regulated and there was no Query raised by the Defendant on the Retirement of Funds.

The Defendant in his evidence before the Court admitted giving Mr. Wubon an Oral Directive to prepare the Memo and this again, was a Breach of Procedure from the Established Practice.

If, the Defendant's Supporters made the Request for the Grains to him in Taraba State, he did not need to get to Abuja to direct Taraba to send the Funds to Abuja for onward delivery to Lagos before the Rice was purchased. This does not make any iota of sense!

By his evidence, the Defendant has stated that he could not produce any Document evidencing the fact that the Grains were purchased or even knew the Name and Address of the Supplier in Lagos.

One of his Witnesses, DW1, had testified as to the Correct Procedure and had more importantly found it contrary to the Financial Instructions of the State for the Abuja Liaison Office to collect money for the Grains. It was not the Budgetary Vote of the Abuja Liaison Office to purchase Grains, so the Defendant's Instruction to them to do so, was clearly Wrong and a Breach of Established Procedure.

It is curious, why the Accountant in Abuja Liaison Office had to make a trip to the Ministry of Finance in Jalingo to collect a Cheque there, especially when the collected Cheque was deposited into the Bank Account of the Abuja

Liaison Office in Jalingo. His travel does not make any sense at all, as any Staff of the Ministry of Finance could have done them the favour of depositing the Cheque on their behalf.

The Accountant travelled back and from the Statement of Account of the Abuja Liaison Office, the Withdrawal was evident.

So, if the Accountant withdrew the Money as evidence, how then did the Lagos Seller come into the mix?

By the Defendant's narration, it is only Mr. Wubon or the Accountant that would pay the Lagos Supplier BUT they did not know that Supplier. So, who sent the Money to Lagos?

If the Defendant's evidence that he did not receive the Money personally is true, then why on earth was the Accountant not queried or even indicted and jailed for theft. This was a Direct Order for Purchase by the Defendant and it would only take a very bold and courageous Civil Servant to go against the Directive of a Governor of a State.

From the Contents of the Memo seen in **Exhibit Q** dated the 27th of June 2005, it can be seen that the items of Grains included Maize, Rice, Beans, and Guinea Corn, the Cost of Transportation and Other Contingencies. So, how then, can the Defendant state before the Court that ALL the Money was given or sent to the Rice Trader in Lagos? Very curious indeed as the appellation "Rice Seller" and not "Grains Sellers", presumes that, that was the only Product that Supplier marketed.

It all does not make sense and certainly does not add up!

The Court in conclusion finds that the Defendant as Governor of Taraba State was a Public Servant entrusted with the Funds of the State, gave an Approval to a Wrong Agency, i.e., the Taraba State Liaison Office in Abuja. The Defendant assumed Dominion and Control over the Funds, and issued out Directives contrary to the Financial Instructions of his State and as seen

through the Circuitous Route the Sum of Twenty Four Million, Three Hundred Thousand Naira (N24, 300, 000) took, he acted dishonestly and is found Guilty of Misappropriating and Causing the Unlawful Disposal of Government Funds in **Count 8**.

AS REGARDS THE PRESIDENTIAL VISIT TRANSACTION UNDER CRIMINAL BREACH OF TRUST: -

The Prosecution has alleged under **Counts 10, 12 and 14** that Reverend Jolly Tevoru Nyame while he was the Governor of Taraba State, entrusted with dominion over the State's Properties, committed the Offence of Criminal Breach of Trust with regard the following Sums: - **Twenty-Seven Million Naira (N27, 000, 000.00), Thirty-Two Million, Three Hundred Thousand Naira (N32, 300, 000.00) and Forty-Two Million Naira (N42, 000, 000.00)**, which were meant for the **Preparation of the Visit of President Olusegun Obasanjo scheduled for the 12th of April, 2007**.

The Prosecution in Proof of this Offence called **Two Witnesses, who are; PW4, Mr. Dennis Nev, the Permanent Secretary Government House, Jalingo and PW9, Mr. Ibrahim Galadima, the 1stEFCC Investigating Police Officer.**

In **further Proof**, the Prosecution tendered **Four Documentary Exhibits**, which are: **Exhibit O1, a Memo** dated the 11th of April 2007, written by the Permanent Secretary Government House Jalingo for the **Approval of the sum of Thirty-Two Million, Three Hundred Thousand Naira (N32, 300, 000.00); Exhibit O2, a Memo** also dated the 11th of April 2007 and written by the Permanent Secretary Government House Jalingo for the **Approval of the sum of Twenty-Seven Million Naira (N27, 000, 000.00); Exhibit O3** also a **Memo** dated the same 11th of April 2007 and written by the Permanent Secretary Government House Jalingo for the **Approval of the sum of Forty-Two Million Naira (N42, 000, 000.00)**, all of which were tendered **through PW4; and Exhibit Z5, the Further Statement of**

Reverend Jolly Tevoru Nyame made on the 11th of July 2007 tendered **through PW9**.

In Defence, Reverend Jolly Tevoru Nyame through his Legal Representation called **Four Witnesses:- DW1**, Mr Yakubu Bulus, the Accountant from the Accountant General's Office; **DW2**, DSP Philips E. Akolo, his Orderly; **DW3**, Mr Aminu Ayuba, the Accountant (Salaries) Taraba State Government House; and Reverend Jolly Nyame himself as **DW4**.

In **further Proof** of his Defence, Reverend Jolly Tevoru Nyame tendered **Exhibits P1, P2 and P3, Documentary Exhibits**, which were the Statements of Mr. Dennis Nev, the Permanent Secretary Government House. **Exhibit P2**, is the Further Statement PW4 dated the 17th of June 2007, and all these were tendered **through PW4 himself during Cross-Examination**.

Now, after a careful consideration the Court is cognisant of the fact that the Charges as regards the Presidential Visit to Taraba State in **Counts 10**, for the Sum of Twenty Seven Million Naira Only (N27,000,000.00), in **Count 12**, for the Sum of Thirty Two Million Three Hundred Thousand Naira (N32,300,000.00) and in **Count 14** for the Sum of Forty Two Million Naira, all totalled a Grand Sum of One Hundred and One Million, Three Hundred Thousand Naira (N101, 000, 000).

The Evidence before the Court revealed that these Sums of Monies were withdrawn from the Account of the Taraba State Government through Three Memos written out by Mr. Dennis Nev, the Permanent Secretary of the Taraba State Government House, and were all dated the 11th day of April 2007 and admitted as **Exhibits 01, 02, and 03**.

It can be seen from these Memos that the Defendant as Governor of Taraba State, Approved and Signed them and further directed through his Minutes, the Honourable Commissioner of Finance to pay the Specific Sums reflected in each Memo.

In **Exhibit Z5**, the Statement of Reverend Jolly T Nyame dated the 11th day of July 2007, the Defendant, stated that the President visited the Mambila Plateau in Taraba State, for the Ground Breaking Ceremony of the Hydro Electric Project of the Plateau. This Project was a Federal Government Sponsored Project executed by a Chinese Contractor, and according to him, the State Government had to show substantial interest by placating the displaced Tribes involved. He stated that the amount expended by his State was within the region of N100Million, which took care of Security, Logistics, Feeding, Duty Tour Allowance, Publicity and Honorarium and Cash Donations to Interest Groups.

According to him, the First Approval of Thirty-Two Million, Three Hundred Thousand Naira (N32, 300, 000.00) was initially approved presuming the visit was only taking place in Jalingo, but when they were told it would be on Site at Mambila Plateau, they had to approve an Additional Forty-Two Million Naira (N42, 000, 000.00) to cater for Security and Logistics.

Whilst on Site, it was then realized that there was the need to do more to get the complete attention of the Indigenes and he had to request for an Additional Sum of Twenty-Seven Million Naira (N27, 000, 000.00) to cater for other Expenses.

During his Evidence in Chief, Reverend Jolly Nyame stated that he sat and discussed with the Permanent Secretary Government House, Mr. Dennis Nev, directing him to raise a Memo for the Visit and put together People that would assist in Planning, however, he did not specify an amount. According to him, there were Two Committees, namely the Security and Logistics Committees and he identified the Memos in **Exhibits 01-03** as Memos approved by him.

On the part of Mr. Dennis Nev the Permanent Secretary of the Government House, Taraba State, it can be seen from his Further Written Statement to the EFCC dated the 17th day of June 2007, which was admitted into Evidence as **Exhibit P2**, that he was directed by the Defendant as Governor, to prepare for the Visit of Mr. President to Taraba State and acknowledged receiving all the stated Funds from Mr. Paul Yani, who brought them in Cash

to his Office. Further, he acknowledged the Relevant Payment Vouchers for each Sum, the **N32.3 Million in VOUCHER NO.GHJ/135/2007, N42.Million in VOUCHER NO.GHJ/133/2007 and N27Million in VOUCHER NO. GHJ/134/2007**, attached to the Three Memos in **Exhibits 01, 02 and 03**. This witness stated initially that the Monies in Cash were brought to him, in his Office on different days by the Accountant, Government House, Mr. Paul Yani, and he took the Monies to the Defendant at his Office, in Government House Jalingo, on the Defendant's Directives and on different days for the designated Officers to carry out the Assignments.

However, he was not there when the disbursements were done and he could not recall whether the Defendant was alone at the times the Monies were taken to him.

He did not sign for the Monies, and neither did the Defendant as Governor Sign as well before collection. All he did was to handover the Monies to the Defendant and he did not hear **anything** about the Monies again. His assignment ended when he took the Monies to the Defendant, as he was not "Privy" to what transpired thereafter.

Further, the Defendant had mentioned the existence of Two Committees, Security and Logistics, that were to Plan the Activities and Execute the Assignments for the Visit in collaboration with Mr. Dennis Nev.

Under Cross-Examination, the Defendant stated that he did not see the Persons who worked with Mr. Dennis Nev in regard to the Visit but saw the List of their Names. According to him, he had directed Mr. Dennis Nev to co-opt People to assist in the successful planning of the President's Visit and these People were in charge of executing the various items listed under the Memos. Further still, he maintained that he signed the Memos for the Visit and "it was Successfully Executed by the **Committees** that handled it".

If the Governor stated that there were two Committees, the Security and Logistic Committees, and he later stated that ALL the arrangements and everything else was under the control of Mr. Nev, then it is the evidence of

Mr. Nev, who handed the Committees that comes to the fore in validating the Defendant's Claim.

Now Mr. Nev on his own part, has stated that he was not aware of, and was not part of any Committee in respect of this Visit, thereby directly contradicting the Defendant's assertions. His closest statement was when he had testified in Chief, stating that the Defendant directed him to bring the Monies to his Office for "Designated Officers", who would carry out their duties in regard to the Presidential Visit.

Under Cross-Examination, Mr. Nev had acknowledged that such an important Event would usually entail setting up Teams from different Departments such as; Information, Logistics and Securities, to organize and ensure the success of the Event, and added that his own responsibility stopped at the Government House. His Job Function was only to implement Policies, Programmes and Decisions of the Government of the day and generally Coordinate and Supervise Staff in ensuring a Smooth Administration of Government House.

Whilst admitting that he raised the various Heads of Expenses and the particular Agencies relevant to carry out those Assignments, he did not have the details of the responsibility of the Officers involved, as wider Assignments of this nature are handled at the discretion of the Chief Executive, the Secretary to the State Government and other Top State Government Functionaries.

The Defendant, under Cross-Examination agreed with the Prosecution that the above was the Normal Procedure but stated that it was not a Mandatory Procedure because he could assign any Officer/Individual to receive a Visitor, depending on the timing and the manner of the Visit. Where time is not a factor, it would be through the Secretary of the State Government. He admitted having a Secretary to the State Government, whose name was Mr. Zaku, and agreed that it was Mr. Zaku's responsibility to receive Visitors in this instance.

He was questioned as to whether any Committee performing the Function of receiving Visitors must work with the Secretary to the State Government, and he answered that the Secretary to the State Government would definitely be part of that Committee, but the Governor could assign anybody to receive the Visitors.

He confirmed when asked, that the Secretary to the State Government is Senior to the Permanent Secretary, and agreed that Mr. Nev could not have coordinated and chaired a Committee in which the Secretary to the State Government is a Member. However, he stated that in this peculiar Case, the Secretary to the State Government was not a Member but Chairman of the Committees, coordinated by the Permanent Secretary, Mr. Nev.

Now, as much as the Defendant as Governor could assign any Individual or Officer to receive the President, the simple fact remains that he cannot assign outside the **Rules and Regulations** under which he is to govern. If the normal process in play was through the Office of the Secretary to the State Government, he could not go outside that Procedure.

The Defendant appeared to flip when he initially stated that Mr. Nev handled the Committees and when he later ascribed Chairmanship to the Secretary to the State Government. This is also irreconcilable with his earlier Statement that he could appoint anyone. So, the Question remains, if he could appoint any Official, why then turn around to say that the Secretary to the State Government chaired the Committee?

Assuming Mr. Dennis Nev was to setup the Committees, he had no power to appoint the Secretary to the State Government as Chairman of the Committees. If Mr. Nev denied setting up any Committee in regard to this Visit, it only means that it is either the Secretary to the State Government that set up these Committees or the Defendant as Governor, himself. It is clear that a Committee or Committees cannot by itself, spring up, convene itself and carry out functions without any Specific Order or Direction.

The Defendant, who positively recognised Two Committees handling Security and Logistics, ought to have testified specifically in this regard. He ought to have provided more details on the Constitution of those Committees, moreso, when he categorically stated that he **SAW** the List of the People who executed the Project. This List was not tendered into evidence as an Exhibit, and neither is there any Information whatsoever on who prepared the List. Since the Defendant asserted the existence of these Two Committees, the evidentiary burden shifted to him to prove this fact, creating reasonable doubt in his favour.

The next important Issue to consider is the Memos themselves in **Exhibits 01, 02 and 03**. From the Defendant's narration of events, both in Chief and in his Written Statement in **Exhibit Z5**, it appears that **Exhibit 01** was prepared first in time, with **Exhibit 03** being the second in time and **Exhibit 02**, as the final Memo.

A close look at **Exhibit 01**, written by Mr. Dennis Nev, would show that the Memo was dated the 11th of April 2007, and addressed to the Defendant as Governor. The Opening Statements are as follows: -

"Your Excellency

May wish to note that the Tenure of the Present Administration is coming to an end on the 29th of May 2007.

It is in the light of the above that the Commander-in-Chief of the Armed Forces is visiting Taraba State on a 'THANK YOU VISIT' as from the 12th of April 2007"

Another close look at **Exhibit 03**, written by Mr. Dennis Nev, shows that the Memo was dated the 11th of April 2007, and addressed to the Defendant as Governor. The Opening Statement is as follows: -

"Your Excellency

In furtherance to the Visit of the Commander-in-Chief of the Arm (SIC) Forces to the State on Validatory Visit." (Sic)

The Third and Final Memo is in respect of **Exhibit O2**, written by Mr. Dennis Nev, would show that the Memo was dated the same day and still addressed to the Defendant as Governor. The Opening Statements are as follows: -

“Your Excellency

May recall Approving Funds for the Visit of Commander-in-Chief of the Armed Forces to Taraba State, for which Provision was not made to Document or give the Visit Wide Publicity, for the Commemorate of the Visit.” (Sic)

Now, from the above Opening Statements, not one of these Memos attributed the **REASONS** for the necessity of expending Government Funds to the Hydro-Electric Project in Mambila Plateau, Taraba State.

The Question that must be asked now is, when did the thought of MAMBILLA occur to the Defendant?

The reasons stated in these Three Memos are in stark contrast to the Defendant’s explanation before the EFCC and the Court. Providing for a Presidential Visit is a Legal Activity and a Justifiable Expense, so why was the Truth not stated upfront? That is that.

The next question to be asked is whether these Memos were all written on the Same Day and Together in one Sequence according to Mr. Nev, or whether they were written separately according to the Defendant. This is because of the Evidence on Record that the delivery of the Sum of Thirty-Two Million Three Hundred Thousand Naira was said to have happened first. Then it appears that the Second Memo was raised, and the Sum of Forty-Two Million Naira taken, when it suddenly dawned on the Governor at the Site in Mambila, that the Indigenes had not yet been taken into account and another Third Memo had to be written for the Sum of Twenty-Seven Million Naira.

However, contrary to the Defendant’s evidence, **Exhibit O2** approved for this Sum list out the purposes of this Fund to be Publicity, Print and

Electronic Media Live Coverage, News for Seventeen Million Naira (17, 000, 000) and Ten Million Naira (N10, 000, 000) for Souvenirs and Honorarium.

When questioned as to the Time it took to Write and Type out the Memos, and to going back and forth, for the processing, the Defendant could not remember, and also could not state the Hours it took to Process the Memos, but knew that it was Mr. Nev that processed and collected the Monies as Permanent Secretary.

So the Question is, if the Second Memo arose as a result of being on ground in Mambila, and we were told that the President's Visit was to be in Mambila, the issue that arises is, why was there a need to procure the services of a helicopter ride to Mambila? The Defendant had written in his Statement in **Exhibit Z5** that at the time the Memo in **Exhibit O3** (the 2nd in Time Memo) was written, he was already aware that the President was going directly to Mambila. The Charter of an Aircraft or Helicopter in **Exhibit O3** was superfluous. It ought not to have been part of the Budget Plan to convey the President from Jalingo to Mambila, unless there was proof that the President would have to stop initially in Jalingo or unless the use of the Aircraft was meant for the Defendant's use.

Another question to be asked is, did the Defendant have to go back into his Office to approve and sign the Second Memo, and at what time of the day did he do this, and further, what was the possibility/likelihood of Three different Cheques being issued at three different times, with Monies collected at three different times in one day? How realistic could this possibly be? Or was it that all these Memos were presented at the same time, in which case, the Defendant could not have been right, when he said that it was when he got to the Project Site in Mambila that he suddenly realised that he needed more Money.

That being said, if they did employ a Helicopter as they said they did, to be carrying them back and forth, for the purposes of the Visit, then it was expedient for the Defendant to furnish the Receipt of the Helicopter that he

rented, to show that it was possible that all these events described by him could have happened in the Speed of Time.

The Time Factor destroys the Defendant's explanations, because of the Administrative Processes, the Financial Transactions, the Logistics of the Journey and the Practicability of Execution, all of which needed to have happened in **ONE DAY**.

Mr. Dennis Nev had positively stated that he handed over the Monies collected to the Defendant as Governor and had nothing further to do with the payments or the execution of the Tasks he had written out in the Memo. According to him, the Money was taken to the Governor's Office for Designated Officers to carry out the responsibility of coordination.

During his evidence in Chief, he had backtracked from this Statement claiming ignorance about the Designated Officers and Agencies. He admitted that this was not the Normal Practice, but each Assignment has its own way of tackling it.

He had used his discretion to arrive at the important areas, and allocated suggested Funds to be used for each Item, however he did not know whether the allocated Funds were actually used to meet the required Items.

The Defence Counsel, during his Cross-Examination, had unwittingly given Mr. Nev the opportunity to explain away his Inconsistent Statement, when they tendered through him, his Extra-Judicial Statement in **ExhibitP2**. Further, this Statement helped to corroborate his Testimony before the Court and gave him an added opportunity to clarify the mistakes he had made in his Statement as to Dates, which would have been left standing, had the Statement not been tendered. He was able to clarify the mistakes.

In this Statement, Mr. Dennis Nev, went into detailed recantation of how he had given the Defendant the Monies. It is worthy of note that this Statement is dated the 16th of June 2007, barely two months after the incident, when the Memory of the occurrence would have been fresh in his mind. He had stated that "*...on the directive of my Boss-the Governor, Reverend Jolly Nyame*

for the preparation of the visit of the President, Chief Olusegun Obasanjo, to Taraba State. Funds so received, were given to His Excellency for the Designated Officer/s for the Assignment. But I was not there when the disbursement was done. The Accountant brought the Money to me in my Office, and I took same to HE-Rev Jolly Nyame- to his Office in Government House, Jalingo. I can't remember whether he was alone by the time I took the Money to him. After giving him, that was the end of my Assignment. I did not hear anything about the Money again. On the issue of Forty-Two Million Naira N42, 000, 000.00-vide payment voucher GHJ/133/2007 dated 11th April 2007, the Accountant Government House, Jalingo (brought) Mr. Paul Yani brought the Money to me in my Office Cash and it was given to Rev. Jolly Nyame in his Office. On the issue of Twenty-Seven Million Naira N27, 000, 000.00 vide Voucher No. GHJ/134/2007 dated 11th April 2007, the Accountant Government House, Mr. Paul Yani, brought the Money Cash to me in my Office, and I collected same to HE, Rev. Jolly Nyame (for) in his Office, Jalingo Government House. The Accountant brought the Money at different days and I took the Money to HEX on different days. I did not sign for the Money nor HEX did before collection."

On the part of the Defendant, he categorically denied collecting the Sums of Money in Cash from Mr. Nev, adding that Mr. Nev was in charge of the Cash and the Execution.

Therefore, the evidence of the Defendant is pitted against that of Mr. Nev and to ascertain the true facts or likely sequence of events, the Court will look at the surrounding circumstantial evidence in this regard.

The Paper Trail starts with the Memo and ends with the Payment Vouchers. Both parties are in agreement that the Payments were in regard to a State Function.

A careful look at the Memos would show that in each Memo specifically in **Paragraphs 3 for Exhibit O2 and O3**, and **Paragraph 4 for Exhibit O1**, that it states thus *"Your Excellency may wish to Approve and Direct Ministry of Finance to release Funds to Permanent Secretary, Government House to arrange"*.

Also on all the Three Memos, is the Defendant's Minutes to the "HC (F)" presumably the Hon. Commissioner for Finance, to "pay", showing that he has given his Approval to the Commissioner of Finance to go ahead to pay the Permanent Secretary the Specific Sums stated in the Memos.

From the evidence of both Mr. Nev and the Defendant, this is the Normal Payment Procedure for State Projects. However, the Court notes that the Signature or Minute of the Commissioner of Finance is nowhere to be found anywhere on the Three Memos in **Exhibit 01, 02 and 03**. They all have the Permanent Secretary's Request for a Directive to be issued to the Ministry of Finance, but none of the Memos, on the face of it, showed that it was treated by the Ministry of Finance, or seen by the Commissioner of Finance. The Minutes and Signatures of either the Commissioner of Finance or the Permanent Secretary, Ministry of Finance are absent on these Documents. Yet, both Mr. Nev and Defendant have maintained that the Funds were released.

The Question therefore to be asked is, how was the Funds released to the Permanent Secretary Government House without the Commissioner of Finance's Approval for Payment? It can be seen clearly from **Exhibits 01, 02 and 03** that the Directive to Pay was given directly to the Honourable Commissioner of Finance.

By logical deduction, this was a direct instruction from the Number One Citizen of the State, and was an Order that must be obeyed. Therefore, these Memos ought to have been conveyed to the exact Person that was directed by the Defendant, and so could not have been taken to any other Person, say the Hon. Commissioner for Health or Works. However, there is no indication on any of these Memos that they were so taken to Alhaji Tutare, the Commissioner of Finance.

From his Testimony in his Statement and before the Court, Alhaji Tutare, the Commissioner for Finance denied any knowledge of these Memos, and denied participating in the Payment Process for the Presidential Visit.

Mr. Dennis Nev in his Evidence in Chief had stated that when he presented the Memos to the Governor, that is, the Defendant, they were approved and the Commissioner of Finance was directed to release the Funds to him, **which he did by Cheque**, covering the amount approved. He then lodged the Cheque into his Department's Account, and a Cheque was raised from there. Again, there was no evidence presented before the Court of these Cheques.

All these Instructions were Unwritten Instructions with no Records but they were still authentic. He was familiar with the Civil Service Financial Rules and Regulations and knew that Monies had to be vouched for, with the Payee Signing for it, and the Accountant, who prepared the Voucher also had to sign the Voucher, as well as himself.

These above referenced Sequence of Events and Validating Signatures were blatantly absent from the face of the Payment Vouchers, and it was expected that there be Records of the Receipt of the Monies by Mr. Nev, and the Receipt of the Monies by the Governor, but again, these were absent from the Payment Vouchers and any other Documentary Exhibits.

The Defendant had stated that the Administrative Processes depended on the Permanent Secretary, and according to him, he did not know whether the Commissioner for Finance minuted and acted on his Instruction to pay and also, did not know when Nev collected the Monies.

However, it is uncontroverted that these Sums of Monies were received and expended from Government Funds, and therefore the Question remains, which Official carried out the Governor's Instructions. Since the Protocol determined that the Honourable Commissioner of Finance would direct the

Accountant General to pay, then evidence of this direction should have been apparent on the face of the Memo, or at best, on the Payment Voucher.

This means that the Records of Payment of the Cheques to the Permanent Secretary would have been evident, and the Accountant from the Accountant General's Office would have signed the Payment Vouchers.

From Documentary Evidence, it appears that the Hon. Commissioner of Finance was bypassed in the Processing of these Funds, and if by Protocol, he was to direct the Accountant General to pay, then it could only postulate one of these two facts; either the instructions were passed by Mr. Dennis Nev directly to the Accountant, or the Defendant as Governor, directly passed the instruction to the Accountant. From all other Memos and Vouchers before the Court, it was customary to see the Confirmation and Signature of the Commissioner of Finance as well as the evidence of the Cheque (s) for a particular transaction. This was a Rare Occurrence!!!

According to Mr. Nev, the Payment Vouchers serve as Authority to the Payee to collect the Funds, but a careful perusal of each Payment Voucher in **Exhibits 01, 02 and 03**, show that the **NAME** and **DESIGNATION** of the Payee and Collector of these Funds were conspicuously absent from the Memos, making the recipient of the Funds anonymous. It was only a Signature seen in that Column, and it did not say to whom it belonged. This was an irregularity of Government Procedure, and a Breach of Due Process, as well as undoubtedly, a Breach of the Financial Instructions of Taraba State.

The Defendant, under Cross Examination disagreed with the Prosecution that he put pressure on Mr. Nev to sideline the Administrative/Due Process of going through the Ministry of Finance, through the Commissioner of Finance, and to have the Monies released to Mr. Nev. He maintained that since the Memos were signed, Due Process was meant to be followed.

According to him, Government Funds are meant for Government Purposes and once the Money is released, it has to be accounted for. Monies for any Project, if received by the Accountant, must be signed by the Accountant that he received the Funds, and if he or she is disbursing the Funds, the Recipient of the Money has to sign on receiving the Cash. This is for accounting purposes, and as far as Government Funds are concerned, there is no exception to the non-signing, as every Recipient must sign before receiving the Funds.

It is clear that by Government Process and by the Financial Rules and Regulations of a State, which was ably set out by Mr. Dennis Nev while testifying in Chief, Departments after utilising assigned Funds, do account for the Monies to justify the Assignment or the Jobs they undertook. Retirement of the Funds is to show that they were judiciously used for the intended purpose. The Due Process Office, which is a Separate Office, scrutinises the Documents submitted to ascertain the fairness and correctness of the work done.

From the Records, the Handing Over of the Monies ought to have been documented by the Person who gave it, and the Person who received it, upon completion of the task or job, ought to have retired the Funds. Evidence of Retirement of the Funds was not done and/or produced before the Court. Therefore, an Audit Query by the Accountant General or Auditor General ought to have been issued, since there were no Receipts or Recipients.

The Defendant had testified that ultimately such a Query would come to his table. He was then questioned whether there was any Audit Query raised in regard to the Presidential Visit and he responded that the Audit Queries had steps, which would go from the Accountant or the Auditor General, within the Ministry of Finance from where the Query emanated, and if the Query was not satisfactorily answered, his attention would be drawn. He was referred to his Statement that no Documents were handed to him at the EFCC. He was not told of any Audit Queries and presumed there was nothing to query about.

As regards the Vouchers, the Court notes that on the date the Memos were approved and the Payment Vouchers were issued out, which all occurred on the 11th of April 2007, it was strangely stated in the Payment Vouchers and Certified by Mr. Paul Yani CPA, (the Accountant) that: -

“I, Certify that the Services/Goods have been duly performed/received, that Financial Authority GH/07 is held to incur this Expenditure and that the relevant D.V.E. Account Entries have been made.”

This Certification implies that the Services/Goods were performed and already delivered, which by the logical sequence of events, was a near impossibility at the time the Cash were released. All the Defendant had to say in this regard, was that he would not be surprised because it is purely an Administrative Function he was not privy to.

Further, the Bank Statements of the Government House Account from where the Funds were released was not furnished in Court. However, the fact that the Defendant did not categorically deny that the Money was not released, did not make the Bank Statement a contention to be resolved. Had he denied that the Money was not released, then the Bank Statement would have come into contention.

The next sequence of events to be considered is the Physical Custody of the Monies. Mr. Dennis Nev, in both his Extra-Judicial Statement before the EFCC and this Court, had consistently maintained the point, that he took the Monies into the Governor’s Office in Ghana-Must-Go Bags, and gave the Monies to the Governor, thereby ending the Role he played in this Transaction. He had also been given the Funds in Cash by Mr. Paul Yani in his own Office and then in company of Mr. Paul Yani, had delivered the Cash to the Defendant in person.

The Defendant, on the other hand, had denied the receipt of the Cash delivered by Mr. Nev to his Office. Learned Counsel to the Defendant had extensively questioned Mr. Nev on the description of the Governor’s Office,

the Personnel, the Routine and Procedure for an audience with the Governor. Throughout these questionings, Mr. Nev maintained his stance that he indeed delivered the said Sums in the manner he described before the Court.

This Contrasting Piece of Evidence could only be validated by Mr. Paul Yani, the Accountant, Mr. Philip Akolo, the Orderly to the Governor, Mr. Adamu Aboki, the Defendant's Chief Detail and any Protocol or Administrative Staff, working in the Governor's Office. The Court was informed that Mr. Paul Yani was dead, and the only way to get his own version of events, was to visit the Heavenlies, which trip, both the Prosecuting Silk and Learned Counsel for the Defence, were not willing to make.

The next possible Eye Witness is Mr. Philip Akolo, who testified that on the day in question, he had seen Mr. Dennis Nev visit the Defendant as Governor, BUT, he only saw him with Files. He narrated the arrangement of the Governor's Office, as well as the Procedure for receiving Non-Governmental Officials and Government Officials. For the Commissioners, Permanent Secretaries and Directors, the Aide-De-Camp (ADC), he writes their Names and takes it to the Governor, who would give him a List, instructing him on the order of how he would like to see them. Even in exceptional cases where the Governor requests an audience with a particular Commissioner, both the ADC and himself, would still be involved.

Under Cross-Examination, he stated that on the Eve of the Presidential Visit, he was with the Defendant and saw so many Prominent Officials in his company, but could not recall all of them. He saw Mr. Nev there in the company of Mr. Joel, the Accountant, and another Accountant who is now Late.

Philip Akolo's evidence goes to corroborate the fact that Mr. Nev and Rev. Jolly Nyame, were in close proximity, and saw each other, and also that the Late Mr. Paul Yani was also present on the 11th of April 2007. Philip Akolo testified that he only saw Mr. Dennis Nev with Files, but stopped short of

stating that the Files were encased in Ghana-Must-Go Bags, thereby still leaving the doubt unresolved.

The point is this, whether Mr. Dennis Nev knew the direction to the Office of the Governor, or whether he knew the colour of the furniture, or how many flower pots were by the door of the Governor's Office, or how many flower pots were by the entrance to the Government House, or how many pictures were on the wall, or how many people were seated in the Governor's Reception Room, as the Defence sought to know under an extensive Cross-Examination, the issue is, Mr. Dennis Nev and the Late Paul Yani were located within the vicinity of Rev. Jolly Nyame and his Office.

The next possible Eye Witness is Mr. Adamu Aboki, the Chief Detail, who despite attempts to summon him to testify before the Court, could not be located by the Prosecution. In this instance, the interest to secure his attendance before the Court and to validate one position or the other was a shared interest, and the responsibility fell on both sides of the divide. It had to be that particular side that needed validation of their own contention that should have taken the extra mile to produce him before the Court. This same deduction applies to the Protocol and Administrative Officers.

It is pertinent to recall the fact that Rev. Jolly Nyame, when referred to the evidence of Mr. Dennis Nev to the effect that he gave him the Total Sum of One Hundred and One Million Naira, confirmed that he received only the Ten Million Naira (N10, 000, 000.00) allocated for "His Excellency's Dispensation". The question then has to be asked, where and who received this Sum of Money? Was it the Defendant personally? Or did his Orderly, Mr. Philip Akolo, receive it on his behalf? It is in evidence that Mr. Akolo denied receiving any huge amount of Money for the Defendant, and when the Defendant was confronted with this fact, during his Cross-Examination, he stated that he did not know that.

Another way of confirming who actually possessed and disbursed the One Hundred and One Million Naira would be the Testimony of any Member

from the Two Committees; the Security and Logistics Committees, said to have been in charge of the arrangements. If Mr. Dennis Nev said there were no Committees, but the Defendant maintained that he actually saw the List of the Members of both Committees, the confirmation of Cash Payments could only have come from he who saw the List.

The Mystery here, is that Nev said “there were no Committees but the Monies were disbursed directly to Rev. Jolly Nyame”, but Rev. Jolly Nyame said “there were no disbursements to me, but I saw the list of the two Committees Members coordinated by Nev, who gave the Monies to the Security and Logistics Committee Members. It is clear that he, who ascertains a certain state of affairs, has the evidential burden to prove it. Therefore, the Defendant who claimed he saw a List of Committee Members who carried out Security and Logistic Activities, and who was paid, had to establish these assertions on a preponderance of evidence.

The next Issue for determination has to be Practicability of the Execution of Projects and Activities described in the Three Memos dated the 11th of April 2007.

According to the Defendant, the information that the President of the Federal Republic of Nigeria was coming to Taraba State on the 12th of April 2007, was communicated to him via Telephone late on the 10th of April 2007 by the then Chief of Staff of the President. He therefore could not react until the next day.

From this fact, it meant that by the time the Defendant received the Information of the Visit, he had only One Day to prepare for the Visit. The question to be asked here is, what Practical Preparations could possibly be made for a State Visit with One Day Notice, if he only got the Information on the 10th of April 2007, and what end could have been achieved by the Short Notice? He had only One Day!!!

Reverend Jolly Nyame, under Cross-Examination stated that the Monies were spent on what they were meant for, implying that the Court should consider the contents and activities contained in **Exhibits 01, 02 and 03** as Gospel Truth. Therefore, each Memo would be considered thoroughly.

It is expected that the President's Scheduled Visit would have been communicated at least a week prior to the 12th of April 2007, otherwise the Presidential Advance Team of Security and Protocol would not have arrived Jalingo before the President. The Defendant had testified that the Presidential Advance Team were taken around Jalingo by the Committee Members to inspect the ground preparations and were even given allowances. This dispels the Statement that they only got wind of the President's Intended Visit on the 10th of April 2007. If the Notice of the Visit had been short, then the Advance Team could not have expected to see much in terms of preparations within 24 to 48 hours. However, for the moment, the Court will proceed with the Defendant's version of what happened on, and during the Presidential Visit.

The First Memo, was the Request to Approve Funds for Security Arrangements in the Sum of Ten Million Naira (N10, 000, 000.00); the Provision for General Facelift, Sanitation and Civil Works in the Sum of Fifteen Million Naira (N15, 000, 000.00); and Vehicle Maintenance, Overhauling of Generating Sets/Equipment in the Sum of Seven Million, Three Hundred Thousand Naira (N7, 300, 000.00), all totalling the Sum of Thirty Two Million, Three Hundred Thousand Naira (N32, 300, 000.00).

On the Question of Security, the Sum of Ten Million Naira (N10, 000, 000.00) was allotted and this figure appears to be on a high side for a One Day Visit. It is expected that when the President as Commander in Chief of the Armed Forces intends to visit a particular area, all Forces of the Nigeria Army, Navy, Air Force, the State Security Services, the Nigerian Police Force, Civil Defence etc., are all alerted to provide Security. It is expected that provision for his Security would have also been made from Abuja. It is unclear whether Tanks, Helicopters or other Military Equipment to be utilized have to be paid for by

Taraba State Government, but the point is, the Figure still appears on the High Side.

Unless it is shown that Mercenaries or Hired Private Security Agents were hired, and even then how quickly could they have been assembled in or to Taraba State.

As regards the General Facelift and Sanitation Works, the Sum of Fifteen Million Naira (N15, 000, 000.00) was provided. The Defendant had stated that he had no idea what would actually be done, but the purpose of the Facelift was to beautify and Prop-Up the Image of the State in the Areas the President would visit.

The General Facelift, Sanitation and Civil Works could only be carried out once the Money allocated was released to the purported Committees or Departments, and the Works would have had to be completed before the 12th April 2007, the Day of the President's Arrival to Taraba State.

From the Documentary Exhibits before the Court, the **Exhibit O1** and the attached **Payment Voucher**, the Approval and Payment Process were conducted on the 11th of April 2007. The Time Factor is therefore a very Strong Factor, and it is not known what time of the Day the Money was released, relevant Ministries mobilized, and/or when Contractors were engaged. They literally had less than 24 hours to do whatever Face Lift, Sanitation and Civil Works, and that would have been an uphill task to initially identify the Areas of Concern, then mobilize Labour Force and procure Materials, such as Paints, Cleaning Agents etc.

Now, assuming Sanitation could be achieved, the inclusion of Civil Works and General Facelift appears rather Time Consuming, and the Court recalls the Administrative Processes to obtain the Funds in the first place. A Member of these Committees, if they existed, was expected to testify before the Court on how they achieved this Extraordinary Feat. Their Accomplishment and Master Stroke would have served as an example to every other State in the Federation, once they revealed how they achieved the Task.

The Final Activity in **Exhibit O1** was that of Vehicle Maintenance, Overhauling of Generating Sets/Equipment for the Sum of Seven Million, Three Hundred Thousand Naira (N7, 300, 000.00) only, and again the reasoning is the same as above. The Time Factor calls into question the Reality and Reasonableness of carrying out this Task. The Numbers of Vehicles, Generators and Equipment were not stated, and it is difficult to imagine how these tasks were carried out in at best, 20 hours of the 11th of April 2007, because they would not want the President to see them at work. Then of course, the Presidential Advance Team were stated to have inspected the preparations and it is highly unlikely that they would have inspected on the 12th of April 2007, because they needed to give the Presidency a Feedback on the readiness of Taraba State to receive the President. So, when did they inspect? Was it during the carrying out of the Facelift or Civil Works? It just does not add up.

The Defendant had stated that there was provision for Vehicle Maintenance and Overhauling, and the sum of Seven Million, Three Hundred Thousand Naira (N7, 300, 000.00) was assigned, with Money released. The Defendant during Cross-Examination stated that it was not up to him to determine the nature of the Works. All he could say was that the Money was Approved and Executed for the Project, because even the Permanent Secretary said the Visit was Successful.

Now, the questions to be asked are whether the Maintenance and Overhauling of the Government Cars and Convoy Vehicles were serviced throughout the Day, even on the assumption that the fuelling of the Cars could be done in an hour, or two, and as regards the servicing of the Generating Sets, how many Generators would need to operate to cater for a One Day Visit? It all just does not tally.

From **Exhibit O1**, it is clear that these allocated Funds needed to have been Retired, with Records to show for it. The Cheque issued, Invoices and Receipts from the Contractors engaged in the provision of Materials and

Service Fees ought to have been on Record, but there were no Records. For this Memo, the Procedural Steps were not followed. **DW3**, Aminu Ayuba, then Accountant in Salaries Office, Government House, and now Acting Accountant General of Taraba State, had stated that there were no exceptions to the Acknowledgment of any Payment and where a Payee refuses to sign, he must return the Funds. He stated that it was the Duty of the Permanent Secretary and the Maintenance Department to manage the Maintenance of Cars and Generators, as well as Sanitation and Civil Works. When shown the Memos, he could not see any sign of Post-Auditing done.

If the narration by **DW3** is to be believed, and if the contention by the Defendant that Mr. Nev handled the Committees in these respects is also true, then Mr. Nev is in the best position to explain how these Funds were entrusted and expended. BUT, Mr. Nev has consistently maintained that he did not perform any act or activities regarding the Presidential Visit, except to take the Funds to the Governor. He was not aware of any Committee. Therefore, the Party who states that there were Committees and that he saw the List of the Committee Members had the Burden of Proof to challenge Mr. Nev, since he is asserting the Positive of this assertion. No, Validating Witness was called to testify and No Documentary Exhibits exist to justify these activities.

By the narration of the Defendant before the Court and from his Extra-Judicial Statement, the events in **Exhibit 03** occurred before the events in **Exhibit 02**, and therefore **Exhibit 03** is sharply in focus.

Exhibit 03 sought the Approval of the Defendant as Governor for the following: -

1. His Excellency's Dispensation in the Sum of **Ten Million Naira** (N10, 000, 000.00)
2. Fuelling of Generating Sets/Vehicles for Convoy & Guest to Gembu and other Towns in the Sum of **Eight Million, Five Hundred Thousand Naira** (N8, 500, 000.00)

3. Feeding of Guest, Entertainment, Cultural Groups/Gala-Nite Dinner in the Sum of **Nine Million, Three Hundred Thousand Naira** (N9, 300, 000.00)
4. Duty Tour Allowance for Staff and Logistics in the Sum of **Three Million, Eight Hundred and Fifty-Thousand Naira** (N3, 850, 000.00)
5. Chartering of Air Craft in the Sum of **Six Million, Two Hundred and Fifty Thousand Naira** (N6, 250, 000.00)
6. Provision for First Aide & Ambulance Services in the Sum of **One Million, Five Hundred Thousand Naira** (N1, 500, 000.00)
7. Mobilization/Enlightenment N.G.O in the Sum of **Three Million Three Hundred and Fifty Thousand Naira** (N3, 350, 000.)

Totalling the Sum of **Forty Two Million Naira**

When the Defendant was questioned under Cross-Examination, he responded that he gave the Approval of the Additional Forty Two Million Naira (N42, 000, 000.00) via a Memo in Jalingo.

From his Statement in **Exhibit Z5**, the Defendant stated inter alia that: -

“...the First Approval of Thirty Two Million Three Hundred Thousand Naira was first approved thinking the Visit was only taking place in Jalingo; but when we were told it will be on Site, Mambilla Plateau we had to approve an additional Forty Two Million Naira to take charge of Security and Logistics”.

Now, the First Item on the List was His Excellency's Dispensation for the Sum of Ten Million Naira (N10, 000, 000). The Defendant under Cross-Examination admitted collecting this Sum of Money from Mr. Dennis Nev, but only through his Orderly, Mr. Philip Akolo. Mr. Philip Akolo on his own part testified that he never collected any Huge Sum of Money for the Defendant, but only collected his Duty Tour Allowances and Entitlements. It is not clear what Mr. Akolo's perception of what he meant by 'Huge' Sums of Money, but it is clear that he could collect the Defendant's Entitlements.

The Breakdown of what he was supposed to dispense was not stated. The Court is being told that for Twenty Four (24) hours, the Defendant was to

have the Sum of Ten Million Naira (N10, 000, 000.00) at his Personal Disposal, and the Court cannot conjecture what he would have used the Money for, especially for a Twenty Four (24) Hour Activity. Assuming the Visit was for Two to Five Days, the Amount at his Personal Dispensation would have been staggering. The Sum of Ten Million Naira in Year 2007 is not equivalent to the same Sum in Year 2018. The Court is aware of **ExhibitAA2**, the Taraba State Civil Servant's Payroll for the Governor, and notes that as at April 2007, his Monthly Salary was Four Hundred and Fifteen Thousand, Eight Hundred and Fifty Seven Naira, Thirty Six Kobo (N415, 857.36), a Figure under a Quarter of a Million Naira. This indeed is Food For Thought.

As regards Fuelling of Generating Sets/Vehicles for Convoy & Guest to Gembu and other Towns, the Sum of Eight Million, Five Hundred Thousand Naira (N8, 500, 000.00) was allocated. This expense was said to be after he became aware that the President was flying straight to the Project Site. If the Defendant had stated that Fuelling of Vehicles and the Generating Sets were for the Vehicles and Generating Sets in Mambila Plateau, then perhaps that would have been understandable. A careful look at **Exhibits 01 and 03** would show that the Activities for the Vehicles and Generating Sets were almost similar. In **Exhibit 01**, it was for **Maintenance** of the Vehicles and **Overhauling** of the Generating Sets, whilst in **Exhibit 03** it was for the **FUELLING** of the Vehicles and Generating Sets. These items could easily have been accommodated under one Memo. The Court curiously observes that the Fuelling of these Vehicles and Generating Sets was to convey the Convoy and Guests to Gembu and other Towns, and did not involve the Vehicles and Generators at the Project Site. Even if the Convoy was a Hundred Cars long, and the Generating Sets were up to a Hundred, it is ridiculous that the cost amounted to Eight Million, Five Hundred Thousand Naira Only (N8, 500, 000.00)

These expenses were Government Expenses and it is expected, that Invoices and Receipts were furnished to the Office of the Ministry of Finance for the Retirement of Funds. But no such evidence was furnished and the payment

of these Sums, contravened the Financial Regulations of Taraba State Government as aptly set out by **DW1 and DW3**, both Accountants working in Strategic Ministries/Departments of Taraba State Government. There was certainly no Accountability of Governance. It can be seen that Mr. Dennis Nev, dissociated himself and his Department, the Government House, from these Payments and maintained that he knew nothing of these Expenditures and nothing of the Committees.

Therefore, the Defendant who saw the List of the Security and Logistics Committee Members, ought to have summoned in his Defence at least One Member to disprove Mr. Nev's denials and ought to have called any of the Contractors and Suppliers of Fuel to Validate the Sum of Eight Million, Five Hundred Thousand Naira Only (N8, 500, 000.00).

As regards the Feeding of Guests, Entertainment, Cultural Groups/Gala Night Dinner, the Sum of Nine Million, Three Hundred Thousand Naira (N9, 300, 000.00) was allocated for the activity of the day. It was expected, that there ought to have been tendered Invoices, Receipts, Programmes, Invitations and such like, to vindicate the claim that such a Huge Amount was spent for One day Activity. Yet again, as with the Fuelling and Maintenance of Vehicles, Government Procedures were not followed and there was no evidence of the Retirement of these Funds.

The Subsequent Items were the Duty Tour Allowance for Staff and Logistics in the Sum of Three Million, Eight Hundred and Fifty Thousand Naira (N3, 850, 000.00); Chartering of Aircraft in the Sum of Six Million, Two Hundred and Fifty Thousand Naira (N6, 250, 000.00); the Provision for First Aid and Ambulance Services in the Sum of One Million, Five Hundred Thousand Naira (N1, 500, 000.00) and finally, the Mobilization/ Enlightenment N.G.O was in the Sum of Three Million, Three Hundred and Fifty Thousand Naira (N3, 350, 000.00) all followed the same pattern of Non-Compliance with established Government Procedure, Non-Retirement and there was Non-Accountability for the Funds received. All these Funds totalled the Sum of Forty Two Million Naira (N42, 000, 000.00) received by an Unnamed Payee, who did not furnish any Invoices, Receipts, and Acknowledgement Registers

for Receipt of Duty Tour Allowances. Talking of the Aircraft, this expense was for a Receivable Service and definitely there had to be Documentation but none was produced.

The Third and Final Memo in **Exhibit O2**, sought for the Approval for Provisions for Publicity, Print, Electronic Media Life Coverage and News in the Sum of Seventeen Million Naira (N17, 000, 000.00), as well as Souvenirs/Honorarium in the Sum of Ten Million Naira (N10, 000, 000.00), totalling the Sum of Twenty Seven Million Naira (N27, 000, 000.00)

The Defendant in his Evidence in Chief stated that in anticipation of the President's Visit, it was imperative for them to make proper Security Arrangement, Publicity, Logistics for Visitors and Prominent Persons, as well as Honorarium. He explained that the giving of Honorarium is common in this kind of Event because the State Government is expected to show appreciation to the Invitees, such as the Emirs, Chiefs and the Entourage that came with the President.

Under Cross-Examination, the Defendant was referred to the last portion of his Third Statement in **Exhibit Z5**, which read inter alia, ***"...whilst on Site realised we needed to do more to get the complete attention of the Indigenes, I had to request an additional Twenty Seven Million Naira to cater for other other (sic) expenses"***.

By the above Extract of his Statement, it can be seen that the Defendant was present at the Site, presumably at Mambila Plateau when he realised this need. It is also clear that he granted the Approval for the Sum of Twenty Seven Million Naira (N27, 000, 000.00). The question to be asked therefore is, when did he get to the Site? How realistic was it that the Defendant got a call late on the 10th of April 2007, by the President's own Chief of Staff, who had notified him that the President would be visiting the State but was not told of the Actual Destination of Mr. President less than 48 hours from the President's Departure!!!

It is not known the exact location the President's Advance Party Team visited, whether it was at Jalingo or Mambila Plateau.

When questioned as to where in the Memo in **Exhibit O2**, the Provision to take care of the Indigenes was contained and where he wrote that he needed to do more and then approved the additional Third Memo, he answered that all these were not stated in the Memo.

The Defendant had stated that on the 11th of April 2007, he was flying back and forth from Jalingo to Gembu and so he could pretty much have signed the Memo in any of these two locations, but he did not state that Mr. Nev and the rest of the Administrative Team were also flying back and forth and so the presumption has to be that the Memo was signed in Jalingo. However Time Factor in achieving this feat is still in question, since he stated that the Factors that influenced the Approval for this Memo was discovered on Site, presumably in Mambila Plateau/Gembu.

From all the available evidence, the Money was approved and processed on the 11th of April 2007. At some point, the Money was withdrawn from the Government Account and provided to Mr. Nev and from then on, the story deviates depending on who is telling it. Mr. Nev admitted receiving the Monies in Cash from the Accountant and giving it to the Defendant, whereas, the Defendant denied receiving the Money and instead stated that it was Mr. Nev and some co-opted Members who were in charge of the dispensation, and all this happened on the 11th of April 2007.

From the Defendant's narration it appears that the Memos were written, and Monies withdrawn at different times in One Day, as the need arose. From his evidence, the initial Sum in **Exhibit O1** was to provide for Jalingo, and when he discovered a change of direction, he made provisions for Gembu/Mambila. This logically means that the Memos were written at different Stages and Times. This second time around, after obtaining the Forty Two Million Naira (N42, 000, 000.00), he then flew by Helicopter to the Site and on getting there, remembered the Local Community. The logical sequence by his narration, has to be that he hopped back on the Helicopter

to Jalingo to Approve the Memo in **Exhibit O2**, whereupon, the whole Administrative Exercise of Processing the Payment would have been conducted. There is also the fact that Mr. Nev, testified that he obtained Cheques of these various Sums of Monies from the Commissioner of Finance Taraba State and this presumes that a 'Third Party' HAD to be involved in the Financial Process.

The Third Party had to be the Bank/s and their Operational Processes, for which neither the Defendant nor Taraba State Government had any control over. What then are the odds that in a Few Hours and for the Third Time on the 11th of April 2007, the Money was received in sufficient time to ensure the execution of the Projects listed in that Memo. The Memo had to be Written and Approved, the Commissioner of Finance had to issue a Cheque to the Government House, which Cheque would then have to be paid into the Government House Account, and cleared, and then withdrawn, in Cash, and then disbursed.

Because it was important to get the "complete attention" of the Indigenes, it is reasonable to expect that he would seek to get their immediate attention, at least before the President arrived on the 12th April 2007, lest he risked sharing the Money to the Indigenes on the day of the Visit. So, at some point in the day, certainly not during the Morning Hours, a flight had to be made back to the Site.

On the question of Honorarium there must be Signatures on Record, as every Government Expenditure even Allowance or Honorarium must be signed for, or ticked against a General Record from the State. It cannot be acknowledged on an ordinary Exercise Book but a recognisable Government Acknowledgment Register. The responsibility to produce this Register had to be the person who says Honorarium was given out. That Person is Reverend Jolly Nyame. There are however no Records of Government evidencing the fact that any Honorarium was given.

Also, they had to make arrangements for the Special Invitees, Chiefs and Emirs. It is noted that there is no indication in **Exhibit O2** that included this category of Expenditure, except it is classified under Honorarium. It was expected that either the Acknowledgment Register or Receipts from those Emirs and Chiefs be produced before the Court, because it is Government Expenditure that needed to be retired. Any one of the Emirs or Chiefs could have been called as a Witness to testify as to the Sum of Money he received. The only Agency who could have known who they were was the Protocol Unit, if ever they were involved.

The Defendant had authorised Payments for Publicity through the Print and Electronic Media, Life Coverage News, when he was informed on the 11th of April 2007 that the President was coming to the State the next Day, The Executing Agencies would invariably involve the Printing Press and Electronic Media. The question to be asked here, is what would have been the logistics involved and the likelihood of the Media House collecting Money, paying and then rolling out the Print in the Morning, because the President would be arriving in the Morning of the 12th of April 2007.

The more important and complex Expenditure is that regarding the Press. Even if the Defendant on the 10th of April 2007, was to Summon the Head of Taraba State Television Corporation, minutes after being notified of the visit and instructs him to Publicise that the President was coming to Mambila or Taraba, and had deferred Payment till the 11th of April 2007, it still has not changed the fact that the authorisation of the Press to print or announce was a Formal Act of Government using Government Funds and therefore, there must be evidence on Record to show that the Television House or the Radio Station were contacted by Telephone or through Writing of their Engagement, but no Evidence was furnished to the Court. These kinds of Huge Contracts or Expense in the Sum of Seventeen Million Naira (N17, 000, 000.00) cannot be done by Air.

There are certain Items that must have Invoices, and/or Receipts and there are certain categories of Artisans that would issue out Invoices, but yet

again, there is no evidence of these before the Court. If souvenirs were bought as stated, then it is expected that the evidence of the items bought should have been furnished to the Accounts Office to retire the Funds and evidence of these should also have been tendered before the Court.

All in all, the Court finds that from the Evidence of the Witnesses in this regard, the President actually Visited Taraba State on the 12th of April 2007, and the Visit was said to be successful. The Success or otherwise of the Visit has little or nothing to do with the Expenditure of the State's Funds and the Accountability expected from its Chief Executive.

It is utterly ridiculous that the Sum of One Hundred, and One Million Naira (N101, 000, 000.00) was expended for the Visit of One Man for a One Day Event. What if the Visit was to extend for Three Days? This is a valid question to be asked, as in One Day the Defendant Approved the Entire Budget appropriated to the Taraba State Government House for One Year, and even exceeded it by One Million Naira (N1, 000, 000.00). The Evidence remained unchallenged that for any Excess Funds over the Budgetary Allocation for a given Year, any Department/Agency of Government, had to apply to the State House of Assembly for a Supplementary Budget to be passed. There was no Evidence that this was done.

The Court recollects the Contradictory Statements made by the Defendant as regards the when and where the Memos were made. The Defendant attributed this inconsistency to the conditions in which his Statement was written and then told the Court that he would not stand by his Statement.

It is also clear that Money from the State has to come from either the Commissioner for Finance in the Ministry of Finance, or from the Office of the Accountant General of the State. Going by the Date on the Petition, the 12th of June 2006 admitted as **Exhibit B**, written by **PW1**, Hauwa Kulu Usman, it is clear that by the Dates of the Approvals of the Memos on the 11th of April 2007 in **Exhibits 01, 02 and 03**, both the Defendant and the Commissioner of Finance were already under EFCC Investigation. In fact, as far back as 2005, Alhaji Tutare, the Commissioner of Finance had written

Statements on the issues of Stationeries and Gratification. Therefore, it is very likely that Alhaji Tutare would not want to put his Signature on any Document. His Statement writing was ongoing until the 12th of July 2007.

In the face of stark irreconcilable and conflicting evidence, from both the Defendant and his Permanent Secretary in charge of Government House, the Documentary Paper Trail becomes the crucial validation for one side or the other. Crucial Documentary Evidence Missing from the Issue of the Presidential Visit, include: 1) The Signature of the Commissioner of Finance, approving the payment on the face of the Memo. 2) The absence of the Name of the Payee on the Payment Voucher. 3) Invoices and Receipts of Payments made to the Contractors. 4) Acknowledgment Registers. 5) Evidence of Retirement of Funds. 6) List of Committee Members and 7) The Cheques of Payment.

It is clear that it was Government Funds, which necessitated Government Function and was for a State Government Occasion, albeit that the Contract was directly between the Federal Government and a Chinese Company, for which Taraba State Government had no input. There was therefore a great need for Due Process, Accountability and Probity. There was a bypass of the Process to Procure a Supplementary Bill, and all Relevant Offices, Departments, and Officials were sidelined. It remained clear that it was the Secretary to the State Government that had the responsibility to Coordinate and Execute the Activities as well as receive Guests for that Day. The Defendant has stated that Mr. Ayuba Zaku was the Secretary to the State Government at this time, and it was expected that his Name featured prominently in the Execution of the Memos. In actual fact, the Memos ought to have been raised initially from the Office of the Secretary of the State Government. The Defendant had mentioned that Mr. Zaku was the Chairman of the Planning Committee, but there was no evidence of this before the Court.

As much as the Governor can assign roles to anyone, the simple fact remains that the Governor cannot assign outside the Rules and Regulation under

which he is to govern. If the Normal Process was through the Office of the Secretary to the State Government, then he could not go outside that Process.

Time Factor played a crucial part in showing how impracticable some of those activities were, and there was no satisfactory explanation on that. Under Cross-Examination, the Defendant stated that he did not ask Mr. Nev to return Thirty Two Million, Three Hundred Thousand Naira (N32, 300, 000.00) released for the Hosting of Mr. President in Jalingo.

There were Clear Breaches of Trust under these Counts. The Defendant had the Duty to notify or engage the Correct Offices or Officers, and in summoning Mr. Nev, the Permanent Secretary of Government House instead of the Secretary to the State Government, the First Breach was committed.

There was also a Clear Breach of Trust by the way Funds were utilized and disposed off. There was no Accountability of the Monies Expended and there were no Retirement of the Funds or Audit Queries issued.

Misappropriation under the Offence of Criminal Breach of Trust does not equate to Conversion to one's Use. The lack of Adequate Documentation, the fact of the Impracticability and the Non-accountability injects a Dishonest Element to this Breach of Trust. The Element of Disposal is one of the Modes under Criminal Breach of Trust, and any Disposal of Government Funds contrary to the Financial Rules and Regulations of the State constitutes Criminal Breach of Trust.

The Defendant is the Chief Custodian and Executor of all Government Funds, and he is to Direct the Expenditure in Compliance with the Laws under which he governs. At the Time he approved the Memos in **Exhibits 01, 02 and 03**, he ought to have known that these Huge Expenses for a One Day Visit, with a One Day Notice was absurd and extreme to say the least.

From the above Analysis, the Court is satisfied that as regards the Offences in **Counts 10, 12 and 14**, the Prosecution has satisfied the Court that the Defendant committed Criminal Breach of Trust Beyond Reasonable Doubt.

Therefore as regards **Count 10** for the Sum of Twenty Seven Million Naira (N27, 000, 000.00) he is found to have committed Criminal Breach of Trust, whilst entrusted with this Fund, in the manner of Misappropriation, Use and Disposal of the Fund.

As regards **Count 12** for the Sum of Thirty Two Million, Three Hundred Thousand Naira (N32, 300, 000.00) he is found to have committed Criminal Breach of Trust, whilst entrusted with this Fund, in the manner of Misappropriation, Use and Disposal of the Fund.

As regards **Count 14** for the Sum of Forty Two Million Naira (N42, 000, 000.00) he is found to have committed Criminal Breach of Trust, whilst entrusted with this Fund, in the manner of Misappropriation, Use and Disposal of the Fund.

AS REGARDS THE TRANSACTION OF THE LIAISON OFFICE UNDER CRIMINAL BREACH OF TRUST: -

The Prosecution, has alleged under **Counts 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41** that Reverend Jolly Nyame while he was Governor of Taraba State, entrusted with dominion over the following Sums, committed Criminal Breach of Trust in respect of the Counts as set out as follows: -

- **Count 16**, the Sum of Fifteen Million Naira (N15, 000, 000.00) on the 18th of January 2007
- **Count 18**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00) on the 30th of January 2007

- **Count 20**, the Sum of Twenty Million Naira (N20, 000, 000.00) on the 19th of February 2007
- **Count 22**, the sum of Two Million Naira (N2, 000, 000.00) on the 7th March 2007
- **Count 24**, the Sum of Four Million Naira (N4, 000, 000.00) on the 24th of March 2007
- **Count 26**, the Sum of Six Million Naira (N6, 000, 000.00) on the 24th of March 2007
- **Count 27**, the Sum of Twenty Million Naira (N20, 000, 000.00) on the 30th of March 2007
- **Count 28**, the Sum of Nine Million, Four Hundred Thousand Naira (N9, 400, 000.00) on the 15th of December 2006
- **Count 29**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00) on the 8th of January 2007
- **Count 30**, the Sum of Twenty Million Naira (N20, 000, 000.00) on the 7th of May 2007
- **Count 31**, the Sum of Twenty Million Naira (N20, 000, 000.00) on the 27th of November 2006
- **Count 32**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00) on the 12th of November 2006
- **Count 33**, the Sum of Ten Million Naira (N10, 000, 000.00) on the 31st of October 2006
- **Count 34**, the Sum of Five Million Naira (N5, 000, 000.00) on the 13th of March 2006
- **Count 35**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00) on the 4th of May 2007
- **Count 36**, the Sum of Five Million Naira (N5, 000, 000.00) on the 16th of June 2006
- **Count 37**, the Sum of Five Million Naira (N5, 000, 000.00) on the 10th of October 2006
- **Count 38**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00) on the 26th of June 2006

- **Count 39**, the Sum of Thirty Million Naira (N30, 000, 000.00) on the 8th August 2006
- **Count 40**, the Sum of Three Million Naira (N3, 000, 000.00) on the 24th of August 2006
- **Count 41**, the Sum of Ten Million Naira (Ten Million Naira) on the 6th of May 2006

The Above Categorization of the Offences, the Amounts involved and their Respective Dates **ALL** relate to the Offences of Criminal Breach of Trust with regard to the Funds sent from Taraba State Government House to the Taraba State, **Abuja Liaison Office** of the **Taraba State Government**.

The Evidence led in respect of these Counts of Offences are derived from Specific Witnesses both called by the Prosecution and the Defence, and their Evidence across the Board will be set out collectively for a concentrated determination of whether the Prosecution was successful in establishing the Offences charged in these Counts beyond a reasonable doubt.

In his regard, the Prosecution Summoned Four Witnesses, who were: -

1. **PW3**, Mr. Olubunmi Ogunode, an Official of Zenith Bank Plc.;
2. **PW4**, Mr. Dennis Nev, the Permanent Secretary, Government House;
3. **PW5**, Mr. Japheth Wubon, the Permanent Secretary, Liaison Office, Abuja and
4. **PW8**, Mr. Abdulrahman Mohammed, the Accountant at the Liaison Office in Abuja.
5. **PW11**, Mr. Joel Andrew Gilenya, the Chief Accountant of Taraba State Government House

In Further Proof, the Prosecution tendered into Evidence the following Documentary Exhibits and they are as follows: -

- A. **Exhibit L**, the Zenith Bank Response Letter to the EFCC's Enquiry on the Bank Account of the Taraba State Liaison Office, Abuja dated the 30th of April 2010, which had two Annexure---tendered through PW4
- B. **Exhibit M**, Another Letter from Zenith Bank to the EFCC in regard to the 2nd Account dated the 2nd of June 2010, which had attached One Bulk Appendix---tendered through PW3.

- C. **Exhibits W1 to W14**, the Zenith Bank Cheques of Taraba State Liaison Office which was paid to Mr. Abdulrahman Mohammed---tendered through PW8
- D. **Exhibit Z6**, a Further Statement of Rev. Jolly Nyame dated the 11th day of July 2007---tendered through the PW8 and
- E. **Exhibit AA1-3**, Details of Salary/Allowances paid to the former Governor Rev. Jolly Nyame
- F. **Exhibit PP**, A Letter written by the Defendant to the Assistant Director, dated the 16th day of December 2005, which was copied to the Accountant General---tendered through the Defendant himself.
- G. **Exhibit UU**, Memo raised by Government House for Trip to South Africa by Dennis Nev dated 22nd of March 2005

The Defence, on their own part, summoned Four Witnesses to rebut the allegations of the Prosecution on these Charges and they are as follows: -

1. **DW1**, Mr. Yakubu Bulus, the Accountant from the Office of the Accountant-General
2. **DW2**, Mr. Philip Akolo, the Orderly to the Defendant as Governor.
3. **DW3**, Mr. Aminu Ayuba, the Accountant from the Salaries Department at the Government House and
4. **DW4**, Rev. Jolly Nyame, the Defendant and Ex-Governor of Taraba State.

In Further Proof of the Case for the Defence, Learned Counsel representing the Defence tendered the following Documentary Evidence as Exhibits before the Court: -

- A) **Exhibit N**, Another Letter from Zenith Bank to the EFCC in regard to the Account dated the 4th of June 2010, which had attached One Bulk Appendix 1---tendered through the Defence
- B) **Exhibit P1**, the Statement of Mr. Dennis Nev dated the 16th of June 2007---tendered by the Defence Counsel through PW4.
- C) **Exhibit P3**, Another Statement of Mr. Dennis Nev dated the 9th of June 2010---tendered by the Defence Counsel through PW4.

D) **Exhibit R3**, a Further Statement of Mr. Japheth Wubon, the Permanent Secretary at the Liaison Office dated the 19th of May 2010---tendered by the Defence Counsel through PW5 and

E) **Exhibit X2**, the Further Statement of Mr. Abdulrahman Mohammed dated the 10th day of July 2007---tendered through PW8.

Now, after a careful consideration of the above, the Court 's approach will be to initially identify the FACT that the Monies in the above listed Counts of Offences were actually sent from Jalingo to the Taraba State Liaison Office and then determine WHY they were remitted and FOR WHOSE BENEFIT.

PW3, Mr. Olubunmi Ogunode from Zenith Bank Plc., had tendered the Statement of Account of Taraba State Abuja Liaison Office and had demonstrated the Entries into and from the Account of the Taraba State Liaison Office. There was only One Particular Person who withdrew the Amounts demonstrated in Cash and that was Mr. Abdulrahman Mohammed from the Abuja Liaison Office.

He Specifically Identified the Sums of the Monetary Transactions involving Withdrawals in **Counts 16, 20, 25, 29, 30, 33, 35, 36, 37, 38, 39, 40 and 41** and the Transactions involving the Lodgment of the Funds, which identified practically all the Counts under this head. This Witness categorically stated that he did not personally take part in the investigation of these transactions and only printed out the requested document from the Bank's Records. He also could not state the purpose for which the withdrawals were made.

In their Final Written Address, Learned Counsel for the Defence had challenged the basis and essence of PW3's testimony by stating that he only read out from **Exhibit M** and was not a Staff of the Bank when the Transactions occurred. Upon a comeback on this point by Learned Senior Counsel, Rotimi Jacobs SAN, in the Complainant's Final Written Address, the Defence Counsel subsequently submitted that he did not contend that **PW3** is not a Competent Witness, but had only argued that the evidence of **PW3** is

not sufficient to establish the Defendant's Guilt, having not linked the Offences in the Charge to the Defendant.

It is clear that any Banker so assigned, can testify in Court on behalf of his Bank and it is not necessarily crucial that it is only the Account Officer for that Account that could testify in regard to Transactions contained in the Statement.

It is clear also that the evidence of **PW3** was not sufficient to establish on its own, proof Beyond Reasonable Doubt that the Defendant committed Criminal Breach of Trust, but it established One Link in the Chain.

The next testifying witness was **PW4**, Mr. Dennis Nev, the Permanent Secretary of Government House in Jalingo. He acknowledged on record having several financial dealings with the Taraba State Liaison Office in Abuja from May 2004 to May 2007. His testimony established that he usually sent Money to the Defendant either in Cash or by Cheque, for his Trips to Abuja after being directed by the Defendant personally through Messages or direct Phone Calls. He also established that after receiving the Messages from the Defendant, he would communicate with his Counterpart, Mr. Japheth Wubon and the Accountant at the Liaison Office of the impending transfer. These two would then notify him acknowledging receipt of the transferred Funds, which fund, belonged to the Taraba State Government.

From the Extra-Judicial Statement of Mr. Dennis Nev in **Exhibit P3**, he Specifically Referred to Sums of Monies charged under **Counts 16, 18, 20, 28, 31, 33, 34, 36, 37, 38 and 39**

According to him, he never received any complaint that the Defendant as Governor did not receive the transferred Funds. He reiterated his assertions during Cross-Examination, and added that sometimes the Defendant would tell him the Funds were for Official Functions and sometimes, it involved an Escorting Staff, and provisions would be made for these Staff. He confirmed the fact that there was nothing written down in the directive he received

from the Defendant and it was only an Oral Directive. He was obedient to the end because he did not want to face Disciplinary Actions.

The value of this witness' testimony was to confirm the fact that Money was Requested BY the Defendant and alongside his acknowledgment of the Monies in **Exhibit M**, has corroborated the evidence of **PW3**. It also raises a presumption that the Money Transfers to the Defendant were received by him because he never received any query that he disobeyed Orders and that the Defendant's direct instruction was disregarded. He was the only person the Defendant could challenge, if the Funds were not remitted.

Therefore, he furnished another Link in the Chain.

PW5, Mr. Japheth Wubon, the Permanent Secretary Liaison Office, in Abuja, in his testimony confirmed that the Cheques for Payment of the Transferred Sums were written by his Office and Countersigned by him. The Transfers were to the Defendant in Abuja. He corroborated the evidence of Mr. Dennis Nev, **PW4** to the effect that Funds were paid into the Liaison Office Account from him for the benefit of the Defendant. He also stated that the notification of the impending transfer by Mr. Nev was also through telephone calls or message and again, these were oral in nature. He also confirmed that the Accountant effected withdrawals of these Funds and he also received no complaints from the Defendant about non-delivery of the Funds. Under Cross-Examination, he admitted that he did not know how many visits were made by the Defendant to Abuja.

From his Extra-Judicial Statement in **Exhibit R3**, and in his evidence before the Court, he Specifically Referred to various Cheques under **Counts 16, 18, 20, 22, 25, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40 and 41**.

Therefore, he furnished another Link in the Chain and established that the transferred Funds were remitted to the Liaison Office Account.

PW8, Mr. Abdulrahman Mohammed, Accountant Liaison Office Abuja, corroborated the evidence of Mr. Dennis Nev and Mr. Japheth Wubon to the effect that Monies were sent from Taraba State to the Liaison Office for the Defendant's use. Mr Wubon would instruct him to raise a Cheque, Cash it for onward transmission to the Defendant.

He would go to the Bank, and then would take the Money to the Governor's Private Sitting Room and inform him that he had a Message for him from Jalingo. The Defendant as Governor would then ask him to go upstairs and drop it in an open room, and he would go on his way. There were times he would meet the Governor in his Room upstairs and drop it. There were also times the Governor was not around, so he would ask the Steward, Dennis Bobo Umar to open up the room and he would keep the Money there.

Upon delivery of the Cash, he would then call the Defendant's Chief Detail, Mr. Aboki to notify him of his compliance with the instructions of the Permanent Secretary, Mr. Wubon and he would be told that the Governor would be notified. According to this witness, he was told that the Monies were meant for the Governor. He had accurately described the Domestic and Security Staff at the Governor's Lodge and named them, showing familiarity of the going ons at the Government Lodge, including the Protocols. He had also stated that it was not necessary that he be seen by the outside Security whenever he carried the Money into the Governor's Lodge, and had only delivered the Money in small batches to the Lodge. He stated that the Orderly, the Chief Detail and the ADC were always with the Governor and they usually stays downstairs, whilst he takes the Monies upstairs to his usual place of keeping the Monies.

The evidence of this witness serves to confirm that he was the deliverer of the Money transferred to the Defendant and was able to situate the cash in hand to the near proximity of the Defendant. At the end of the day, the truth of the actual cash receipt is between his evidence and that of the Defendant.

He explained in great detail the entries in **Exhibit M**, orally before the Court and in his Extra-Judicial Statement in Exhibits Specifically Identifying the various Cheques in **Exhibits W1 to W14** and the Transactions in **Exhibit X2**, Specifically referring to **Counts 16, 18, 21, 25, 27, 29, 30, 33, 34, 35, 37, 40 and 41**.

Now, this witness additionally explained the purpose for some of the Funds, and in the instance of Duty Tour Allowances, he described the payments to all Categories of Staff. The Receiving Officers are mandated to sign against their names on payment, and that meant for the Defendant as Governor, is usually given to his Chief Detail, Mr. Adamu Aboki. It was not expected for a Governor to sign and so it was unnecessary to prepare Payment Vouchers in regard to their Payments.

He had not mentioned the authorization of the transactions by the Defendant to the EFCC. This witness also tendered into evidence, **Exhibit Y**, the Financial Regulations binding on Public Officials, adding that the disbursement of Security Votes is governed by Financial Instructions which are silent in regard to Security Votes. He knew that the Governor's Security Votes formed part of Government Funds. In **Part IV at Page 15 of the Financial Instructions**, Other Public Funds were referred to, and therefore, since Security Votes are Public Funds, it is covered under the Bracket. In other words, this witness explained that all Public Funds are to be accounted for.

The inconsistencies in the figures given during trial and that given in his Statement were due to the fact that he did not have access to the information derived from the Cheque Stubs. He was only asked about the Entries in the Account and in any event, the Payment Vouchers emanated from Jalingo for the transfer of Funds. He did not have the Memorandum to show that the Monies were authorized from the Government House in Jalingo but he had the Statement of Account and was not in a position to know the purpose for the Monies.

The position about Duty Tour Allowances was also discussed by Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, who described DTA, as an Overnight Allowance, which an Officer receives when he or she travels out of his State, and is for Accommodation, Feeding as well as Transportation.

The **PW11**, Mr. Joel Andrews, was the Chief Accountant at the Government House, and his major role was to tender the Details of Salary/Allowances paid to the Defendant from the 29th day of May 1999 to the 29th of May 2007, the Taraba State Civil Servants Payroll- Governor's Bank Account Statement and the Payment Record Card 2002 to 2007 as **Exhibits AA1 to AA3**.

He agreed with the Defence Counsel, when shown **Exhibits AA1-6; AA21-36; and AA3 1-6** adding that he was involved in the information transfer from **AA3**, the Payroll. He also acknowledged making **AA1**, which is its Summary and even though his Signature was not Evident on **AA2**, he referred to his Signature on the Certification. He did not attach any Financial Instrument or Documents with which the Defendant as Governor was paid in **Exhibits AA1 to AA3**.

He had under Re- Examination, explained the reason he Certified **Exhibit AA1** that it was because it was computed in his Office. **Exhibit AA3** was the Bundle of Documents copied from **Exhibit AA2**, which was signed by the Overall Boss of the Department, Mr. Paul Yani, the Former Director of Finance.

The 1st Defence Witness was Mr. Yakubu Bulus, now retired, who had worked in the Taraba State Ministry of Finance, Office of the Accountant General. He had explained that the Office of the Secretary to the State Government was in charge of the Liaison Office, and raises Memos for the Governor. He did not keep the Vote Book for the Liaison Office and kept no records, such as Cash or Cheque Register, Vouchers or Chequebook. He therefore had little or nothing to say about these transactions with the Liaison Office.

DW3, Mr. Aminu Ayuba, the Acting Accountant-General of Taraba State testified that he did not witness cash payments to the Governor and testified in regard to the procedure for acknowledging Monies by a Governor or Government Official and spelt out the Payments he made such as Maintenance, Medicals, and Payments to Security around the Governor and such like. He could not recall the amount of Monies he had paid due to length of time but had never paid any Funds to the Defendant and attributed this task to the Permanent Secretary, Government House.

DW2, Philip Akolo, the Orderly's testimony was to confirm that he usually received Funds on behalf of the Defendant and claimed only to receive his DTA. He also had not received any large sum of Money on behalf of the Defendant. He described the protocols around the Defendant, emphasizing that no one could see the Defendant without his knowledge and that of the ADC and Chief Detail. He was the Custodian of the Keys to the Defendant's Bedroom, whenever they were in Abuja and denied that he saw the Accountant having access to the Bedroom.

Under Cross-Examination, he again explained the security around the Defendant but stated that he was not privy to any discussions at the Government House, except that of security. He maintained he was always with the Defendant as Governor.

The Defendant, testifying on this issue had recognized the need for Accountability and knew that as far as Government Funds were concerned, there was no exception to the Non-signing of the Payment Voucher, as every recipient must sign before receiving the Funds. He accepted that he had received several Funds that were his entitlements but he did not specify exactly what categories of entitlement he received.

Under Cross-Examination, when questioned on what his entitlement was comprised of, he could not recall as his entitlements depended on whatever was raised in the Memo, and how it was couched, sometimes, it could be stated as Contingents but the Main Fund is his DTAs. He was also entitled to travel, car and medicals. He acknowledged Philip Akolo as his authorized

collector of such allowances. This statement was confirmed by Mr. Akolo, who stated that aside of only these allowances; nothing else was brought to the Governor's Lodge. He was not aware the Accountant took Monies in excess of Twenty to Twenty Four Million Naira to the Defendant.

More importantly, he admitted that in advance of his trip to Abuja, he caused the Permanent Secretary, Government House to write a Memo funding his trip. The Monies were then transferred to the Taraba State Liaison Office Account, cashed and released to him through his Orderly. He also displayed knowledge of the processing of the transferred Funds, when he stated that the Liaison Officer would direct the Accountant to go to the Bank and cash the Funds for onward delivery to the beneficiaries.

By this, the Defendant has told the Court that he normally requested for Money when he was coming to Abuja; the Money was actually sent and cashed, and more importantly, he received it through his Orderly.

Now, it is important to peruse the said Counts of Offences under the Liaison Office to decipher where the said transferred Funds came from. The Counts all stated generally that the Funds belonged to the Taraba State Government. However, the Defendant had in his Written Extra-Judicial Statement in **Exhibit Z6**, stated thus: -

"Mallam Abdulrahman Mohammed is the Accountant Abuja Liason (sic) Office. I usually direct my dispensation or Security Funds to be transferred from Government House Jalingo to the Liaison Officer Account. The accountant cashes the Money and brings it cash. The Money involved ranges from two to thirty Million depending on the need as it aroused (sic). In the case of my dispensations, Memos are always raised and cash transferred to Abuja for disbursement to me and other Staff. In the case of Security Funds, since it is paid in cash, I direct the Permanent Secretary to transfer cash as need arises. On the issue of Purchase of Stationaries (sic) worth two hundred and fifty million, and the alleged one hundred and eighty million naira given to me by my then Commissioner of Finance, Alhaji Abubakar Tutare. I wish to say that

after due consultation I will report with Alhaji Tutare tomorrow being 12th July 2007 for final resolution of the matter. I want to state voluntarily to ask for plea bargain. So that whatever is alledged (sic) to have been misappropriated (sic) by me personally will be returned back to Government. I will request my lawyers and EFCC to set the Process in Motion.”

Now, from this Statement, it can clearly be seen that the Defendant was the very person who mentioned Security Funds and NOT the Prosecution and the issue of Security Votes was not stated in the Counts of Offences.

It is also clear from the above Extract in **Exhibit Z6** that the Defendant positively acknowledged the fact that “the Accountant cashes the Money and brings it cash to me...” Therefore, the defendant had received certain Monies from the Accountant in Abuja sent from Jalingo, which he admitted ranged between Two to Thirty Million in Cash, through a PROCESS that starts from the Cash in the Bank.

Under Cross Examination, the Defendant admitted that whenever he wanted to travel to Abuja, he would ORALLY instruct Mr. Dennis Nev, the Permanent Secretary, Government House, to act by transferring Funds to Abuja.

These Monies from Taraba State Government could be any of the following as claimed by the Defendant, who stated that his Duty Tour Allowance, was not the only Monies collected by his Orderly, who signed for his

Entitlements: -

- 1) His Duty Tour Allowances
- 2) His Security Votes Fund
- 3) His Dispensation/ His Entitlements

The Defendant could not recall what his Entitlements were comprised of but stated that it depended on the way the Memo was couched. It could be Contingents but the main Funds were his Duty Tour Allowances.

From the testimony of Mrs. Asabe Maiangwa, the Permanent Secretary Ministry of Finance, she explained Duty Tour Allowance to be what they called 'Night Allowance'. It is the Money an Officer receives when he or she is travelling out of his State or out of his Station. It is normally for Accommodation, Feeding and Transportation. This Allowance varies from Level to Level. Receipts are collected for Hotels, Fuelling and if they were other Repairs of Vehicles, for the purposes of Retirements.

Mr. Japheth Wubon, the Permanent Secretary Liaison Office, described Duty Tour Allowance as Night Allowance which is given before the Entourage arrives but occasionally when they overstay a period by their Duty Tour Allowance, a case is made to the Permanent Secretary Government House Jalingo, and an additional Duty Tour Allowance covering the extra days would be sent to them through the Liaison Office Account and the Money would be collected by the Accountant and paid to them accordingly.

The Defendant acknowledged that his Duty Tour Allowances were collected by his Orderly as well as all his Entitlements, and the Orderly confirmed that all he received and signed for on behalf of the Governor were his Duty Tour Allowance. The Defendant could not recollect, whether his Duty Tour Allowance was less than Fifty Thousand Naira (N50, 000.00) and the Court notes that the Orderly stated that he did not receive any huge Sums of Money for the Governor. When he was challenged with this fact, he stated that he would be surprised that his Orderly said it was only the Duty Tour Allowance he collected.

Therefore, going by the range of Monies sent, it cannot be contemplated as a possibility that the Defendant's Duty Tour Allowance would amount to between Two Million Naira to Thirty Million Naira as the Orderly would have recalled receiving such an amount. Even if the Duty Tour Allowance was escalated, it is unlikely that it would amount to the Sums of Monies stated in the Charge.

The next possibility of the Source of Funds the Defendant admitted receiving from the Accountant is the Security Votes Funds. As earlier stated, it was the Defendant that mentioned the idea of Security Votes Funds when he stated that he sent Monies from his Security Votes Funds to Abuja. However, he subsequently contradicted himself when he said the disbursement to him in Cash, were not for Security Votes.

Learned Counsel representing the Defendant in his Written Address had argued that there was no evidence showing that these Security Funds were not used for Security Purposes, neither is there evidence on Record showing that the Security Funds were traced to the Defendant's Account or any of his Relatives Account and none of his Properties had been proven to be a Proceed(s) of the said Security Funds.

This submission can be taken in two lights: the first being that Security Funds were used for the purpose it was sent and secondly, the Counsel was equivocal about whether the Funds in the Charges included Security Funds.

According to the Defendant, Monies are NOT written for Security Votes and were within the Governor's purview to determine how to expend the Votes. The Origin of this Money was the Ministry of Finance, who released Fifty Million Naira (N50, 000, 000.00) monthly to him by paying into the Government House Account. There was no Memo, but there was an Instrument to the effect that Monthly Deductions of Fifty Million Naira (N50, 000, 000.00) be put into the Security Funds Account.

When questioned whether the Security Funds Account was the same as the Government House Account, he stated that he did not know the Name of the Account or the Bank in which the Monies were domiciled, but knew the Sole Signatory to the Security Votes Account was Mr. Bubajoda. According to him, the idea was to keep the Monies meant for Security Votes with him for easy accessibility.

The Defendant also stated that there were misconceptions about the Security Votes in the State, which should not have been because Security Votes are clear to anyone. He initially could not remember giving a directive that the Security Votes must be kept with him and not by any Public Officer even when he was shown **Exhibit PP**. He was not sure that he signed the Letter, even though it bore his Signatures. However, he agreed with the Prosecution that he always used Red Biro to sign as Governor and subsequently, accepted signing the Minutes and even signing “*twice for emphasis and for importance of this Letter.*”

The Court has had a very close look at **Exhibit PP**, which is a Letter dated the 16th Day of December 2005, written on the Letter Head Paper of the Office of The Governor, Taraba State to the Assistant Director of Finance, Administration Department, Government House, Jalingo. It was titled “**HOW MY MONTHLY SECURITY FUNDS SHOULD BE HANDLED FROM NOW ON.**” The text of the Letter reads thus: -

“Following recent developments and misconceptions about the Security Funds released to my Office as the Governor of Taraba State, I have decided that henceforth these Funds be kept by me directly whenever they are received from Ministry of Finance.

2. You are to note further that I am the Sole Accounting Officer to this Account. Any issue regarding it, should therefore be referred to me, please.”

The Defendant signed this Letter not once but twice, when he copied the Accountant General, Office of the Accountant General Jalingo for his information. Therefore, it is little wonder that he stated that, as at the 16th of December, there had never been any misconception because “*we have an Officer who takes Charge of the Security Funds and he has a Register, showing disbursement of Funds and for what purposes, by name Mr. Hilkih Bubajoda, a Senior Special Assistant in his Office.*” He also acknowledged him as a Political Appointee who was not a Civil Servant. Further he stated that the Permanent Secretary, Government House had no ROLE to play on Security Vote.

According to the Defendant, there were Specific Ministries that received Allocation of Funds on a Monthly Basis and when questioned on what type of Instruments effect the release of Allocations, he could not remember the Person who Signed, the Date, the Author and where the Instruments were as he did not keep control of Government Documents.

Under Cross Examination, the Defendant stated that he stood by his Statements in **Exhibits Z4 to Z6**. He only started receiving Security Votes during the last Three or Four Years of his Eight Years Administration and he needed to be guided by the Records from Government House as he could not remember whether it was the last three or four years of his First or Last Tenure in Office.

He considered it a possibility that during his Tenure in Office, there were Budgets on Security Votes from 1999 to 2007 and he needed to be guided by the Records from Government House and not from the Budget Office to know when they started receiving Security Funds adding that not all Funds budgeted for were Cash Spent.

By all indications, the Defendant was the Sole Accounting Officer for the Security Funds and despite his uncertainty as to whether he signed **Exhibit PP**, he tacitly claimed authorship of this Letter when he stated that as of the 16th of December 2005, there were no more Misconceptions because there was an Officer who takes Charge of Security Funds.

By his own Statement before the Court, he has thrown one individual by name, Mr. Hilkih Bubajoda into the Mix. This individual was not a Civil Servant but his Senior Special Assistant and a Political Appointee. More interestingly, he stated that Mr. Bubajoda had a Register showing the disbursement of Funds.

This Statement of the Defendant is very strange indeed. He had in **Exhibit Z6** stated that he usually directed his Dispensation or Security Funds to be

transferred from the Government House Jalingo to the Liaison Office Account. He had also stated before the Court that the Permanent Secretary had no Role to play regarding the Security Vote. This again is a strange statement, because if indeed he directed his Security Votes to be paid into Government House Account, then it is obvious that the Permanent Secretary of the Government House must be in control or have a part to play in the release of the Security Vote Funds.

The Defendant flipped backwards when presented with the Evidence of Mr. Nev, who stated that the Defendant told him to send Security Vote Funds to Abuja as well as his own Statement in **Exhibit Z6**, where he stated that Security Vote Funds be sent to Abuja. He then said that he did not ask Mr. Nev whether he collected the Money from his Special Assistant, Mr. Bubajoda. When questioned further, he did not know whether a Political Appointee could keep custody of Public Funds.

When asked about the Security Funds Accounts that his Senior Special Assistant was keeping and to whom he was accountable to, the Defendant stated that he was not aware of how Security Funds could be retired, but knew that they were meant to be used by the Governor for Security Reasons. The Power to expend was not given to the Special Assistant but to the Governor and the Special Assistant, must render accounts to the Governor. He did not mention all the above in his Statements contained in **Exhibit Z4 to Z6** because the question of Security Funds were not in dispute and he admitted not mentioning the fact that his Security Vote Account was managed by his Special Assistant because he was not asked and there was no need.

When questioned why in **Exhibits Z4-Z6**, he did not mention that he gave instructions for the Transfer of Security Votes to Abuja; his response was that he was not asked. According to him, Security Vote Funds are not accountable for and cannot be stolen and he was not wrong when he said he was the Sole Accounting Officer because the Funds were non-accountable.

It is clear from the above that the Defendant has not said that in relation to any of the Transferred Funds in the Charge, he instructed Mr. Bubajoda to remit Money to the Liaison Office through the Government House Account, which according to him was different from the Security Votes Account.

This would have meant that Mr. Bubajoda being the Sole Signatory to the Security Votes Account would have had to withdraw the requested Funds from the Security Votes Account and pay them into the Government Account for onward transmission to the Liaison Office Account. He may as well have deposited the Monies himself directly into the Liaison Office Account. This will no doubt have explained the reason the Defendant said that there was no involvement of the Permanent Secretary in Security Vote Funds, and could have explained why a Political Appointee could control Government Funds in the manner he did. The Defendant did not state that Mr. Bubajoda travelled to Abuja with him and so it all does not add up.

What else did not add up was when the Defendant stated still under Cross-Examination that he could not remember telling the Court that he asked Mr. Bubajoda to collect the Security Votes Fund. He could only remember telling the Court that his Staff keeps Records of Security Spending, but could not remember who he said the Staff was on the day of his testimony and added that ALL Records are kept for Security Spending.

More baffling was when still under Cross-Examination, he was asked who kept his Security Funds after its release by the Accountant General and his response was that the Security Vote Monies were kept in the Government House Safe, but he did not know who was in charge of the Safe at the Government House. All he could remember is that when a need arose, he requested for the Funds.

All these Flip-Flops by the Defendant make it rather complex to understand exactly what recantation he settled on as the truth. The above Statement on the Safe is contrary to his Express Directive in **Exhibit PP** and contrary to his Statement that the Accountant General to the Government House

Account released the Funds. Mr. Bubajoda would have been a valuable Witness for the Defendant to summon to testify in his regard and would have no doubt cleared the air on the transferred Funds, if indeed they emanated from the Security Funds Accounts.

It is worthy to note that if the Defendant had maintained before this Court that the Security Votes Monies were deposited directly into the Account belonging to the Government House, and had he then requested Mr. Dennis Nev to transfer the Sums of Money, there would have been no problem because they were none accountable to anyone but the Defendant himself. Had he also said, Mr. Bubajoda transferred or paid Money from the Security Votes Account into the Government House Account in Jalingo, before it was subsequently transferred to Abuja, there would also have been no problem but he had said that Mr. Bubajoda was the Sole Signatory of the Security Funds Account. Then he contradicted himself when he stated that it was another Official and he could not remember his name. Another inconsistency was when he stated that the Security Funds were always deposited in a Security Votes Account but later said it was always placed in a Safe at the Government House.

The Defendant had by his testimony before the Court stated that as at the 16th of December 2005, there were no more misconceptions about the Security Votes which means he tacitly admitted writing the Letter in **Exhibit PP**.

It all does not add up and from the evidence, Mr. Bubajoda ought to have been called to establish that it was Security Funds that was transferred to Abuja or the other Official with his Security Votes Register ought to have been called.

The Final Origin of the Liaison Funds could have been that of the Defendant's Entitlements/Dispensation. The Defendant had fingered the Accountant of Government House, Mr. Joel Andrews as the right Person to compute all

Allowances. According to him, all Allowances given to him have Records and could be computed.

The Defendant stated that he usually directed Several Funds which were his Dispensation varying from Two to Thirty Million Naira from the Government House in Jalingo to the Taraba State Liaison Office, depending on what it was used for. He did not know the details except that the Funds were dutifully and properly given to him and added that he did not write it down.

He described the Governor's Lodge and stated that his allowances as Governor were more than Three Million Naira (N 3, 000, 000.00). He could not remember telling Mr. Bubajoda to pay the Sum of Ten Million Naira in cash to his Account. His Bank Statements including the Account Opening Packages were admitted as **Exhibit SS**. He was shown various huge Sums of Money Lodgments of Cash paid into his Account by one Mr. Aminu and he acknowledged that ALL his Salaries and Entitlements were paid into the Account contained in **Exhibit SS**.

Therefore, there is a presumption that his Allowances and Entitlements were paid into this Account. The Question that must be asked now is how possible could it be for the Defendant to request his entitlements to be sent to the Abuja Liaison Office when there is a Presumption that the Account in **Exhibit SS** was his Private Account. The Permanent Secretary of Government House could not possibly have access into his Personal Account. The Court can see from **Page 10 of Exhibit SS** that the Defendant had a relationship with Mr. Bubajoda as he severally deposited Funds into his Account, and as regards the other Depositors, he could not remember who some of them were.

Also tendered into evidence, was **Exhibit TT** the Defendant's Bank Statement from Standard Trust Bank, now United Bank of Africa. Relating to Government Expenditure during his Tenure, he was shown **Exhibit NN1 to NN3**, the Published Accounts of Taraba State Government and **Exhibit 001**, where his attention was drawn to the fact that in Year 2005, the Budget

Estimate for his Office was Twenty Million Naira but he spent a total of One Billion, Two Million, Seventy Six Thousand, Eight Hundred and Ninety One Sixty Two Kobo (N1, 200,706, 891. 62) and he explained the excess of Nine Hundred and Eighty Two Million Naira by saying that Budgets were only estimates while spending will be a reality and he stated that the excess was not stated therein but Supplementary Budgets could be requested for by the Prosecution.

The Defendant was also shown **Exhibit OO2**, where the Budget for the Governor's Office was Forty Million Naira, but where he actually spent a total of Seven Hundred and Thirteen Million, with an excess of Six Hundred and Seventy Three Million Naira and **Exhibit N1**, where the Budget for his Office was One Hundred Million Naira but the Sum of Two Billion, One Hundred Million Naira was spent with a difference in the Sum of actual Monies spent as Two Billion Naira.

The Prosecution also tendered **Exhibits AA1**, the Details of Salary/Allowances paid to the Defendant from the 29th day of May 1999 to the 29th of May 2007; **AA2**, the Taraba State Civil Servants Payroll-Governor's Bank Account Statement and **AA3**, the Payment Record Card 2002 to 2007 all Certified by Mr. Joel Andrews to show the details of Payments of Salary/ Allowances.

Mr Joel Andrews Schedule of Duties involved Raising and Checking of Payment Vouchers, Posting of Cash Book, Cashing of Cheques as Cashier. He did not know how much the Security Vote of the Defendant as Governor was and stated that apart from his Salaries/Allowances, he did not know whether the Defendant collected any Money.

The Prosecution also tendered **Exhibit QQ**, the EFCC Declaration of Assets Form for Jolly T. Nyame; **Exhibit RR**, the Code of Conduct Declaration of Assets Form for Public Officers received on the 30th of August 1999; **Exhibit RR2**, the Code of Conduct Declaration of Assets Form for Public Officers received on the 27th of May 2003 (End of Tenure) and **Exhibit RR3**, the Code

of Conduct Declaration of Assets Form for Public Officers received on the 29th of May 2003 (Assumption of Office). He extensively grilled the Defendant on his Assets but did not Specifically Link any of the Assets to any Count in the Charge.

The Defendant mentioned Dispensation severally, but did not explain what he understood by the word. According to him, his Salaries and Allowances, were ALL paid into his Personal Account in **Exhibit SS**. It is not clear whether the Defendant categorized Dispensation as Allowances.

What the Court gathers is that the narration by the Defendant regarding his Security Vote was Substantially Contradictory, did not tally and was not concretely set. His Salaries and Allowances were paid into his Personal Account and not into Government's House Account; his Duty Tour Allowances were collected by his Orderly Philip Akolo who claimed not to collect huge Sums, so the question remains, if Mr. Akolo collected his Allowances and Entitlements as he claimed, why then would the Defendant still collect/receive Allowances that has already been collected by his Orderly? By his own Testimony in Court and in his Extra-Judicial Statement, he had stated that he directed his Dispensation and Allowance and collected them in Abuja. So, the Receipt by the Defendant of these Monies is not in question.

The Bulk of the Circumstantial Evidence before the Court is that the Monies that were sent, were actually given to him directly from the Government House Account.

As regards the Collections by or deposits of these various Sums of Monies to the Defendant, the Defendant in **Exhibit Z6**, wrote that, ***"Mallam Abdulrahaman Mohamed is the Accountant Abuja Liason (sic) Office.....The Accountant cashes the Money and brings it cash. The Money involved ranges from Two to Thirty Million depending on the need as it aroused. In the case of my Dispensation, Memos are always raised and cash transfered (sic) to Abuja for disbursement to me and other Staff....."*** (Underlining Mine).

Mr. Dennis Nev, the Permanent Secretary, Government House confirmed receiving the Defendant's Directives Personally and in complying with the Directives, he did not raise Memos and the only Written Record and Proof of all these occurrences is his Narration as contained in his Statement. He did not know the purpose of the disbursements. His Evidence has established that he was directed by the Defendant and that he related with his Counterpart in Abuja.

The Evidence of Mr Wubon, the Permanent Secretary, Liaison Office was direct, in that he knew the Funds were Cashed because he Signed the Cheques and was told by the Accountant that the Monies were delivered to the Defendant. Both of these Officials were not queried by the Defendant that he did not receive the Monies.

The Only Possible Direct Eyewitnesses to the actual Receipt by the Defendant of these Monies were the Defendant himself; Mr. Akolo his Orderly; Ms Jerusha the House Keeper; Mr. Dennis Bobo the Steward; the Chief Detail Mr Aboki; and the Accountant. The Court was informed that the Chief Detail could not be found; Ms Jerusha was either working at the Liaison Office or dead; and Mr. Bobo was dead. The Truth is therefore between the Evidence of the Defendant, his Orderly and the Accountant.

The Accountant, in his Written Statement before the EFCC admitted as **Exhibit X2**, had stated essentially the same testimony as he rendered in Court to the following effect: -

"Further to my earlier Statement of 4th July, 2007 I wish to voluntarily say that when Cheques are signed by Mr. Japheth Wubon Permanent Secretary Liaison Office and I, I usually go to the Bank and Cash the Cheque for onward transmission to His Excellency Rev Jolly T. Nyamethrough the Governor's Lodge that is by taking the Money to his Bedroom, it has become a Tradition that whenever, I bring such I take it directly to his Bedroom on his Instructions. I could remember on 13th March, 2006 on Cheques Numbers

03868094 and 00000044 of N5 Million **was cashed by me and taken to his Room as usual**. So also on 4th of May, 2006 we signed a Cheque No: 03868098 & 00000048 of N25 Million only and **took it to Rev Jolly Nyame's bedroom @ the Governor's Lodge T.Y. Danjuma House Abuja**. On 16th June 2006, we signed a (sic) Cheque NOs: 14052951 & 00000051 of N5 Million Only. Also on 29th June, 2006 (we) signed a (sic) Cheque NOs 14052952 & 00000052 of N25 Million Only **as usual cash it and take it to him**.

Furthermore, on the 8th of August, 2006 my Perm Secretary and I signed a Cheque Nos. 14052953 & 00000053 of N30 Million Naira Only **as usual I took it to him through the Normal Process**. On 21st August, 2006, Cheques NOs: 18432501 & 00000101 of N3 Million Only vide Normal Procedure. On 5th of May, 2006 Cheques NOs 03868099 & 00000049 duly signed by Perm Secretary and I of N10 Million Naira Only **cash and took it to him vide normal Procedure**. On 10th October, 2006 Cheques NOs 18432502 & 00000102 of N5 Million Only **cash and took it to him vide Usual Procedure**. So also on 31st October, 2006 Cheques NOs 18432503 & 00000103 of N10 Million Only, **as usual cash and took it to him @ the Governor's Lodge T.Y. Danjuma House Asokoro**. On 13th November, 2006 we signed a (sic) Cheque NOs 18432504 & 00000104 of N25 Million Only, and cashed it **and took it to him vide Normal Procedure**. So also on 27th November, 2006 a Cheque NOs 184325 & 00000105 of N20 Million Only was duly signed and **cash and I took the Money to him at the Governor's Lodge-T.Y. Danjuma House Asokoro where I normally keep Monies to him**. On 15th December, 2006 a Cheque NOs 18432508 & 00000108 of N9.4 Million Only was **cash by me and I took the Money to him through Usual Process**, also a Cheque NOs 03868093 & 00000043 of N10, 500, 000 Million Only which date I can't remember, was also **cash and I took the Money to him as usual**. Furthermore, on 8th January, 2007 my Perm Secretary and I signed a Cheque NOs- 18432510 & 00000110 of N25 Million only which was **duly cash and the Money was taken to him as usual**. On the 18th January, 2007 Cheque NOs 18432511 & 00000111 of N15 Million Only **was raised cash and the Money was taken to him (His Excellency Rev Jolly T. Nyame) @The Governor's Lodge T.Y. Danjuma House Asokoro and kept the Money in his**

Bedroom upstairs. On 30th January, 2007 (we) raised a Cheque NOs 18432513 & 00000113 of N25 Million Only, which I took the Money to him as usual, that is his bedroom upstairs at the Governor's Lodge T.Y. Danjuma House Asokoro. Moreso, on 19th February, 2007 a (sic) Cheque NOs 18432514 & 00000114 of N20 Million only was duly signed and the Money was cashed and I took it to him as usual. The same thing happened on the 7th March, 2007 a Cheque NOs 18432515 & 00000115 of N2 Million only was taken to him through the usual Procedure. So also on 21st March, 2007 a Cheque NOs 18432516 & 00000116 of N4 Million Only was duly signed and cashed and the Money was taken to him through the usual Process. Moreso, on 23rd March, 2007 a Cheque NOs 18432517 and 00000117 of N6 Million only was duly signed and cashed and the Money was taken to him at the Governor's Lodge in his bedroom in T.Y. Danjuma House Asokoro. On 30th March, 2007 a Cheque NOs 18432518 & 00000118 of N20 Million only was duly signed and cashed and the Money was taken to him (His Excellency Rev Jolly T. Nyame) @ the Governor's Lodge in his bedroom in T.Y. Danjuma House Asokoro. Finally on 7th May, 2007 a (sic) Cheque NOs 18432520 & 00000120 of N20 Million Naira only was duly signed and cashed and the Money was taken to him at the Governor's Lodge T.Y. Danjuma House Asokoro. Furthermore, all the Monies were sent to Taraba State Liaison Office Abuja from the Government House Jalingo. And that His Excellency Rev. Jolly T. Nyame doesn't sign a Voucher.

Under Cross-Examination he knew that access to the Governor's Lodge was regulated by the Domestic Staff, but his Duties extended to the Governor's Lodge in terms of making Payments. He never requested at the EFCC for both the Chief Detail and the Steward to confirm his facts and in his Statement he did not mention the Cheque Stubs, even though he referred to it when writing his Statement. He also did not mention the Imprest of the Liaison Office and the fact that the Withdrawals were authorised by the Defendant. He was aware of Financial Instructions as a guide in expending Government Funds and is binding on all Public Officials as far as expenditure is concerned. The Financial Guidelines was tendered through him as **Exhibit Y.**

This witness received instructions from the Chief Detail in regard to the Funds and he never spoke to the Defendant directly concerning the Funds. The extras over the requested amount were not written by him in his Statement because the information given in his Statement were from the Cheque Stubs and not the actual Cheques and he did not tell the EFCC about the imprest. Not all Funds need to be documented. These extras were for imprest which had an Imprest Warrant issued and while at the EFCC, he did not produce Vouchers because it emanated from Jalingo, who might have prepared the Voucher for the transfer of the Funds. He agreed that under the Financial Instructions, these sums of Monies should have Vouchers but he did not see them. He was not asked by the EFCC to produce any evidence of the movement of the Funds referred to in **Exhibits X1 and X2**, and he did not have any Memo from his Permanent secretary regarding these Funds.

The Next Possible Eyewitness was Mr. Philip Akolo, the Defendant's Orderly, who stated that he was with the Governor throughout and it was not possible for anyone to see the Governor without his knowledge. He attested to the fact that Jerusha was dead as he attended her burial. He described in great detail the Lodge and the Security Protocols. According to him, it was not possible for any Government Official to have access to the Governor's bedroom. He was mandated by the Governor to sign for his Allowances brought by the Accountant and apart from his Allowances, nothing was brought to the Government Lodge in Abuja. He was not aware of the sums of Monies brought to the Governor.

Under Cross-Examination, he stated that he was not privy to the discussions of what goes on in the Government's House and did not know how and when requests for Funds were made and when they were given to the Governor. They were in Abuja every month. The Defendant himself stated that whenever they needed allowances, the Monies were sent and disbursed to the various beneficiaries.

Now, it is clear that if the Governor received all his allowances through his Orderly, and if the Orderly claimed NOT to receive the sums of Monies contained in the Charge, then the Monies could not have been allowances but Monies received directly from the Taraba State Government, through the Government House Account. There is also the fact of the positive admittance of receipt of Monies by the Defendant of sums ranging from N2 to N30 Million Naira.

As Regards:

Count 16 for the Sum of N15 Million dated 18th January 2007, the Permanent Secretary of Government House Jalingo (PW4) identified this as a Payment he transferred to the Liaison Office Account in Abuja in Exhibit P3, and the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the said specific sum in Exhibit R3. From the Statement of Account in Exhibit M, Page 31 it can be seen that this payment was a Cash Deposit by Mahmud Umar in Jalingo and this sum was withdrawn with Cheque No. 00000111 by Mr. Abdulrahman Mohammed on the same day and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***raised cashed and the Money was taken to him (His Excellency Rev Jolly T. Nyame) @The Governor's Lodge T.Y. Danjuma House Asokoro and kept the Money in his Bedroom upstairs.***

Count 18 for the Sum of N25 Million dated 30th January 2007, the Permanent Secretary of Government House Jalingo (PW4) identified this as a Payment he transferred to the Liaison Office Account in Abuja in Exhibit P3, and the Permanent Secretary, Liaison Office, (PW5) in Abuja acknowledged receiving the said specific sum in Exhibit R3. From the Statement of Account in Exhibit M Page 31, it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo and this sum was withdrawn with Cheque No. 00000113 by Mr. Abdulrahman Mohammed on the same date and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that

he ***took the Money to him as usual that is his bedroom upstairs at the Governor's Lodge T.Y. Danjuma House Asokoro.***

Count 20 for the Sum of N20 Million dated 19th February 2007, the Permanent Secretary of Government House Jalingo (PW4) identified that the Sum of N2Million Payment was made to the Liaison Office Account in Abuja in Exhibit P3, and the Permanent Secretary, Liaison Office, (PW5) in Abuja acknowledged receiving the Sum of N20 Million on the same date in Exhibit R3. From the Statement of Account in Exhibit M Page 31, it can be seen that the Cash Deposit of N20 Million was made by Joel Andrews in Jalingo and this sum was withdrawn in Cheque No. 00000114 by Mr. Abdulrahman Mohammed on the same date and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that ***the Money was cashed and I took it to him as usual.***

Count 22 for the Sum of N2 Million dated 7th March 2007 the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment in Exhibit P3. The Permanent Secretary, Liaison Office, (PW5) in Abuja acknowledged receiving this specific sum in Exhibit R3. From the Statement of Account in Exhibit M Page 31, it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo, but he paid in the sum of N2 Million and subsequently paid in the Sum of N10, 000.00 on the same date, and both were withdrawn in a single Cheque No. 00000115 by Mr. Abdulrahman Mohammed in the Sum of N2, 010, 000.00 on the same date and but in his Statement admitted as Exhibit X2, he stated that N2 Million was withdrawn. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it ***was taken to him through the usual Procedure.*** From the explanation of Mr. Abdulrahman, the Sum of Two Million was delivered to the Defendant as reflected by him from the Money he collected.

Count 24 for the Sum of N4 Million dated 24th March 2007, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment in Exhibit P3, and the Permanent Secretary, Liaison Office, in Abuja also did

not acknowledged receiving the said specific sum in Exhibit R3 on this date. From the Statement of Account in Exhibit M Page 31, there was no payment on that day. However, it can be seen that a Cash Deposit of N4 Million by Joel Andrews in Jalingo was made on the 21st of March 2007. Mr. Abdulrahman Mohammed withdrew this Sum with Cheque No. 00000116 on the same date and he confirmed it in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***cashd and the Money was taken to him through the usual Process.***

Count 26 for the Sum of N6 Million dated 24th March 2007, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment in Exhibit P3, and the Permanent Secretary, Liaison Office, in Abuja also did not acknowledge receiving this specific sum in Exhibit R3, but on the 23rd of March 2007. From the Statement of Account in Exhibit M, there was no payment on that day. However, it can be seen that two Cash Deposits of N1 Million and N5 Million by Joel Andrews in Jalingo were made on the 23rd of March 2007. Mr. Abdulrahman Mohammed withdrew the sum of N6 Million with Cheque No. 00000117 on the same date and he confirmed it in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***cashd and the Money was taken to him at the Governor's Lodge in his bedroom in T.Y. Danjuma House Asokoro.***

Count 27 for the Sum of N20 Million dated 30th March 2007, the Permanent Secretary of Government House Jalingo (PW4) identified this as a Payment he transferred to the Liaison Office Account in Abuja in Exhibit P3, but the Permanent Secretary, Liaison Office, in Abuja did not acknowledge receiving this Sum in Exhibit R3 on this date. In Exhibit R3, there is a payment with Cheque No 000004431 for the Sum of N20 Million without a specified date of Payment. From the Statement of Account in Exhibit M, it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo on the 30th of March 2007, and this sum was withdrawn with Cheque No. 00000118 by Mr. Abdulrahman Mohammed on the same date, and he confirmed same in his

Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***cashd and the Money was taken to him (His Excellency Rev Jolly T. Nyame) @ the Governor's Lodge in his bedroom in T.Y. Danjuma House Asokoro.***

Count 28 for the Sum of N9, 400, 000.00 dated 15th December 2007, the Permanent Secretary of Government House Jalingo (PW4) identified the Payment of the above Sum, transferred to the Liaison Office Account in Abuja in Exhibit P3, but on the 5th of December 2006 and the Permanent Secretary, Liaison Office, in Abuja did not acknowledge receiving the specific sum in Exhibit R3. From the Statement of Account in Exhibit M Page 31, there were no payments on this date as the Statement ended on the 3rd of July 2007. However, on the 15th of December 2006, it can be seen that a Cash Deposit by Mikailu Ahmed in Jalingo and the sum of N9, 420, 000.00 was withdrawn with Cheque No. 00000108 by Mr. Abdulrahman Mohammed, but he in his Statement Exhibit X2, he stated that he withdrew the Sum of N9.4 Million. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***cashd by me and I took the Money to him through Usual Process.***

Count 29 for the Sum of N25 Million dated 8th January 2007, the Permanent Secretary of Government House Jalingo (PW4) identified this as a Payment he transferred to the Liaison Office Account in Abuja in Exhibit P3, and the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the said specific sum in Exhibit R3. From the Statement of Account in Exhibit M, Page 31 it can be seen that this payment was a Cash Deposit by Mahmud Umar in Jalingo and this sum was withdrawn with Cheque No. 00000110 by Mr. Abdulrahman Mohammed on the same day and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***duly cashd and the Money was taken to him as usual.***

Count 30 for the Sum of N20 Million dated 7th May 2007, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment

in Exhibit P3, and the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the said specific sum in Exhibit R3. From the Statement of Account in Exhibit M, Page 31 it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo on the 7th of May 2007 and this sum was withdrawn with Cheque No. 00000120 by Mr. Abdulrahman Mohammed on the same date, and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***cashed and the Money was taken to him at the Governor's Lodge T.Y. Danjuma House Asokoro.***

Count 31 for the Sum of N20 Million dated 27th November 2006, the Permanent Secretary of Government House Jalingo (PW4) identified this Sum as Payment in Exhibit P3, but the Permanent Secretary, Liaison Office, in Abuja did not acknowledge receiving the said Sum in Exhibit R3. From the Statement of Account in Exhibit M, Page 31 it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo on the 27th of November 2006 and this sum was withdrawn with Cheque No. 00000105 by Mr. Abdulrahman Mohammed on the 28th of November 2007, but he confirmed in his Statement admitted as Exhibit X2 that he cashed same on the 27th of November 2006. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was ***cashed and I took the Money to him at the Governor's Lodge-T.Y. Danjuma House Asokoro where I normally keep Monies to him.***

Count 32 for the Sum of N25 Million dated 12th November 2006, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Sum in Exhibit P3, and the Permanent Secretary, Liaison Office, in Abuja also did not acknowledge receiving the said Sum in Exhibit R3. From the Statement of Account in Exhibit M, Page 31, it can be seen that no payment in the sum of N25 Million was made and neither was there any Cheque by Mr. Abdulrahman Mohammed.

Count 33 for the Sum of N10 Million dated 31st October 2006, the Permanent Secretary of Government House Jalingo (PW4) did not identify a payment on

this date, but identified the payment of the above Sum on the 30th of October 2006 in Exhibit P3, but the Permanent Secretary, Liaison Office, in Abuja acknowledged the said Sum on the 31st of October 2006 in Exhibit R3. From the Statement of Account in Exhibit M, Page 31 it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo on the 30th of October 2006 and this sum was withdrawn with Cheque No. 00000103 by Mr. Abdulrahman Mohammed on the 31st of October 2006 and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was *as usual cashed and took it to him @ the Governor's Lodge T.Y. Danjuma House Asokoro.*

Count 34 for the Sum of N5 Million dated 13th March 2006, the Permanent Secretary of Government House Jalingo (PW4) did not identify a payment on this date, but identified the payment of the above Sum on the 10th of March 2006 in **Exhibit P3**, but the Permanent Secretary, Liaison Office in Abuja acknowledged the said Sum on the 13st of March 2006 in **Exhibit R3**. From the Statement of Account in **Exhibit M, Page 30** it can be seen that there were two Cash Deposits by Joel Andrews in Jalingo, one on the 10th of March 2006 and the other on the 13th of March 2007, in the sum of N10, 500, 000.00 and N5 Million, which were both withdrawn with Cheques Nos. 00000044 & 00000043 respectively, by Mr. Abdulrahman Mohammed on the 13th of March 2006, and he confirmed same in his Statement admitted as **Exhibit X2**. More importantly, Mr Abdulrahman Mohammed confirmed delivering the Sum N5 Million that it *was cashed by me and taken to his Room as usual, and the Sum of N10, 500,000.00 was also cashed and I took the Money to him as usual*

Count 35 for the Sum of N25 Million dated 4th May 2007, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment in Exhibit P3, but the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the said sum in Exhibit R3 on the 4th of May 2006. From the Statement of Account in **Exhibit M**, Page 31 it can be seen that this payment was a Cash Deposit by Mahmud Umar in Jalingo on the 4th of May

2006 and this sum was withdrawn with Cheque No. 00000048 by Mr. Abdulrahman Mohammed on the same day and he confirmed same in his Statement admitted as **Exhibit X2**. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was *taken to Rev Jolly Nyame's bedroom @ the Governor's Lodge T.Y. Danjuma House Abuja*.

Count 36 for the Sum of N5 Million dated 16th June 2006, the Permanent Secretary of Government House Jalingo (**PW4**) identified a payment on this date, transferred to Liaison Office in **Exhibit P3**, and the Permanent Secretary, Liaison Office, in Abuja acknowledged the said Sum in **Exhibit R3**. From the Statement of Account in **Exhibit M, Page 30** it can be seen that this payment was a Cash Deposit by Joel Andrews in Jalingo and this sum was withdrawn with Cheque No. 00000051 by Mr. Abdulrahman Mohammed on the same day and he confirmed same in his Statement admitted as **Exhibit X2**. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was *as usual cash it and take it to him*.

Count 37 for the Sum of N5 Million dated 10th October 2006, the Permanent Secretary of Government House Jalingo (**PW4**) identified this as a Payment he transferred to the Liaison Office Account in Abuja in **Exhibit P3**, and the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the sum of N5, 010, 000.00 in **Exhibit R3**. From the Statement of Account in **Exhibit M, Page 31** it can be seen that there was a Cash Deposit of N5 Million by Joel Andrews in Jalingo and the Sum of N5, 010, 000.00 was withdrawn with Cheque No. 00000102 by Mr. Abdulrahman Mohammed on the same day and he confirmed same in his Statement admitted as **Exhibit X2**. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was *cashied and he took it to him vide the Usual Procedure*.

Count 38 for the Sum of N25 Million dated 26th June 2006, the Permanent Secretary of Government House Jalingo (**PW4**) did not identify this Sum in **Exhibit P3** but identified a N25 Million payment on the 28th of June 2006,

the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the Sum of N25, 030, 000.00 on the 29th of June 2006 in **Exhibit R3**. From the Statement of Account in **Exhibit M, Page 31** it can be seen that no payment in the sum of N25 Million was made on this date, but there was payment and withdrawal on the 28th and 29th of June 2006; there was a Cash Deposit by Joel Andrews in the Sum of N25 Million on the 28th, and a Cheque withdrawal No. 00000052 by Mr. Abdulrahman Mohammed on the 29th which he confirmed in his Statement admitted as **Exhibit X2**. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that *as usual cash it and take it to him*

Count 39 for the Sum of N30 Million dated 8th August 2006, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Sum in Exhibit P3, but identified the Sum of N30 Million paid on the 7th of August 2006 and the Permanent Secretary, Liaison Office, in Abuja acknowledged the Sum of N30, 020, 000.00 on the 8th of August 2006 in Exhibit R3. From the Statement of Account in Exhibit M, Page 31 it can be seen that there was a Cash Deposit of N30 Million by Joel Andrews on the 7th of August 2006 in Jalingo and the sum of N30, 020, 000.00 was withdrawn with Cheque No. 00000053 by Mr. Abdulrahman Mohammed on the 8th of August 2006 and he confirmed same in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering this sum by stating that it was *as usual I took it to him through the Normal Process*.

Count 40 for the Sum of N3 Million dated 24th August 2006, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment in Exhibit P3, but the Permanent Secretary, Liaison Office, in Abuja acknowledged receiving the said sum in Exhibit R3 on the 21st of August 2006. From the Statement of Account in Exhibit M Page 31, there was no payment on the said date. However, it can be seen that a Cash Deposit of N3 Million by Yakubu A. Idiris in Jalingo was made on the 21st of August 2007. Mr. Abdulrahman Mohammed withdrew this sum with Cheque No. 00000101 on the same date and he confirmed it in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed

delivering this sum by stating that it was ***cashed and took it to him vide normal Procedure.***

Count 41 for the Sum of N10 Million dated 6th May 2006, the Permanent Secretary of Government House Jalingo (PW4) did not identify this Payment in Exhibit P3, but the Permanent Secretary, Liaison Office, in Abuja acknowledged the said sum in Exhibit R3 on the 15th of August 2006. From the Statement of Account in Exhibit M Page 31, there was no payment on the said date. However, it can be seen that a Cash Deposit of N10 Million by Joel Andrews in Jalingo was made on the 15th of August 2006. Mr. Abdulrahman Mohammed withdrew this sum with Cheque No. 00000049 on the same date and he confirmed it in his Statement admitted as Exhibit X2. More importantly, Mr Abdulrahman Mohammed confirmed delivering the said sum by stating that it was ***cashed and took it to him vide normal Procedure.***

Learned Senior Counsel noted at **Count 35** that the date in the Count as per the Charge is said to be 4th of May 2007 but the Evidence showed that the Transaction took place on the 4th of May 2006.

Learned Counsel to the Defendant argued as regards **Counts 34 and 37**, which according to him had to do with a Specific Amounts in a Named Account, but the Prosecution failed to adduce any evidence to prove the particular/specific amounts. Further that the Prosecution's evidence did not in any way link the Defendant to the specific particulars of these Counts therefore, he urged the Court to discharge the Defendant. Relying on the cases of **ONAGORUWA V STATE (1993) 7 NWLR (PT. 303) 93; GBOLARUMI V COP (1971) NMLR 69; EZE V STATE (1992) 7 NWLR (PT 251) 75.**

The Court notes that on the 15th of November 2016, the Prosecution notified the Court of his intention to amend **Count 37** of the Charge from N5 Million to read N5, 010, 000 (Five Million, Ten Thousand Naira) and **Count 34** of the Charge to read N15, 500, 000.00 instead of N5 Million. However, on the 22nd

of November 2016, he had a change of mind and applied to close his case. With this closure, the Defence requested an adjournment to file a No-Case Submission, which was filed and briefs were exchanged. Arguments on the No-Case Submission were heard on the 18th of January 2017 and a Considered Ruling was delivered on the 14th of February 2017, dismissing the No-Case Submission and the Defendant was ordered to enter into his Defence.

It clear from the Proceedings before this Court that the Defendant did not contend the Particulars of any Offence under any Count brought under the Charge was unclear or misleading. However, the errors as to Dates in **Counts 24, 26, 28, 31, 33, 35 and 40**, and the errors as to the Sums as in the **Counts 22, 26, 28, 34, 37, 38, 39 and 41** cannot be cured by the Final Address of the Prosecution. Learned Senior Counsel had attempted to salvage some mistakes by giving evidence not elicited from the Trial.

Now, from the Evidence it can be seen there were some disparities as to dates and figures in which the Deposits and Withdrawals took place, as opposed to the dates and figures stated in the Charge. Learned Senior Counsel had submitted in regard to disparities as to date by referring to the cases of **R V DOSSI 13 CR APP.R 158; R VS ERONINI (1953) 14WACA 366; DURU VS IGP (1960) LLR PG135; THE STATE VS OGBAMBA (1963) FSC PG 46; AND R V OTUEDO (1929) 9 NLR PG 33**, that though the date of the Offence should be alleged in the indictment, it has never been necessary that it should be laid according to truth, unless time is the essence of the Offence. Thus, if there was Evidence on which the Court would come to the conclusion to find the Appellant guilty of the Charge against him, even though it is found that the Offence had not been committed on the actual date specified in the indictment. The error on the date of the Offence is not material to the case so long there is Evidence, and so long as the Dates are relatively accounted for and close in time, and the Figures not too far wide apart.

Now, Section 196(1) of the Administration of Criminal Justice Act 2015, on its own part states, “The Charge shall contain such particulars as to the time and place of the alleged Offence and the Defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the Defendant notice of the Offence with which he is charged.”

By the above Provision, it is clear that Each Count framed in the Charge have been classified and determined by Date and Sum that the Defendant committed the Offence of Criminal Breach of Trust and it is expected that the Prosecution would through the Evidence demonstrate or establish a Link between Each Count and Evidence adduced during Trial. However, in this instance, the Prosecution has not led evidence to cure the disparity in Dates and Figures in **Counts 22, 24, 26, 28, 32, 34, 35, 37, 38, 39, 40 and 41.**

From the above Counts, it is clear that the Defendant was a Public Servant and was entrusted as the Governor of the State, with the Funds belonging to Taraba State Government, as seen from the principles of Entrustment. This Entrustment was implied and he had Dominion and Control over the Properties belonging to the Good People of Taraba State. He was able to direct the Management and Expenditure of the Funds. The Defendant in fact admitted that he collected the said Sums **in Exhibit Z6** and in his Oral Evidence before the Court for unproved purposes. He is found to have caused the Disposal of the Sums contained in **Count 16**, the Sum of Fifteen Million Naira (N15, 000, 000.00); **Count 18**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00); **Count 20**, the Sum of Twenty Million Naira (N20, 000, 000.00); **Count 27**, the Sum of Twenty Million Naira (N20, 000, 000.00); **Count 29**, the Sum of Twenty-Five Million Naira (N25, 000, 000.00); **Count 30**, the Sum of Twenty Million Naira (N20, 000, 000.00); **Count 31**, the Sum of Twenty Million Naira (N20, 000, 000.00); **Count 33**, the Sum of Ten Million Naira (N10, 000, 000.00); and **Count 36**, the Sum of Five Million Naira (N5, 000, 000.00).

These Sums of Monies had to be to his own use because the Defendant did not testify as to what official use he employed the Funds for. He is found to have converted the Original Sum from its Official Purpose to his own, for a benefit. By his Oral Directives, Receiving without Accountability and by his tolerance to the bypass of Due Process, he misappropriated the above Sums in a manner that can only appropriately described as dishonest, contrary to the Oath of Office he undertook and the Financial Guidelines of his State Government. The Prosecution is found to have proven these Counts of Offences Beyond Reasonable Doubt and the Defendant is found Guilty in regard to the Offence of Criminal Breach of Trust in **Counts 16, 18, 20, 27, 29, 30, 31, 33 and 36.**

As regards **Counts 22, 24, 26, 28, 32, 34, 35, 37, 38, 39, 40 and 41** the Prosecution failed to establish these Counts of Offence, and therefore are found to be unmeritorious and are accordingly dismissed.

CRIMINAL MISAPPROPRIATION,
COUNTS 3, 7, 9, 11, 13, 15, 17, 19, 21, 23 AND 25

Now, Criminal Misappropriation is a Lesser Pedigree Offence of Criminal Breach of Trust and Certain Ingredients distinguishes it from Criminal Breach of Trust. Criminal Misappropriation, does not Particularize Certain Categories of Persons, rather, it is all encompassing to include **ALL** Persons, regardless of Status or Office held or occupied. Further, Criminal Misappropriation does not require any form of, Entrustment created or Dominion controlled, over a Property either by way of Contract, Law or Directive and the Violation of the Law or Contract is not a factor. Finally, **ONLY Duplex Modes** suffice for this Offence of Criminal Misappropriation, which are **Misappropriation and/or Conversion.**

Section 308 of the Penal Code defines Criminal Misappropriation in this manner: -

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

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

1. The Property must have an Owner;
2. The Defendant had reasonable belief that the Owner could be found by evidence of his Previous Acquaintance with the Ownership of the Property, the Place where the Property is found, or the Nature of the Marks upon it;
3. The Property in question is a Moveable Property;
4. The Defendant is already in Possession of the Property and is either lawfully in possession or in his Possession;
5. The Possession came by innocently;
6. There has been a change of intention by the Defendant or the Defendant is aware of some new facts, which makes his continued retention of the Property wrongful and fraudulent;
7. The Defendant Misappropriated the Moveable Property or converted the Moveable Property to his own use;
8. It is sufficient that some of the Moveable Property has been misappropriated or converted by the Defendant even though it may be uncertain the exact amount Misappropriated or Converted and
9. The Defendant did so dishonestly.

As regards the Common Elements, the definitions of Property and Owner comes into play. In **WORDS AND PHRASES: LEGALLY DEFINED AT PAGE 446**, the word “Property” is stated to include Money and all other Property, Real or Personal, including Things in Action and other Intangible Property. From the above definitions, Money is a Property and it is a Moveable Property that could be perceived using human senses.

Further, from the evidence adduced during Trial, it is important to note that the Money contained in each Count of Offence for Criminal Misappropriation was encased in a Cheque, Cash or Draft Form, which are the Mediums

through which the Defendant is alleged to have committed the said Offences. **Section 2(1) of the BILLS OF EXCHANGE ACT 1917**, refers to a Cheque and Draft, as a Prescribed Instrument, and either of these Instruments are capable of "Delivery". This Act defines "Delivery" as a "Transfer of Possession, Actual or Constructive, from one Person to Another". In other words, Money, whether in a Cash Form or encased in a Cheque or Draft, still remains a Moveable Property, which are capable of being perceived with the human senses, either by touching it, seeing it, feeling it, smelling it and/or in fact, tasting it. It is certainly not the working of the mind. The adjective "Moveable" which qualifies the Property is not defined in **Section 18(1) of the Interpretation Act 1964**. Rather, it defines "Immovable Property" to mean, "Land".

This Definition of Moveable Property is seen in **Section 12 of the Penal Code**, which states "Moveable Property" to include Corporal Property of **every** description except Land and Things attached to the Earth or permanently fastened to anything which is attached to the Earth." **S.S. RICHARDSON** in his **NOTES ON THE PENAL CODE LAW CAP. 89 LAWS OF NORTHERN NIGERIA 1996**, annotated the words "Corporeal Property" to be "Property which may be perceived by the Senses; the definition therefore excludes all choses in action and obligations of all kinds, which are not so capable of being perceived."

Further Reference is finally made to the case of **ASGHAR ALI KHAN VS KURSHED ALI KHAN (1901) 17 TLR PAGE 715 AT PAGE 716, PC**, where "movable property" was held to include Money.

As regards the Element of Ownership, **WORDS AND PHRASES: LEGALLY DEFINED THIRD EDITION VOLUME 3, BUTTERWORTHS 1989 PAGE 304**, defines "Owner" as Ownership consists of innumerable rights over property, for example the rights to exclusive enjoyment, of destruction, alteration and alienation, and of maintaining and recovering possession of the property from all other Persons. Ownership is nevertheless divisible to some extent. For example, one or more of the collection of rights constituting ownership may be detached. Thus Prima Facie an Owner is entitled to possession or to

recover possession of his goods against the world, a right, which a dispossessed owner may exercise by peaceable retaking. He may, however, voluntarily or involuntarily part with possession, for example by the pledging, lending, hiring out, bailment, theft or loss of his goods, in any of which cases he is left with a right of ownership without possession, accompanied or not accompanied, as the case may be, with the right to possess.

In the case of **UGWANYI VS FEDERAL REPUBLIC OF NIGERIA (2012) LPELR-7817 (SC)**, HIS LORDSHIP RHODES-VIVOUR JSC defined the word Possession to mean, "To have or to own is to possess. A thing is in possession of a Person if it found on him." In **R VS AMISAH 12 WACA PAGE 28**, it was held that before a Person can be convicted of dishonestly receiving goods, there must be Physical or Constructive Possession. "Constructive Possession" means that the Goods must be in the Possession of a Person whose relationship with the Defendant was such that the Goods would be forthcoming at the request of the Defendant.

Misappropriation is the Umbrella Term under which the different ways of misusing someone else's Funds are grouped. **Black's Law Dictionary, Seventh Edition**, defines it as the unauthorized, improper, or unlawful use of Funds or other Property for purposes other than that for which it is intended, including not only stealing but also unauthorized temporary use for ones own purpose, whether or not he derives any gain or benefit therefrom. It thus includes defalcation, defined in **Black's** as Misappropriation of Trust Funds or Money held in any Fiduciary Capacity, and failure to properly account for such Funds, and Conversion, which is any unauthorized act which deprives an owner of his Property permanently or for an indefinite time. See the case of **Re Lunt, 255 Kan. 529, 1994**.

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

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

Furthermore, it is not enough to establish that the Money has not been accounted for or that it was mismanaged. It has to be established that the Defendant had dishonestly put the Property to his own use or to some unauthorized use. See the case of **Y.O. BAKARE & 2ORS VS THE STATE PER COKER JSC SC. 338/67; LC VOL. 1 2004 AT PAGE 173**, where His Lordship held that the necessary Criminal Intent under **Section 16 of the Penal Code** had to be proved. It is the wrongful conversion or dealing with anything by the Person to whom it has been entrusted. Dishonest Intention to Misappropriate is a crucial fact to be proved to bring home the Charge of Criminal Breach of Trust.

Suffice to say at this point that a clear understanding of the Principles governing Misappropriation shows that there must be an intentional and

illegal use of the Property or Funds, in that there is a wrongful assigning or setting apart of a Sum of Money for a purpose or use for which it should not lawfully be assigned or set apart. The **PURPOSE** for the Entrusted Monies was curved down and deviated from its **SET TARGET** directly to the Defendant's **PERSONAL BENEFIT OR GAINED ADVANTAGE/BENEFIT**.

As seen from the Charge Sheet, the Counts under the Offence of Dishonest Misappropriation as well as the facts and evidence presented before the Court are the same facts and evidence elicited under the Offence of Criminal Breach of Trust.

Therefore, the Court would not restate them again but will regard the evidence as well as consider the Written Address of Learned Senior Counsel/Learned Counsel already stated on Record for its deliberation. Each of the Counts under Criminal Misappropriation relate to the specific circumstances of Stationery, Grains, Presidential Visit and Liaison Office.

Count 3 of the Charge is in regard to the Sum of One Hundred, and Eighty Million Naira (N180, 000, 000.00), which formed part of the Funds meant for the Purchase of Stationeries and Office Equipment. Having earlier found the Defendant Guilty of Criminal Breach of Trust, it is now important to decide whether the Defendant misappropriated or converted this Sum of Money. In his Statement admitted as **Exhibit Z4 to Z6**, the Defendant asserted that he knew the Managing Director of Salman Global Ventures, Mr. Ibrahim Abubakar as a businessman but did not know the details of his Company. He agreed to consult with the Government Officials who allegedly gave him Money, and whatever was his Share, he would return. He also identified Mr. Ibrahim Abubakar to be the Contractor for the Dome Tent, and knew Mr. Ibrahim Abubakar was involved in the Ibi Wukari Water Project and stated that he was told his share of the Funds was Eighty Million Naira (N80, 000, 000), which he did not receive directly, but was posted to Mr. Ibrahim Abubakar's Account. The Money was later refunded and he did not directly benefit from the Water Project. There is also the fact of the Defendant's more than casual interest in the fact that the Representative did not take his

Company's Receipt with him to collect the Cheque, when he met him at the Jalingo Annex Hotel.

From the Extra Judicial Statements of Mr. Ibrahim Abubakar, he also exhibited a close affinity with the Defendant, even though he did not testify before the Court. The Defence Counsel had tendered his Statement in **Exhibit Z7**.

The Defendant was found to have issued out Directives concerning this Amount, an Offshoot from the Sum of Two Fifty Million Naira (N250, 000, 000), meant for the Purchase of Stationery and Office Equipment, which was not Supplied. It is clear that this Sum of Money is a Moveable Property, with a defined Owner, who is the Taraba State Government. From the Principles set out above, the Defendant did not have to actually take Physical Possession of the Money, and it was enough that he took actions that resulted in the Misappropriation of Funds. He did not need to use the Money to buy something or otherwise spend it. Courts have held it enough that to transfer the Money to a Bank Account or even to refuse or fail to hand over the Owner's Money when the Owner demands it, amounts to Conversion. By the mere fact of non-delivery of these items, Conversion took place and the manner in which the Funds were belatedly approved and the Fact that there was a Breach of the Terms of Approval for Direct Labour, with no Evidence of a Contractual Relationship, has proved Beyond Reasonable Doubt the Offence of Criminal Misappropriation under this Count. The Defendant is accordingly found Guilty as Charged.

As regards **Count 7**, which deals with the Purchase of Grains in the Sum of Twenty Four Million, Three Hundred Thousand Naira (N24, 300,000.00), having earlier found the Defendant Guilty of Criminal Breach of Trust, it is now important to decide whether the Defendant misappropriated and converted this Sum of Money. In the Memo tendered as **Exhibit Q**, the Sum of Money contained therein was a Moveable Property and the Purpose for this Money just did not add up and there was no Supply of the Products and no Confirmation of Receipt by those who ought to be in the know. The

Defendant was the only Person who knew of the Rice Seller in Lagos, who by the Memo ought to have received approximately Eight Million Naira and not Twenty Four Million, Three Hundred Thousand Naira and there was no Due Process and Accountability for the Money and therefore, the Defendant is found to have Misappropriated the Sum of Money in this Count and is hereby found Guilty as Charged.

Counts 9, 11 and 13 are with regard to the Sums of Twenty Seven Million Naira (N 27,000,000.00), Thirty Two Million, Three Hundred Thousand Naira (N32, 300, 000.00) and Forty Two Million Naira (N42, 000,000.00) all meant for the **Presidential Visit**; and which were moveable properties never given to PW4, Mr. Dennis Nev, to disburse. The Defendant accepted that he orally instructed Mr. Dennis Nev to prepare the Memos and he approved the Memos when presented to him. It remained uncontroverted that these Sums of Monies were withdrawn from the Account of Taraba State Government.

It is at this point that there were divergent versions of what happened to the Monies and whether the purpose for which they were approved, were fulfilled or not. Where did the Money Trail End? Mr. Dennis Nev signed as a Receiver on the Payment Vouchers and stated that he never formed any Committees and did not know what happened to the Monies after he took them into the Defendant's Office. There were No Retirement of these Funds and the Requisite Officials or the CommitteeMembers, were not produced before the Court to attest to the fact that they received the Monies or produced any Committee Report on their activities.

Since the Defendant maintained that there were Committees setup including the Security and Protocol Committees, and since he said he saw the List of Committee Members, the burden was on him to produce at least One Member and the List. There were No Receipts evidencing the fact that Monies were paid for what were stated in the Memos. By the fact that there was no evidence whatsoever produced as to the existence of the Committee, or Committees, indicates that there were no Committees formed and the

Money Trail, ended at the Defendant's Doorstep. The Defendant's instruction to PW4, Mr. Dennis Nev, was a Wrong Direction, as he even admitted that the Secretary of the State Government, who had the Budget Votes for such Events, was the Official Delegate to receive State Visitors. PW7, Mrs. Asabe Maiangwa, the Permanent Secretary of the Ministry of Finance, had testified that the Office of the Secretary to the State Government is the Office to apply for Funds to receive Guests and after the Application is made, the Secretary to the State Government is to receive the Funds. DW1, Mr. Yakubu Bulus also confirmed this Procedure in his Cross-Examination.

Therefore, if the Defendant exercised his right to delegate the responsibility of receiving Visitors to a Permanent Secretary, who is from a Different Department, then it is expected that, at least, this Delegation should have been formalized in a Written Form.

The Reasonableness of the Defendant's Approvals in **Exhibits 01, 02 and 03**, taking into account the Time Factor and Lack of Accountability, comes up for question, in that the Funds expended were meant for the Activities of the Government House and did not extend to Mambila Projects. The Prosecution did not prove Conversion of these Funds to the Defendant's Personal Use and Benefit, but proved Misappropriation of these Funds. Had Mr. Dennis Nev or any other Official converted the Monies to their Own Use, they would have been queried by the Defendant and probably prosecuted. There is no evidence of any Query raised.

Therefore, all in all the Court finds that the Prosecution has been able to establish the Dishonest Misappropriation of these Funds in **Counts 9, 11 and 13**, and the Defendant, Rev. Jolly Nyame, is found Guilty on these Counts.

The Offences Relating to the **Counts 15, 17, 19, 21, 23 and 25**, dealt with the Sums of Fifteen Million Naira (N 15,000,000.00), Twenty Five Million (N25, 000, 000.00), Twenty Million Naira (N20, 000, 000.00), Two Million Naira (N2, 000, 000.00), Four Million Naira (N4, 000, 000.00) and Six Million Naira (N6, 000, 000.00).

It is clear that these Sums of Monies are Moveable Properties, with a defined Owner, which is the Taraba State Government. From the Principles set out above, the Defendant caused the transfer of the Monies from Jalingo in Taraba State to Abuja, and all these Monies were documented. The Defendant in a Fiduciary Capacity held the Monies transferred, and he was expected to fully account for the Use of such Funds. He had said that the Monies were his Allowances, Dispensation and Security Funds.

The Defendant confirmed he was in Court when Dennis Nev testified that he, DW4 told him to send Security Funds to Abuja. The Prosecution also referred him to his Statement in **Exhibit Z6** where he stated Security Votes should be sent to Abuja and he confirmed the Statement but added that he did not ask Dennis Nev if he collected the Money from Bubajoda. Rev. Jolly Nyame could not say whether a Political Appointee could not be in the Custody of Public Funds, and reasoned that because the Security Funds was meant for the Governor's exclusive use, his Special Assistant, Hilkihah Bubajoda, must render accounts to him. He was referred to his Statements in **Exhibits Z4 to Z6** and asked to point out where he mentioned that the Security Account was maintained by his Special Assistant and he responded that he was not asked, as the Security Funds were not in dispute and he did not see the need to state it. The Security Votes does not have an Accounting Officer because they are not accounted for and cannot be stolen.

The collection of his Allowances were said to be by his Orderly, Mr. Philip Akolo, who did not deny collecting the Defendant's Allowances but qualified before the Court that the Amounts he received were Small Amounts. Therefore, if they were small amounts, they could not be within the Range of the Sums of Monies under these Counts. He had also stated that they were his Security Funds, and the Court notes that he is not accountable to anyone for the manner the Security Vote Funds were expended. But, he muddled the waters when he said that Mr. Bubajoda solely managed the Security Vote Funds Bank Account. If so, it was expected that Mr. Bubajoda be the Person

to whom he would have addressed his Directives to transfer the Security Funds to him.

There was a missing connection between Mr. Bubajoda and Mr. Dennis Nev, and since the Defendant knew who Mr. Bubajoda was, he ought to have called him as his Witness to validate the fact that he gave Mr. Dennis Nev, the Security Vote Funds for onward transfer to the Taraba State Liaison Office in Abuja. It is worthy of note that the Defendant himself, identified Mr. Hilkih Bujoda to be his Senior Special Assistant and Aide in his Office, and more importantly stated that he was NOT A CIVIL SERVANT.

By logical deduction, Mr. Hilkih Bujoda could not be under the Direction and Control of Mr. Dennis Nev, the Permanent Secretary, and was also not expected to be bound by the Financial Instructions/Regulations of the State. He was Free from Civil Service Rules and Regulations.

Since the Defendant has ascribed the Custodial Role of the Security Funds to Mr. Bubajoda, and since by **Exhibit PP**, he has assumed the Role of the Sole Accounting Officer to this Account, then it was elementary to expect that he knew the Name of the Bank where the Funds were domiciled as opposed to his Statement that he did not know the Account Name and in particular the Bank. More curious is the fact that he stated that Mr. Bubajoda was the Sole Signatory. There cannot be two Soles! And Two Captains on a Ship! It could only mean that the Sole Accounting Officer could only direct the Sole Signatory, and no one else to withdraw Monies from the Account, or even Monies from the Safe. The Permanent Secretary had no Role. Therefore, the Defendant was expected to furnish the missing link between Mr. Bubajoda and Mr. Dennis Nev.

It is important to recall the Extra-Judicial Statement made by the Defendant before the EFCC in **Exhibit Z6**, where he stated “***...Mallam Abdulrahman Mohammed is the Accountant Abuja Liaison Office. I usually direct my Dispensation or Security Funds to be transferred from Government House Jalingo to the Liaison Office Account. The Accountant cashes the Money and brings it cash. The Money involved ranges from Two to Thirty***

Million depending on the need as it arose. In the case of my Dispensation Memos are always raised and cash transferred to Abuja for disbursement to me and other Staff. In the case of Security Funds since it is paid in cash I direct the Permanent Secretary to transfer cash as need arises...”

This above Statement postulates two avenues for Cash, the first being the Dispensation contained in Memos, and the second being the Security Funds in Cash sent by the Permanent Secretary to him. There were no Memos presented before the Court.

Had the Defendant stuck to this narration, he would have nothing to answer or explain in regard to these Charges, because the Expenditure of his Security Funds was not subject to anyone’s oversight function. He could not even be questioned on it, and owed no one any explanation on how he spent it. Had the Defendant merely stuck to a consistent position in regard to the Security Vote Funds, ABSOLUTELY NO ONE could question him on how he spent those Funds.

However, the Defendant made inconsistent Statements regarding the Security Vote Funds. The first deviation is when he stated unequivocally in Court, that ALL FUNDS given to him as Entitlements were duly signed by his Orderly, who also collected his Duty Tour Allowances, and would be surprised if his Orderly testified that he only collected DTAs. He also extended the Beneficiaries to include Expenses for his Entourage.

He then deviated again, by stating that the Monies were NEVER HANDED OVER to him, and he was not confronted with these Officials at the EFCC. Further he could not recall what the Entitlements were, stating that it depended on what was stated in the Memo. Curiously, he could also not say whether the Government Office determined his Dispensation, and admitted to issuing Oral Instructions to prepare Memos.

Another Material Deviation from the Contents of his Statement was when he stated that there was Disbursement of Security Funds from Jalingo to Abuja, but his disbursement in cash WAS NOT for Security Funds. If so, then his Orderly could not have signed for it.

The Defendant had also stated that the Monies formed part of his Dispensation. What exactly he meant by that, was unexplained by him. The definition of Dispensation is clear to all but what is not clear, is his understanding of the word 'Dispensation', because he specifically isolated his Duty Tour Allowances and Security Funds from his Dispensation.

The only other Entitlement would be his Salary, as depicted in the Payroll, **Exhibits AA1, AA2 and AA3**, and his Statement of Account in **Exhibit SS** and finally, his Code of Conduct Forms in **Exhibits RR1, RR2 and RR3**. None of these Documents demonstrated any of these Sums in the Counts. Therefore, the justification for the receipt of these Monies was left unaddressed by the Defendant.

Finally, it is also important to note that Rev. Jolly Nyame admitted collecting these Sums of Monies in his Extra-Judicial Statements in **Exhibit Z6** directly from the Accountant, who brings the Monies to him in Cash, but before the Court, he ascribed collection to his Orderly. The only disputed point is the manner of delivery of the Funds to him.

Since, the Defendant accepted that he received Funds, then it did not matter the HOW, or the WHERE he received it. It is tantamount to flogging a Dead Horse! The issue is he received it. Had he maintained the assertion in his Statement before the Court, it would have been totally irrelevant whether he collected the Monies in the Room, Parlour or in his Car, because he was legitimately receiving Security Votes.

The Defendant capped it all by throwing a Spanner into the Works, when he stated that the Security Funds were contained in a Safe in the Government

House. From Bank to Government House, to Safe, to Mr. Bubajoda, and to Mr. Nev, all these linkages were totally inconsistent.

The Prosecution presented a consistent line of evidence in proving these Counts, whilst the Defence, in rebutting the Case of the Prosecution by reasonable doubt, ended up creating a reasonable doubt against itself.

Therefore, the Court is guided by the Set Principles from the Appellate Courts that a thing is in possession of a Person if it found on him, and there must be Physical or Constructive Possession. It is enough to prove that the Defendant took actions that resulted in the Misappropriation of Funds. He did not need to use the Money to buy something or otherwise spend it. These Funds weretransferred by Mr. Dennis Nev from the Taraba State Government House to the Taraba State Liaison Office, Abuja, under the Leadership of Mr. Japheth Wubon, PW5 and he delegated Mr. Abdulrahman Mohammed, the Accountantto deliver the Monies to the Defendant, and there was no Official Documented Acknowledgement of the Receipt of these Monies received by theDefendant.

These Fundswere not his Entitlements or Salaries, were directed to be cashed and dropped in his Bedroom in the Liaison Office without signing for them. The Monies were Moveable Properties, and theirmovements and the manner of receipts of these Sums were done dishonestly contrary to the Financial Regulations of Taraba State, amounting to an Offence of Misappropriation in Law.

As regards Counts, 21, and 23 these are mirror sums to Counts 22 and 34 and will follow the same fate and he is accordingly discharged on these counts

As regards **Counts 15, 17, 19 and 25** the Defendant is found Guilty on these Counts.

THE OFFENCE OF GRATIFICATION, COUNT 4 AND THE OFFENCE OF ACCEPTING A VALUABLE THING WITHOUT CONSIDERATION, COUNT 5

The Prosecution has alleged under **Counts 4 and 5** that Reverend Jolly Tevoru Nyame while he was the Governor of Taraba State accepted from one **Abubakar Suleiman of Alusab International (Nig.) Ltd** through **Salman Global Ventures (Nig.) Ltd** a Gratification in the sum of **N80, 000,000.00 (Eighty Million Naira)**, (which was not a lawful remuneration) as reward for the Award of Contract by the Taraba State Government to **ALUSAB International (Nig.) Ltd and in Count 5, that** while being the Governor of Taraba State of Nigeria accepted from one **Abubakar Suleiman of Alusab International (Nig.) Ltd** through **Salman Global Ventures Ltd**, a Valuable thing to wit: the sum of **N80, 000,000.00(Eighty Million Naira)** without consideration and knew it to have connection with his Official Function to wit: the Execution of the Water Project at **IBI/WUKARI** in Taraba State.

The Prosecution in Proof of these Offence called **Six Witnesses, who are; PW1**, Hauwa Kulu Usman the Complainant and Widow of the Late Alhaji Usman Abubakar **PW2**; Usman Abubakar Suleiman late brother to Late Alhaji Usman Abubakar **PW3**; Mr Olubunmi Ogunode, a Compliance Officer working with Zenith Bank Plc. **PW9**; Mr. Ibrahim Galadima, the 1st EFCC Investigating Police Officer; **PW10**, Abubakar Tutare, the erstwhile Commissioner of Finance and **PW14**, Dandison Akurunwa, a Subpoenaed Witness.

In **further Proof**, the Prosecution tendered **Ten Documentary Exhibits**, which are: **Exhibit A** Statement of Hauwa Kulu Usman, the PW1 (Widow to Alhaji Usman Abubakar (Deceased) – Executive Chairman, Alusab International), **Exhibit B** - Petition by Solicitor to Hajia Kulu Usman and Maimuna Usman Abubakar to the EFCC. **Exhibit C**, the Complimentary of Alhaji Ibrahim Abubakar, MD/CEO of Salman Global Ventures; **Exhibit D**, Statement of Usman Abubakar Suleiman - PW2 dated 26th September 2006 tendered by the Defence; **Exhibit H**, - Account Statements of Salman Global Ventures with Zenith Bank, Account No. 6013407822 from 1st October 2004 to 30th September 2009, and 1st Of October 2009 to 3rd of June 2010 tendered by the Prosecution. Also Tendered were **Exhibit K**, -Two Deposit

Slips dated the 14th of February 2005, and 13th April 2005 tendered by the Prosecution; **Exhibit N**, - Zenith Bank Response to the EFCC's Enquiry On the Bank Account of Alusab International Limited, Dated 4th June 2010 Tendered by the Prosecution; **Exhibit Z2**, -Zenith Bank Cheque- Taraba State Capital Projects Account tendered by the Prosecution; **Exhibit Z3**, the Zenith Bank Deposit Slip dated 12th Of April 2005 tendered by the Prosecution and finally, **Exhibit Z4** , the Statement of Jolly Nyame (The Defendant) dated 6th June 2007 tendered by the Prosecution

In Defence, Reverend Jolly Tevoru Nyame through his Legal Representation called a **Sole Witness**: - Reverend Jolly Nyame himself as **DW4**.

In **further Proof** of his Defence, Reverend Jolly Tevoru Nyame tendered **Seven Documentary Exhibits**, which are: - **Exhibit E**, the Additional Statement of Usman Abubakar Suleiman, the PW2 dated the 10th Of October 2006 tendered by the Defence; **Exhibit F**, Further Statement of Usman Abubakar Suleiman PW2 dated the 21st Of November 2006 tendered by the Defence; **Exhibit G**, the Further Statement of Usman Abubakar Suleiman dated 27th September 2006, and tendered by the Defence; **Exhibit Z7**, the Statement of Ibrahim Abubakar, Managing Director Salman Global Ventures Limited dated 31st October 2006, tendered by the Defence through PW9; **Exhibit Z14**, the Further Statement of Abubakar Tutare, Commissioner For Finance dated 12th July 2007 tendered by the Defendant through PW10; **Exhibit Z15** - Statement of Abubakar Tutare, Commissioner For Finance Dated 22th November 2006 tendered by the Defendant through PW10 and finally, **Exhibit Z16**, the Further Statement Of Abubakar Tutare, Commissioner For Finance dated 12th July 2007, tendered by the Defendant through PW10.

On **Count 4**, the Offence of Accepting Gratification in the Sum of N80 Million from Abubakar Suleiman of Al -Usab International as reward for the award of the Ibi Wukari Water Project, the Prosecution called PW1, PW2, PW3, PW9 and PW10, and tendered PW1's Statement-**Exhibit A**, the Complimentary Card with the details of Salman Global's Account on it- **Exhibit C**, PW2's Statement-**Exhibit D&E**, the Account Statement of Salman

Global-Exhibit H, the Deposit Slip for N80Million-**Exhibit K**, the Account Statement of Al Usab Int'l-Exhibit N, Statement of Ibrahim Abubakar-**Exhibit Z** and the Statement of PW10.

However, the Law is trite that to prove the Offence of accepting Gratification based on **Section 115 and Section 119 of the Penal Code Act**, the Prosecution must lead credible, irrefutable and ex-facie reliable evidence to prove all the essential elements of the Offences, either directly, circumstantially or inferentially, and he placed reliance on the case of **SANNI VS STATE (1981) 2 NCR 91 @ 98-99**. These essential ingredients are that the Defendant must be a Public Servant who accepted for himself or any other person Gratification, whether pecuniary or otherwise other than lawful remuneration for a motive or reward for doing or forbearing to do any Official Act.

Now, Count 4, which deals with the Offence of Taking Gratification in respect of Official Acts and is governed by: -

Section 115 of the Penal Code Act, which states as follows: -

“Whoever being or expecting to be a Public Servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for another person, any Gratification whatsoever whether pecuniary or otherwise, other than lawful remuneration, as a motive or reward-

a) For doing or Forbearing to do any Official Act; or

b) For showing or forbearing to show in the exercise of his Official Functions favour or disfavour to any person; or

c) For rendering or attempting to render any service or disservice to any person with any department of the Public Service or with any Public Servant as such,

Shall be punished-

- i. With Imprisonment for a Term which may extend to Seven Years or with Fine or with both;***
- ii. If such Public Servant is a Public Servant in the service of the Government of Northern Nigeria or of the Government of the Federation***

acting in a Judicial Capacity or carrying out the duties of a Police Officer, with Imprisonment for a Term which may extend to Fourteen Years or with Fine or with both.

Under this Count, the Prosecution is required to strictly prove the following:

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- 1) That the Defendant is a Public Servant within the definition of **Section 10 of the Penal Code Act** and a careful perusal of this Section, will show that the person must be appointed by the Government or the Government of the Federation for the performance of Public Duties, whether with or without remuneration or for the performance of a specific public duty or any person in service of the Government in a Judicial or Quasi-Judicial, Executive, Administrative or Clerical Capacity.
- 2) That the Defendant accepted, or obtained, or agreed to accept or attempted to obtain from some person, a Gratification for himself or any other person, who need not be a Public Servant. Gratification means Money, Donation, Gift, Loan, Fee, Prize; Favour; Reward, Valuable Security, Property or Interest in Property, being Property of any description, whether moveable or immovable or any other similar advantage, given or promised to any person with intent to influence such person in the performance or non-performance of his duties.
- 3) That the Gratification was not legal remuneration such as Salary and Allowance etc., that are officially paid to the Defendant by the State Government or other payments from other sources, which the Defendant as a Public Servant is permitted to receive.
- 4) The Prosecution must also prove that the Defendant accepted the Gratification as a Motive or Reward: -
 - a) For doing or forbearing to do any Official Act;
 - b) For showing or forbearing to show in the exercise of his Official Functions, favour or disfavour to someone or;
 - c) For rendering or attempting to render any service or disservice to someone within any Department of the Public Service or with any Public Servant.

It is clear that the Official Act for which the Gratification was given, must be an act connected with the Official Functions of the Defendant as Governor, and there must be an understanding that the Gratification was given in consideration of some Official Act or Conduct.

It is not necessary to show that the Official Act, the Subject of Consideration, was performed by the Public Servant, and it is not a defence to show that the act, if performed, was a legal act and against the person who tendered the Gratification.

It is also extraneous to show that at the time of taking the Sum of Money alleged, the Defendant intended to perform the act promised. Therefore, it is immaterial to enquire into how the Money received, affected the mind of the Defendant. Under this Section, there is no need to establish any dishonest or fraudulent intent on the part of the Defendant, as the Offence is complete once he accepts the Gratification in respect of an Official Act.

Whilst there must be a clear connection between the Payment and the Performance of the Act, it need not be shown that if the Gratification had not been given, the Act would not have been performed or that the Act would have been differently performed. Reference is made to the cases of **CALEB OJO & ANOR VS FEDERAL REPUBLIC OF NIGERIA (2008) LPELR-5155 (CA); TEMPLEN WANKWOALA VS FEDERAL REPUBLIC OF NIGERIA (2018) LPELR-43891 (SC) PER RHODES-VIVOUR JSC; AWETO VS FRN (2018) LPELR-43901 (SC).**

Now, Count 5 deals with the Offence of a Public Servant Obtaining Valuable thing without consideration from person concerned in proceeding or business transacted by such Public Servant and it is governed by: -
Section 119 of the Penal Code Act, which states as follows: - who ever being a Public Servant accepts or Obtains or agrees to accept or attempts to obtain for himself or for any other person any Valuable thing without consideration or for a consideration which he knows to be inadequate-
(a) From any person whom he knows to have been or to be or to be likely to be concerned in any proceeding or business transacted or about

to be transacted by such Public Servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate; or

(b) From any person whom he knows to be interested in or related to the person so concerned, Shall be punished with Imprisonment for a Term which may extend to Five Years or with Fine or with both.

Under this Count, the Prosecution is required to strictly prove the following:

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- 1) That the Defendant is a Public Servant;
- 2) That he has accepted, or obtained, or has agreed to accept or has attempted to obtain for himself or for someone else, a Valuable thing. This Valuable thing, could include any Valuable Consideration of any kind, Discount, Commission, Rebate, Bonus, Deduction Or Percentage;
- 3) That he gave no Consideration for it or gave an Inadequate Consideration.
- 4) That the Person from whom the Present was received was known to the Defendant to have been, or to be, or to be likely to be concerned in the transaction of public business with him or his subordinate, [or that the person from whom the present was received was known by the Defendant to be related to a person having been concerned or likely to be concerned in transacting public business with the Defendant].

It is clear that this Section is wider than **Section 115** and makes punishable the Mere Taking of Presents by a Public Servant, when it cannot be proved that the Presents were taken corruptly. The question of the Motive or Reward of the Giver of the Present is not material. The Public Servant must have taken the Present without any Consideration or for Inadequate Consideration in connection with his Official Functions as a Public Servant, but this Offence does not affect Gifts, obtained at a fair price from relatives and friends, unconnected with his Official Duties as a Public Servant.

Learned Counsel representing the Defence had contended that there were Material Contradictions in the evidence of the Prosecution that entitled the

Court to disregard the evidence led by certain witnesses. He argued that during her testimony, PW1, Hauwa Kulu Usman, the Widow of the Late Contractor had stated that the Sum of N90 Million Naira was paid by Mr. Suleiman to the Defendant, whilst PW2, Mr. Suleiman had stated that N80 Million Naira was paid but to Salman Global Ventures. He then challenged the contradiction of Alhaji Tutare, when he initially stated that he shared part of the Money; then later stated that he collected the Money and gave same to the Defendant, and then in another breath, he stated that the Money was paid to Salman Global Ventures. Since the above was challenged, the Prosecution ought to have adduced further evidence in establishing this fact.

Now, it is clear that for a contradiction to be material, the essence of what was said must be substantial and must severely affect the substance of the case. There must be an inconsistent account of the same event such that serious doubt on the case is presented. In the case of **OLATUNBOSUN VS THE STATE (2011) ALL FWLR PART 555, 304 @ 344 PER NWEZE JCA (AS HE THEN WAS, NOW JSC)**, it was held that such inconsistent account would be treated with suspicion, and in any event, Courts have even taken the view that witnesses may not always speak of the same facts or events with equal and regimented accuracy.

Reference is also made to the case of **BASSEY VS THE STATE (2012) ALL FWLR PART 633, 1816 AT 1832 S.C.** See also the Case of **TEMPLWANKWOALA VS FEDERAL REPUBLIC OF NIGERIA (2018) LPELR-43891 (SC)**, where it was held that a piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated, and not when there is just a minor discrepancy between them. Two pieces of evidence contradicts one another when they are themselves inconsistent. A discrepancy may occur when a piece of evidence stops short of, or contains a little more than what the other evidence says or contains minor differences in details. See also the cases of **GABRIEL VS THE STATE (1989) 5 NWLR PT 122 AT PAGE 460; ONUBOGU & ANOR VS THE STATE (NSCC) AT PAGE 358**. It is only material contradictions that are to be considered. Per **RHODES-VIVOUR JSC**.

From the Evidence, Madam Hauwa Kulu mentioned the Sum of Ninety Million Naira (N90, 000, 000.00) as being given to the Defendant, which was what she was told and this was not entirely incorrect in the sense that Ninety Million Naira was indeed deducted from the Sum of One Hundred and Thirty Five Million, Seven Hundred and Ninety Four Thousand, Six Hundred and Eight Naira (N135, 794, 608.00). This Sum represented a deficit to the Money due to Alusab International and as explained by Alhaji Suleiman, Ninety Million, Two Hundred and Fifty Thousand Naira was indeed withdrawn by him. He had explained how this Sum was distributed. Madam Hauwa Kulu's evidence could at best be said to be inaccurate but it was certainly not contradictory. Alhaji Suleiman's narration of events was consistent through his Oral and Documentary Evidence and cannot be said to be inconsistent as he was in an inside in position.

As regards Alhaji Tutare PW10, he had stated in one breath that he gave the Sum of Eighty Million Naira to the Defendant and in another stated that he paid this Sum into the Account of Salman Global Ventures, and then he stated that he shared the Money. The issue is, are all these Statements inconsistent? If Ninety Million Naira was withdrawn and he took Ten Million Naira out of it, this is sharing, as the proportional ratio of the share is irrelevant. If he meant that he paid the Sum of Eighty Million into Salman Global Ventures for the benefit of the Defendant, then it could be argued that he gave the Defendant the Money. An alternative reasoning is to argue that payment into an Account is different from the physical giving of the Money in Cash. The question must be asked, was he consistent as to who was to benefit from the Sum of Eighty Million Naira.

In any event, the Court will determine this issue not only on his evidence but on other Corroborative Evidence.

Learned Counsel representing the Defence had also raised Four Contentions on Hearsay, namely: - 1) that Hajia Kulu's evidence was Hearsay as the information she derived in regard to the Payment was obtained from Mr. Ali

Abubakar, 2) He argued that PW1 and PW2's evidence were based on what Alhaji Tutare told them, and therefore the Court should not act on it and the Third Challenge was 3) when there was a narration of the Defendant's purported interest in the Property Purchased by Ibrahim Abubakar from one Imam Ahmed, who was neither invited nor called throughout the investigation and the actual trial of the case and therefore what was relayed, was hearsay evidence. The 4th and final contention was 4) when he argued that the Extra-Judicial Statement of Ibrahim Abubakar in **Exhibit Z7** did not support the case of the Prosecution, as the Statement was based on what Ibrahim Abubakar heard from Imam Ahmed on the Purchase of the Property. Imam Ahmed was not called by the Prosecution, thereby making the Statement, Documentary Hearsay.

It is clear that Oral Evidence must be direct and if it refers to a Fact, which could be heard, means that it must be the Evidence of a Witness who says he/she heard it. The Hearsay Rule makes Statements other than those made in Oral Evidence inadmissible to prove the Truth of the matters stated. The Purpose of the Statement must be considered rather than its Form to fall under any exception and the Court must examine whether the purpose was to cause another Person to believe the matter in the Statement or whether it was to cause another Person to act on the basis that the matter is as stated. Where the Statement was not intended to assert the matter sought to be proved by adducing the Statement, albeit in an Assertive Form, and where there was no purpose in inducing belief in the matter asserted such as a Private Entry in a Personal Diary, then it falls under the exception of Hearsay. See the Cases of **R VS LEONARD (2009) EWCA CRIM 1251; R VS KNIGHT (2007) EWCA CRIM 3027**.

Now, the Evidence of Hauwa Kulu as to Payments and also the contention that the Evidence of the PW1 and PW2 were based on what Alhaji Tutare told them were on the face of it, hearsay evidence but it is clear that Alhaji Tutare himself when testifying before the Court confirmed their evidence. The Hearsay Evidence would have been excluded from Consideration but the

Original Declarant of the Statement confirmed it when he testified before the Court on the same Evidence.

Learned Counsel had referred to the Statement made by Imam Ahmed to Alhaji Ibrahim Abubakar that the Defendant had a purported interest in the Property, stating that it constituted Hearsay Evidence. Further, it was contended that the Extra-Judicial Statement of Ibrahim Abubakar in **Exhibit Z7** did not support the case of the Prosecution, as the Statement was based on what Ibrahim Abubakar heard from Imam Ahmed on the Purchase of the Property and Imam Ahmed was not called by the Prosecution, thereby making the Statement, Documentary Hearsay. These contentions are closely related to the above and the same deduction applies in this instance.

Now, it is important to understand at the get-go that it was the Defence Counsel himself who applied to tender this particular Statement and so the Admissibility of this Statement was not challenged. There is a Presumption that he read everything that was contained in the Statement before he applied to tender it. The Statement was in effect, his Evidence.

Now, two of the exceptions to Hearsay Evidence made in regard to Statements in Documents, are the fact that the Maker who is the Human Source of the Information was unavailable to testify because he is either 1) Abroad or 2) Unfound. **See Section 39 (b) and (c)**. There must also be proof that such steps as reasonably practicable to find him have been taken, but his whereabouts remained unknown. In his Statements, Alhaji Ibrahim Abubakar had testified that he could not locate Imam Ahmed and did not know his whereabouts when he was questioned by the EFCC and so could not lead them to Imam Ahmed. There was also the fact that Ibrahim Abubakar could no longer be found and therefore, the inability of the Prosecution to produce both Alhaji Iman and Alhaji Ibrahim Abubakar before the Court is reasonable in the light of the circumstances.

Both Parties were identified to the Courts Satisfaction and it can be said that this **Exhibit Z7** was the Defendant's evidence, projected through a

Prosecution's Witness. In any event, the Evidence of what a Party saw cannot be Hearsay nor will Evidence of what he heard or Perceived or Witnessed be termed as Hearsay. Reference is made to the dictum of **NNAEMEKA, JSC IN UTTEH VS THE STATE (1992)23 NSCC (PT.1) @ 236 and also UMEOJIAKO VS EZENAMUO (1991) 21 NSCC (PT.1) @169.**

The Defence had argued that the Extra-Judicial Statement of Ibrahim Abubakar in **Exhibit Z7** did not support the case of the Prosecution, as the Statement was based on what Ibrahim Abubakar heard from Imam Ahmed on the Purchase of the Property. Imam Ahmed was not called by the Prosecution, thereby making the Statement, Documentary Hearsay. In the case of **OLUBODUN VS LAWAL (2008) 17 NWLR PT 1115AT 1 SC, OGBUAGU JSC** acknowledged that he never heard of anything called documentary hearsay, "there is no such provision under the evidence Act". He referred to the then Evidence Act at **Sections 77 and 92** to say that Documentary evidence is the best evidence. See also the case of **UTTEH VS THE STATE (1992)23 NSCC (PT.1) @ 236.**

The Court has exercised the necessary caution and has also considered other Corroborative Evidence in evaluating this contention.

The Third Contention was in regard to the issue of Accomplice and Learned Counsel challenged the evidence of PW10 Alhaji Tutare, the erstwhile Commissioner for Finance stating that it was unsafe since he participated in the commission of the Offence. He had taken N10 Million Naira out of the N100 Million as well as a Mercedes Benz Car as payment for facilitating the Water Project and this Payment was corroborated by the evidence of Alhaji Usman Suleiman. Learned Counsel also pointed out that the IPO, PW9, said that the ownership of the Property in Wuse was not traced to the Defendant.

Now, **Section 198 of the Evidence Act 2011 (As Amended)** provides for Accomplice Evidence and as already defined above, the Court will only additionally state that for a Witness to be an Accomplice, he must have participated in the actual offence charged whether as Principal or Accessory

before or after the fact. It is an issue to be decided in the circumstance of each case. Reference is made to **The QUEEN VS EZECHI (1982) AMLR 45 (PT. 1) 113 @ 112-119**. In Law, an Accomplice is a Competent Witness against a Defendant and a conviction based on the evidence of such accomplice is not illegal, even where such evidence is uncorroborated but the Court will warn itself of the danger of convicting on the uncorroborated evidence of an Accomplice. See also the case of **OKOSI and ANOTHER VS THE STATE (1989) LPELR-2499 SC**. The determination of this contention would be discussed anon.

The Fourth Contention made by Learned Counsel for the Defence was in regard to the absence of Vital Witnesses who were not summoned by the Prosecution to testify in regard to the case. According to him, the MD/CEO of Salman Global Ventures had in **Exhibit Z7**, stated that he was informed by Iman Ahmed that the Defendant was interested in the Property yet the said Mr. Imam was not called to testify before this Court. Further, the evidence of Alhaji Ibrahim, the CEO of Salman Global Ventures was crucial for the Prosecution to obtain orally in Court but the Prosecution failed to call them. Finally Learned Counsel argued that the fact that the Defendant told a lie did not mean that he is Guilty of the Offence Charged.

Now, the Court will consider the Substantive evidence led in regard to **Counts 4 and 5** as well as **the Exhibits** tendered in their regard to determine the Issue of Gratification and Obtaining Valuable thing without Consideration.

In her Written Extra-Judicial Statement to the EFCC admitted as **Exhibit A**, Madam Hauwa Kulu Usman stated thus: -

“When he was contacted he said he gave the Taraba State Governor N90, 000, 000.00 and bought cars for one of the Commissioner for Finance (Former Commissioner of Finance)”.

During her Testimony she had testified that on approaching Suleiman, he informed the family that he gave the former Taraba State Governor the Sum of Ninety Million Naira (N90, 000, 000.00) and also bought Two Cars for one

of the Commissioners of the State. Under Cross-Examination she stated that before she wrote the Petition to the EFCC, Abubakar Ali informed her about the Money paid to the Taraba State Governor.

In **EXHIBIT B**, the Petition written by the Solicitor to Hajia Kulu Usman and Maimuna Usman Abubakar to the EFCC, it alleged that

“Suleiman Abubakar collected a Cheque due to the Deceased’s Company (AL USAB INTERNATIONAL LTD) from the Taraba State Government in the Sum N135, 794, 608.00, which they said Suleiman opened a new Account with Zenith Bank, Account No. CA6012805693. The Sum was lodged on the 12th April 2005 and by the 13th of April 2005, N90, 250, 000.00 was withdrawn. By the 6th of May 2005, what was left in the Account was less than N2, 000, 000.00”.

From these three instances listed above, Hajia Kulu Usman was consistent as regards this Sum of N90 Million.

Now, from a close look at the Statement of PW2, Mr. Usman Abubakar Suleiman in **EXHIBIT D**, dated the 26TH September 2006 tendered by the Defence, it can be seen that the ***“Ibi Wukari Water Project was about N372Million, and was not up to 10% complete when CEO died. The Balance needed to complete the Project was 35M but he was told to add 100M by the Commissioner for Finance, Abubakar Tutare, who had given him the Account Number at Zenith Bank but he did not know the reason. According to him, tax of N10 Million was deducted from the 100Million Naira and given to the State Government, and N 90 Million Naira was paid, 10 Million Naira was VAT and 8 Million Naira Cash was paid to the Commissioner for Finance as demanded, at his Hotel Room at Russel Centre through his wife, which was withdrawn from his Account in Zenith Bank Jalingo on the 19th of April 2005. He added that the 100 Million Naira was paid to Account No. 6013407822, Zenith Bank***

Also in evidence is **EXHIBIT C**, the Complimentary Card of Alhaji Ibrahim Abubakar, the MD/CEO of Salman Global Ventures Limited tendered by Prosecution which on the reverse side of the Card is written the words ***“Salman Global Ventures 6013407822’ N80m”.***

In **EXHIBIT E**, the Additional Statement of Usman Abubakar Suleiman dated the 10TH of October 2006, which was tendered by the Defence, it can be seen that he mentioned the name of *one Mr Carl, a Deputy Manager of Zenith Bank, and Account Officer for Al Usab International Ltd, stating that he had full knowledge of the Payment Transaction into Account No. 6013407822. The Sum of 90Million Naira was withdrawn from Al Usab Int'l and N80Million Naira was paid in favour of Salman Global on the 13th of April 2005, on the instruction of the Commissioner, Abubakar Tutare. According to him, it was Mr Carl who filled out the Deposit Slip and called the Commissioner to confirm. 10Million Naira was given to the Commissioner, Abubakar Tutare through his House Boy, Hussaini where the cash was transferred from his Car to Hussaini's Car. He did not know the Directors of Salman Global Ventures and has no relationship with the Company.*

In **EXHIBIT F**, the Further Statement of Usman Abubakar Suleiman dated the 21st of November 2006 tendered into evidence by the Defence, it was stated that the sum of Eight Million Naira (8, 000, 000.00) was given to the Commissioner's third wife at the Russel Center and in **EXHIBIT G** another Further Statement of Usman Abubakar Suleiman, dated the 27th of September 2006 tendered by the Defence, it just only showed the Summary of how the Deceased Funds were managed as regards carrying out the Ibi-Wukari Water Project.

A careful perusal of **EXHIBIT H**, the Account Statements of Salman Global Ventures with Zenith Bank, Account No: 6013407822, dated from 1st October 2004 to 30th September 2009, and 1st of October 2009 to 3rd of June 2010 tendered by the Prosecution, will show the N80 Million Naira Cash Deposit by Alhaji Suleiman on the 13th of April 2005.

Also before the Court is **EXHIBIT K**, which contains Two Deposit Slips dated the 14th of February 2005, and 13th April 2005 tendered by the Prosecution, which evidences the fact that the sum of N80 Million Naira was paid on 13th of

*April 2005 by Alhaji Suleiman into the Account of Salman Global Ventures, 6013407822. **EXHIBIT N**, is the Zenith Bank Response to the EFCC's Enquiry on the Bank Account of Alusab International Limited, dated 4th June 2010 tendered by the Prosecution, which showed *Usman Abubakar Suleiman as the Sole Signatory.**

From this Exhibit, it can be clearly seen that Alhaji Suleiman on the 12th of April 2005, paid in a Deposit of N135, 794, 608.00 into the Zenith Bank Account 6012805693 belonging to Al Usab International Ltd. A Counter Cheque was then made out to Alhaji Suleiman Usman Abubakar in the Sum of N90, 250, 000 in favour of a Debit Account No. 6012805693 in Jalingo Branch of the Bank. Attached to this Exhibit is also a Plain Sheet of Paper showing Cash was counted and collected by Usman Abubakar Suleiman on the 13th of April 2005, and then the sum of N80 Million Naira was Deposited into Account No: 6013407822 belonging to Salman Global Ventures. The Parent Cheque from which this sum was derived is as seen in **EXHIBIT Z2**, a Zenith Bank Cheque No: 06665838 dated 12th April 2005 paid to Al Usab International Limited in the Sum of N135, 794, 608.00 and also through the Zenith Bank Deposit Slip dated the 12th of April 2005, tendered by the Prosecution as **EXHIBIT Z3**.

PW14, Mr. Dandison Akurunwa, a Subpoenaed Witness and Legal Practitioner, Company Secretary to Salman Global Ventures Nig. Limited had testified that the Managing Director of Salman Global Ventures, as well as Officials of the Company were no longer available. He had tried to communicate with them to no avail and then concluded that they must have travelled. From his association with Ibrahim Abubakar, the Managing Director/ Chief Executive Officer of Salam Global Ventures, he could say that Alhaji Ibrahim Abubakar knew and related very well with the Defendant. He stated also, that Ibrahim Abubakar did not do personal jobs for the Defendant and added that it was between them if they had a friendship.

When referred to **Exhibits H and K**, he testified that there was a Deposit in the Sum of N80 Million into the Company's Account but there was no indication as to the Source. He was not aware of any Contract from Taraba

State Government in regard to this Sum but was aware that it was refunded by Salman Global Ventures and retained by the EFCC. He stated that their Board Meetings discussed Contracts with Taraba State Government but did not have the details of how Taraba State Government paid for the Contracts that Salman Global Ventures executed.

Under Cross-Examination, he stated that he was not in a position to recall ALL the Contracts of Salman Global Ventures particularly those awarded by Taraba State Government. Further, he did not keep the Company's Documents relating to Contracts and stated that it was possible that there were Contracts he was not aware of. From the **Exhibits H, FF2 and K**, he could not see the Defendant's name in these Documents adding that he also knew the Defendant.

Now, the evidence of Mr. Ibrahim Abubakar, the Managing Director and Chief Executive Officer of Salman Global Venture Nig. Ltd, was obtained as a result of the Entry of his Extra Judicial Statements made before the EFCC. Even though the Statements were tendered as one, they were actually a total number of Five Statements, tendered by the Defence Counsel through the PW9, the IPO, which was admitted as **Exhibit Z7**.

The Court will therefore analyze these Statements in the Order of Dates. The First Two (2) Statements were written on the **31st of October 2006** Ibrahim Abubakar stated that he did not have any direct or indirect relationship with Suleiman Abubakar. He acknowledged the Sum of N80Million as an initial deposit to Purchase his Property at Plot 1961E Yaoundé Street Wuse Zone 6. The Transaction fell through because of the Investigation in Jalingo.

According to him, he mentioned at the initial Investigation in Lagos, that Jolly Nyame wanted to buy the Property in his personal capacity. The link to Purchase the Property was Imam Ahmed, who informed him that Rev. Jolly Nyame expressed interest that he wanted to Purchase the Property. He did not know the whereabouts of Imam Ahmed presently. The total price of the

Property was N475Million and the Sum of N80Million was paid into his Account, and he was subsequently informed by Abubakar Tutare of the Deposit mentioned it to him. When the EFCC case developed, and he was asked for the total amount given to him, and when he discovered that there would be a problem, he decided to refund even from the initial deposit. He could not raise the Funds all at once; as such Salman Global began making refunds from June 2005 to February 2006 when they finally appeared before the EFCC Lagos. The payment was mostly done in cash to Abubakar Tutare.

The N80Million paid on the 13th of April 2005 as initial deposit for the House was actually not returned because he took Eight Months to wait for conclusion of the Transaction but to no avail.

He testified further that Abubakar Tutare told him to keep the Money because of the improvements he made and he; Ibrahim actually presumed the Money was for Abubakar Tutare. Rev. Jolly Nyame, as the final person to take decision, asked him not to bother since the Transaction could not hold. Hence the Money was still in his possession.

This Statement was taken before a Superior Police Officer for endorsement on the same day, wherein he stated that he made this Statement freely.

Further on in the day, Ibrahim Abubakar, made another Statement to the effect that since he was only just aware of the Source of Payment made to him on the 13th of September, he would return the N80Million given to him by Abubakar Tutare. On his instruction Suleiman Abubakar, paid Money into his Account at Jalingo Branch of Zenith Bank.

Ibrahim Abubakar Managing Director Salman Global Ventures Limited stated further in his Statement dated 1st November 2006, that he refunded the Sum of N30Million through Zenith bank drafts of N20Million and N10Million to the EFCC, being the Sum of Money paid into his Account through Suleiman Abubakar on the instruction of Abubakar Tutare for the Governor of Taraba State, Rev. Jolly Nyame.

Further his Statement dated 9th November 2006, Ibrahim Abubakar stated that on the 2nd of November 2006 an additional payment of N20Million was made through a Guaranty Trust Bank Draft and on the 9th of November 2006, two Bank Drafts of Zenith Bank Cheque of N28Million and N20Million respectively was paid to Sum it up to N80Million, the Money paid into his Account on 13th April 2004 by Suleiman Abubakar at the instruction of Abubakar Umar Tutare, which he claimed was for the Taraba State Governor Rev. Jolly Nyame.

In his Statement dated 17th December 2006, Ibrahim Abubakar Managing Director Salman Global Ventures Limited stated that some time ago around March 1997, he bought Plot 1961E Yaoundé Street, Wuse 2 Zone 6 from Alhaji Muhammadu Adamu who hailed from Kano. He developed the Property between 1997 and 1998 for commercial purposes, which was in line with his profession. The Deed of Assignment was donated in 1997 and was between Alhaji Muh'd Adamu, the Original Owner and himself. Presently, the AIGIS is processing the Certificate of Occupancy in the name of Alhaji Ibrahim Abubakar. He maintained his earlier statement that the Property was still his and not Jolly Nyame and he did not sell the Property to him.

The above analysis is in regard to the evidence given by Three Witnesses and Sets of Documentary Exhibits, from Parties Externally Connected to the Taraba State Government and gives a good insight to the surrounding circumstances of these Offences. It is therefore now important to turn to the Internal Connections to resolve these Charges one-way or the other. These Internals are Alhaji Abubakar Tutare and Revd. Jolly Tevoru Nyame.

Their evidence as stated above is brought to bear at this point, and the Court will initially refer to the Three Statements made by Alhaji Abubakar Tutare, the erstwhile Commissioner for Finance. In **EXHIBIT Z14**, his Further Statement dated the 12th of July 2007 tendered by the Defence through him, he specifically stated therein that the Sum of N80Million from the Ibbi Wukari Water Project was given to Salman Global Ventures and was to be given to Governor Jolly Nyame as Gratification.

In **EXHIBIT Z15**, the Statement dated the 22th November 2006 tendered by the Defence through him he stated that he first met Alusab International in October 2003, in Kani through Abbas, the former Vice Chairman of Bali Local Government Area. From there, he submitted a Proposal for the drilling of a Borehole for the State, and he (Tutare) helped him to submit it with the Commissioner for Water Resources, and the follow up was done by him, but at the end of the day, the Job was given to another Contractor. Later, using his influence through the Governor, he was able to get the Job of Water Rehabilitation and expansion of Ibbi/Wukari Water Project awarded to Alusab, who was mobilised with the Sum of N100 Million. Before the Contractor died, the job was executed to 75% completion, and upon his death the Government wanted to revoke the Contract and give it to another Contractor, but his Junior Brothers came and pleaded that they will do the Job and the Government agreed that they should continue.

Before the death of Alusab, he had submitted a Bill for Additional Works to the tune of N312 Million, which was approved after his death, and all the Money was paid to them. They had agreed that after the Job was completed part of the proceeds would come to him, and this was the reason he demanded for Money after his death, as his share of proceeds from Suleiman and Abubakar. The Money given to him was N7 Million, and paid into his Account by Abubakar, and the Sum of N4 Million in Cash was also given to him. Suleiman on his part gave him N10 Million Cash, and bought him a Mercedes Benz Car. He knew Abubakar Ibrahim, Managing Director of Salman Global Venture through the Governor, Rev. Jolly Nyame. He also asked Suleiman to deposit N80 Million into Salman Global Ventures Account and that had been done. The Money was to be given to the Governor, but he did not know whether the Money was given to him or not but the Money was paid into the Account on the instruction of the Governor.

Taraba State Government has paid Alusab all their Monies for both the initial Contract and the Additional job, and therefore, does not owe them any Money. He added that there is nothing like Retention Money.

According to him, all the Money paid to him was used to take care of his Families. From the payment of N33Million he was given N7Million by Abubakar and from the payment of N152Million he was given N10Million with a Mercedes Car and from the payment of N182Million he was given N4Milion. All the payments were made after the death of Alhaji Usman, but he was not given anything from the Sum of N55Millon.

The Defence tendered EXHIBIT Z16, on its own part, and is identical to the Statement dated the 12th July 2007.

The Position of Alhaji Tutare as seen through his Oral Evidence before the Court and his Statements attests to the fact that he demanded his own share of the Proceeds from the Water Project at Ibbi Wukari and more importantly, attested to the fact that he was instructed by Rev Jolly Nyame as Governor of Taraba State, to place the Sum of N80 Million (Eighty Million Naira) from the same Project into the Account of Salman Global Ventures. He has also acknowledged that this Sum was the Defendant's own share from the Water Project Funds. This fact remained unshaken during his Cross-Examination. From the totality of all Alhaji Tutare's Statements before the EFCC, he acknowledged his wrong doings, made certain refunds of what he had personally taken, and had appeared to repent, stating that he had learnt his lesson and asked for forgiveness.

The Second Internal Party is the Defendant Revd. Jolly T. Nyame himself. In addition to his Oral Testimony before the Court, there is **Exhibit Z4;**hisExtra- JudicialStatement dated the 6th of June 2007, which had been tendered into evidence by the Prosecution.

From this Statement, the Defendant stated that the Ministry conceived the Ibi-Wukari Water Rehabilitation for Water. Contractors were asked to bid and the various Communities had since been benefitting from the Project. A Variation was submitted, and the Project seemed to go slowly because the Funds were not regularly paid as at when due. Upon the death of the

Contractor, the Brother still continued the Job. In giving the Water Job, competence was put into consideration.

He knew Abubakar Ibrahim of Salman Global Ventures, and was informed that EFCC called to interrogate People in regard to the Ibi-Wukari Project Transaction. **He was told his Share of the Funds was N80Million, which he never received directly but was posted to Abubakar Ibrahim's Account. He was later told the Money had been refunded to the EFCC.**

He denied having a House, which was purportedly bought for him, and he stated that he did not know Imam Mohammed, and also did not DIRECTLY benefit from the Ibi-Wukari Water Project.

In **Exhibit Z6** dated the 11th of July 2007, he had expressed in his closing paragraph, a desire to Plea Bargain so that whatever was alleged to have been misappropriated by him personally, will be refunded back to the Government and he would request his Lawyers and the EFCC to set the Process in Motion.

Now, from all the above, the Court observes that Alhaji Tutare had described what he knew of the relationship between the Defendant and the MD/CEO of Salman Global Ventures, Abubakar, whom he met at the Defendant's Residence. He had been introduced to Alhaji Ibrahim by the Defendant and he knew them together as friends, whether personal or as business friends and could testify as to their relationship. The Defendant had described Ibrahim as a Businessman and he did not know whether they were still friends.

Subsequently, Alhaji Ibrahim gave him his account number and anytime he was directed by the Governor to pay Money into Salman Global Ventures Account, he would call Alhaji Ibrahim to ask him for his Account Number so that he could Deposit the Money there. He added that if he were not directed to pay such Huge Amounts of Money into his Account, he would not have stayed a day because he would have been sacked, and he would not have been reappointed if he did not execute any of the Defendant's Directives.

When shown **Exhibit K**, he acknowledged that this Sum was paid on the 13th of April 2005, stating further that it was the Defendant's Share for the Water Project. He could testify that on all the transactions of payment into Salman Global Ventures Account, Salman Global Ventures as a Company, **DID NOT** do anything in regard to the Projects.

On the contention of the Defence that he was an accomplice, his reply under Cross-Examination was that he was investigated by the EFCC, questioned but not arrested because he was not alleged to have committed any Offence. He also had not been given any Petition to respond to and had made refunds because he conscientiously received from those people.

Mr. Dandison Akurunwa had testified that he knew the Defendant and related with him and also knew of the friendship between the Defendant and Alhaji Ibrahim Abubakar. More importantly, is the assertion of Mr. Ibrahim Abubakar in his Statement in **Exhibit Z7** that he had no direct or indirect relationship with Mr. Suleiman Abubakar. The question must therefore be asked why Funds relating to the Ibi Wukari Water Project should find its way into the Account of a Person or Company that did not have any direct or indirect relationship with the Representative of the Contractor for the Water Project. It just does not make any Sense.

By all indications, the two Parties had never met and Alhaji Tutare had bold facedly collected his own portion of Gratification and so needed not to have hidden under the cover of a Company to collect more. This also, could not be a possibility because both Alhaji Tutare and Alhaji Ibrahim Abubakar were not known as fast friends and both had traced their origin of association to the Defendant. There was also the evidence that Tutare usually called Ibrahim whenever he was directed to pay Money into Ibrahim's Company Account. There is also the fact that if the Defendant did not know Alhaji Ibrahim Abubakar, there would have been little chance that he would visit the Defendant's Residence.

More telling is the evidence of Alhaji Ibrahim Abubakar in **Exhibit Z7**, where he acknowledged the Sum of N80 Million (Eighty Million Naira Only) as an Initial Deposit to Purchase his property at Zone 6, which fell through because of the Investigation in Jalingo. When cautioned and questioned by the EFCC in Lagos, he stated that the Defendant wanted to buy the Property and the link between them was Imam Ahmed. Since he did not know the whereabouts of Imam then, it is likely that he could not have furnished the EFCC with his address details and so the contention by the Defence that Imam was not produced by the EFCC could appear to be splitting hairs. If the Defence had considered him a Valuable witness there was nothing stopping them from summoning him to testify in their Defence.

It is clear that the Eighty Million Naira (N80, 000, 000.00) was separated from the total Funds for the Water Projects and paid into an Account, as demonstrated by **Exhibit K**, making the Act a complete Act. This Sum was refunded by Salman Global Ventures to the EFCC from the period of June 2005 up to February 2006 in Cash to Tutare. Alhaji Ibrahim Abubakar, in his Statement stated that he had waited for Eight (8) Months to conclude the transaction to no avail and Tutare had told him to keep the Money because of the Improvements he had made. He now continued by saying: ***“He now said, I should take it for the Improvement I made. And I actually thought the Money was for him. Rev. Jolly Nyame as the Final Person to take decision asked me to not bother since the transaction could not hold. Hence the Money is still in my possession”.***

It is noteworthy that this Statement was made on the 31st day of October 2006, wherein the maker was taken before a Superior Police Officer for Endorsement on the same day, where he stated that he made the Statement freely.

It is obvious that Alhaji Tutare was an Accomplice in respect to this Charge for Gratification. He had admitted as much. The question of whether his evidence can be trusted by the Court is weighted with what he stands to gain by his indictment of the Defendant. He had stated that he was interrogated and made to refund the sum he benefitted and so what did he have to lose?

Perhaps it would have been a different thing if his testimony absolved him from all consequences and he stated that even though the EFCC decided not to charge him alongside the Defendant, he still made refunds after pleading, as he needed to come clean. According to him, he had pleaded with the EFCC and insisted that they charge him alongside his boss, the Defendant because he owed him a lot and would not bite the finger that fed him.

He knew that he was wrong by his God and by Tarabans and therefore told the truth of what happened and what he gained from all the Transactions. Alhaji Tutare during his Examination in Chief had described what he knew of the relationship between the Defendant and the Managing Director/ CEO of Salman Global Ventures. He knew them together and was introduced to the Managing Director by the Defendant as a Businessman. They were friends then but now, I do not know- it could be Business Friends but I do not know.

Now, the Oral Evidence of Ibrahim Abubakar could not be rendered before the Court because the Court was told that he could not be located despite the Prosecution's effort to secure his attendance. **PW14**, his Company Secretary also could not locate him and his evidence would not have been before the Court at all, had the Defence NOT tendered it as an Exhibit. Had these Statements of Ibrahim Abubakar not been tendered before the Court, it would have been an uphill, stressful and near impossible task for the Prosecution to ground these Counts.

By their submission of these Documents into evidence, the Defence invariably assisted the Prosecution who failed to establish a **LINK** between the Giver and the Defendant. The Middleman and Key Factor was missing until the Defence Counsel, as a Prince, came to the rescue, riding gallantly on a White Horse and Waving the Statements into the Arena!!!

There was the Evidence of PW2, Alhaji Suleiman, the person, on whom the demand was made by Alhaji Tutare, for the benefit of the Defendant as Governor, who categorically stated that he did not know the Company or their Managing Director. The only person who knew the Nexus of the Money

to the Defendant was Alhaji Tutare and he, maintained throughout the evidence that he was instructed by the Defendant. It is his word against the Defendant. Despite the Defendant's denial before the Court, he had admitted this Sum in his Statements **Exhibit Z1-Z3**, tying it to the Purchase of a House belonging to Alhaji Ibrahim. Alhaji Ibrahim on his own part, in **Exhibit Z7** confirmed that this Sum was a deposit for his House and he had waited over Eight Months for the completion of the Contract. It is also in Evidence, that this Sum of Money was refunded through Alhaji Ibrahim, through Alhaji Tutare to the EFCC. According to Alhaji Ibrahim, the Defendant actually communicated with him when the Defendant told him that the Transaction could no longer take place.

Had Alhaji Ibrahim Abubakar and Alhaji Imam Ahmed both testified to the effect that the Money was not for the Purchase of a House, and had Alhaji Ibrahim Justified the Receipt of this Fund to be a legitimate transaction, either with Taraba State Government or Salman Global Ventures, their Evidence would have assisted the Defendant in rebutting the Evidence of the Prosecution Witnesses. The Evidence that the Defendant intended to Purchase the Property is Evident by the propensity of Oral and Documentary Evidence in confirmation.

The Court finds that this Sum of Eighty Million Naira was not the Defendant's Legal Remuneration as a Public Servant, seen through **Exhibits AA1 to AA3**. There is also the salient fact that no Contract was performed by Salman Global Ventures for this amount of Money. It can also be seen that this Company received the Money as illustrated in **Exhibit H** for no apparent reason and PW14; Mr. Dandison stated that as Company Secretary that Salman Global Ventures did not perform any Water Project.

As Governor of Taraba State, he was a Public Servant and he even acknowledged this fact that he **HIMSELF** was a Public Servant in **Exhibit SS** his Account Opening Package. By the Mere Instruction and Payment of the Money into Salman Global Ventures Accounts, this Act amounted to Gratification and also obtaining a Valuable Thing without Consideration, as

Eighty Million Naira (80, 000,000.00) is a Valuable Thing obtained for no Services Rendered by Alusab International Limited to the Defendant to warrant such Payment. There was also no Consideration flowing from the Defendant to Alusab International Limited for this Payment and there is no Legal Reason justifying the Payment and Receipt of this Sum and therefore the Court finds that the Prosecution has satisfied the Ingredients of the Offences in Count 4 for Gratification and Count 5 for obtaining a Valuable Thing without Consideration.

Now, as seen from the earlier referred to **United Kingdom's Supreme Court** Decision in the case of **IVEY VS GENTING CASINOS (UK) LTD TRADING AS, CROCKFORDS [2017] UKSC 67. DELIVERED 25TH OCTOBER 2017**, the Decision of whether a Particular Action or Set of Actions is Dishonest remains Separate from the Issue of Moral Justification. For example, when Robin Hood robbed the Sheriff of Nottingham, he knew that he was, in effect, stealing from the Crown, and knew that he was acting dishonestly and would have been properly convicted of robbery. His argument would have been that he was morally justified in acting in this way, but in Modern Legal Terms this could only have been brought to the Court by way of Mitigation of Sentencing and would not have affected the Inference of Dishonesty.

Coming back home, here in Nigeria, the actions of the Notorious Lawrence Anini can be compared to Robin Hood, when he was brazenly robbing people in Benin City and was throwing Money around to small children and widows. When convicted, such benevolent behavior constituted no defence to the Charges of Robbery and Stealing.

The New Trend in English Law is for only the actions to be tested **OBJECTIVELY** and not to apply any Test as to the Subjective State of Mind of the Defendant.

It is amazing that the Defence in this Case, provided the Entire Arsenal the Prosecution needed to take home the Charges. With each Statement tendered by the Defence, it can be liken to pointing a gun at ones foot and

COUNT 7-Guilty as Charged
COUNT 9-Guilty as Charged
COUNT 11-Guilty as Charged

COUNT 15- Guilty as Charged
COUNT 17-Guilty as Charged
COUNT 19-Guilty as Charged
COUNT 25-Guilty as Charged

As regards the Offence of Gratification punishable under **Section 115 of the Penal Code Act**, the Court finds as follows: -

COUNT 4-Guilty as Charged

As regards the Offence of Accepting a Valuable Thing Without Consideration punishable under **Section 119 of the Penal Code Act**, the Court finds as follows: -

COUNT 5-Guilty as Charged

ALLOCUTUS:

Learned Counsel to the Defendant stated that the various Laws upon which the Counts in the Charge are based do not create a Mandatory Sentence. In other words, the Courts discretion is recognised and remains intact. The Law is clear that the Court is not bound to impose the Highest Sentence on the Convict, and is mandated to take into consideration certain Mitigating Factors.

According to him, the Defendant served the People of Taraba State for more than Eight Years. The Defendant was selfless in his Service during his Tenure, he has no Criminal Records, and is a First Time Offender. Further, he is a young man less than 60 years old. He is also Family Man, with many Family Members who cannot exist without his Support.

He referred the Court to the Case of **ZACHEUS VS LAGOS STATE (2015) LPELR-24531** that a Sentence can be in such forms as Fine, Caution or Imprisonment, and the Case of **FABORO VS FRN (2015) LPELR- 40885, PER AUGIE JCA (AS HE THEN WAS)** where His Lordship considered certain

Mitigating Factors in the Court. He then urged the Court to be lenient in giving the Appropriate Fine against the Defendant.

Learned Counsel representing the Prosecution stated that the Charge has been before this Court for over Eleven (11) years and urged the Court to take into consideration **Sections 401 (2) (a) (d) (e) and (f) and 416 of the Administration of Criminal Justice Act,2015;and Sections 4(2)(a)(i) and (iii) of the Federal Capital Territory (Sentencing) Practice Direction**, wherein Aggravating Factors and Levels of Culpability were expressly set out. He further made reference to the Case of **FEDERAL REPUBLIC OF NIGERIA VS MR. JOHN YAKUBU YUSUF CA/A/366c/2013 delivered on the 21st of March 2018 (unreported)**, where the Court of Appeal took cognizance of Aggravating Factors by varying upwards the Initial Sentence meted out on the Respondent.

According to Learned Counsel, the Effect of these Offences for which the Defendant has been convicted, are illustrations of Aggravating Factors including amongst others, the fact of Corruption and its' Prevalence in the Society.

Apart from that, Learned Counsel submitted that this Court has found that within Five Weeks, the Defendant had transferred the Sum of Three Hundred, and Forty-Five Million Naira (N345, 000, 000) belonging to Taraba State, into the hands of a total stranger. The Convict's Acts had detrimental unquantifiable effects on the Funds belonging to the People of Taraba State.

In response to the fact that the Defendant had selflessly served the People of Taraba State, Learned Counsel submitted that this was far from the Truth, as the Court had also found that the Defendant was Guilty of Gratification, that is, the Monies came to him for his own purpose.

Further, the fact that the Convict has Dependents cannot outweigh the Effect of the Offences as well as the Sufferings of the People of Taraba State.

Finally, he urged the Court to wield a Big Stick by imposing Severe Sanctions that would meet these Aggravating Factors.

PREVIOUS CONVICTIONS: - NONE

SENTENCING

I am morally outraged with the facts of this Case. The Citizens of Taraba State elected Reverend Jolly Tevoru Nyame, a Clergyman as Governor on three Separate Occasions, which showed a Consistent Level of Trust in him. Their Expectations were so high and as a Reverend, he must have been seen as an Epitome of Morality, Piety, Honesty and Everything Good. How would he explain to these People his “Actions” and “Inactions”? How can he justify such a Colossal Loss of Monies to his State? Even when the Investigations began in Year 2006, there were still Offences committed by him a Month before vacating Office. The Budget of the Government House for One Whole Year in the Sum of One Hundred Million Naira (N100, 000, 000) was spent in **One Day**, for the Visit of ONE MAN and NOT a GOD, at a Time, in April 2007, when he was expected to vacate Office on the 29th of May 2007, the very Next Month. This is just a Catalogue of Errors and Shame.

It is either Reverend Jolly Nyame entered the Office without a Corrupt Mind and became Corrupted OR he was Corrupted *ab initio*. The Testimonies that were rendered considering the Amounts of Monetary Gifts and in an instance, Cars, given to even to other Civil Servants under his Control and Direction showed that there was such a Level of Corruption in the Air and it is amazing that none of those Permanent Secretaries and Commissioners and Officials of Taraba State were not arraigned before any Other Court of Law. He consistently encouraged other Officials surrounding him to engage in reckless misappropriation of public funds.

It was very disheartening the boldness exhibited by the Senior Officials of Taraba State Ministry of Finance at the Relevant Time the Defendant was Governor. There is no legal or moral justification for the level of outright

theft. The evidence on record showed that the Defendant and his cohorts behaved like common thieves with unbridled greed.

This is the First Case of its kind where a Governor is found to have committed such Impunity. The Court must therefore impose a Sentence that would hopefully serve as a Deterrent to such other Public Officers, who may be similarly inclined to deep their Hands into Public Till.

Accordingly, this Court would be failing in its Responsibilities, if it fails to throw the Book at the Defendant.

Having found the Defendant Guilty as Charged in regard to these **Counts of** the Offences under Criminal Breach of Trust, the Court hereby Sentences the Defendant, Rev. Jolly Tevoru Nyame to Terms of Imprisonment in Each of these Offence, as follows: -

As regards the Offence of **CRIMINAL BREACH OF TRUST**, the Defendant is to serve in:-

COUNT 1-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 2-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 6-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 8-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 10-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 12-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 14-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 16-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 18-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 20-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 27-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 29-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 30-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 31-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 33-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 36-Fourteen (14) Years Term of Imprisonment with No Option of Fine

As regards the Offence of **CRIMINAL MISAPPROPRIATION**, the Defendant is serve in: -

COUNT 3-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 7-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 9-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 11-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 13-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 15-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 17-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 19-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 21-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 23-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 25-Two (2) Years Term of Imprisonment with No Option of Fine

As regards the Offence of Gratification in **COUNT 4** punishable under **Section 115 of the Penal Code Act**, the Court finds as follows: -

The Defendant is accordingly sentenced to Seven (7) Years Imprisonment without Option of Fine

As regards the Offence of Accepting a Valuable Thing Without Consideration in **COUNT 5** punishable under **Section 119 of the Penal Code Act**, the Court finds as follows: -

The Defendant is accordingly sentenced to Five (5) Years Imprisonment without Option of Fine

ALL SENTENCING ON EACH COUNT TO RUN CONCURRENTLY.

THE COURT RECALLS ALL THE FUNDS REFUNDED IN RESPECT OF ALL THE OFFENCES UNDER THIS CHARGE AND HEREBY ORDERS THE ECONOMIC AND FINANCIAL CRIMES COMMISSION TO FORFEIT AND PAY ALL REFUNDED SUMS MADE BY THE OFFICIALS AND PARTICIPANTS TO THE ABOVE TRANSACTIONS INTO THE COFFERS OF TARABA STATE GOVERNMENT.

**HON. JUSTICE A.A.I. BANJOKO
JUDGE, HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA**