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IN THE COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION
HOLDEN AT NNEWI:

BEFORE HIS LORDSHIP, THE HON JUSTICE O. M. ANYACHEBELU ON
WED THE 14TH DAY OF FEB 2018.

SUIT NG HID/ 22C/2010:

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA: : : **APPLICANT**

AND

REV EMMANUEL OBIANAGHA : : : **DEFENDANT**

JUDGMENT

The initial charge in respect of this case was filed on 6th October 2010. It was a 14 count charge of the offences of stealing. On the 23rd day of February 2011, before trial proceeded, the Prosecution sought leave to amend the charge in terms of the amended charge filed on 15th December 2010. This was not opposed and so was granted as prayed. That brought about the birth of a substituted charge.

Fresh plea was taken thereto on the said 23rd February 2011, whereupon the sole Defendant pleaded not guilty.

From the Amended Charge, the statement of Offence in respect of this case reads as follows;

COUNT 1

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (F) of the Criminal Code Law CAP 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H)(v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagha sometime in 2009, at Ogidi in Idemili Local government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; Stealing by fraudulently converting to your personal use the sum of N1,700,000.00 (One Million seven hundred thousand Naira) from Jude C. Nwangwu, property of Ikenga Ogidi Family Union being the proceeds of the sale of 2 (two) plots of land at Ogboetiti Ndiagu, Ikenga Ogidi in Idemili North Local Government Area of Anambra

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HIGH COURT
NNEWI
27/2/18

State registered under plan number FALS/AN/MISC.760/2009 which are the properties of Ikenga Ogidi Family Union and thereby committed an offence.

COUNT 2

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagha sometime in 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; Stealing by fraudulently converting to your personal use the sum of N1,700,000.00 (one million, seven hundred thousand naira) from Jude C. Nwangwu, property of Ikenga Ogidi family Union, being the proceeds of the sale of 2 (two) plots of land at Ogboetiti Ndiagu, Ikenga Ogidi in Idemili North Local Government Area, registered under Plan Number FALS/AN/MISC.284/2009 which are the properties of Ikenga Ogidi family Union and thereby committed an offence.

COUNT 3

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagha sometime in 2010, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N1,500,000.00 (one million, five hundred thousand naira) from Jude C. Nwangwu, property of Ikenga Ogidi Family Union, being the proceeds of the sale of half plot of land with building at Ogboetiti Ndiagu by Express Road, Ikenga Ogidi in Idemili North Local Government Area of Anambra State, registered under Plan Number FALS/AN/MISC.85/2010 which are the properties of Ikenga Ogidi Family Union and thereby committed an offence.

COUNT 4

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

HIGH COURT
NNEWI
DATE 27/12/18

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PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba sometime in 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N2,300,000.00 (two million, three hundred thousand naira) from Chief Augustine Chukwuka (MD) Austraco Ind. Ltd, property of Ikenga Ogidi Family Union being the proceeds of the sale of land; plots 2, 3 and 7 at Ogboetiti Ndiagu, Ikenga Ogidi in Idemili North Local Government Area of Anambra State, registered under Plan Number FALS/AN/MISC.73/2010 which are the properties of Ikenga Ogidi Family Union and thereby committed an offence.

COUNT 5

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba sometime in 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mr. Sylvester Dim, property of Ikenga Ogidi Family Union being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 6

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba sometime in 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Anayo Nnolim, property of Ikenga Ogidi Family Union being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

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HIGH COURT
NNEWI
DATE 27/12/08

COUNT 7

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba sometime in 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mr. Bonaventure Madubuobi, property of Ikenga Ogidi Family Union being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 8

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 11th September 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Chukwudi Ngene, property of Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 9

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 11th September 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mr. Sunday Ikechukwu, property of



Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 10

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 21st September 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mr. Chukwuma Ohaeri, property of Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 11

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 17th September 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mr. Uchenna Ezeifeoma, property of Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 12

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 7th June 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by

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fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mr. Emmanuel Tochukwu Obiakonwa, property of Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 13

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 8th April 2010, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Apostle Izuchukwu Nwobu, property of Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

COUNT 14

STATEMENT OF OFFENCE

Stealing contrary to Section 343 (f) of the Criminal Code Law Cap 30 Revised Laws of Anambra State 1991 and punishable under Section 353 (H) (v) of the same law.

PARTICULARS OF OFFENCE

Rev. Emmanuel Obianagba on or about the 18th June 2009, at Ogidi in Idemili North Local Government Area of Anambra State within the jurisdiction of the High Court of Anambra State did commit a felony to wit; stealing by fraudulently converting to your personal use the sum of N160,000.00 (One hundred and sixty thousand naira) from Mrs. Adaora Ikenokwalu, property of Ikenga Ogidi Family Union, being the proceeds of Ikenga Ogidi Family Union Development Levy and thereby committed an offence.

As already indicated, the Defence pleaded not guilty to the Amended Charge. Actual trial started on 6th December 2011 with the evidence of PW1. Altogether eight (8) witness testified for the Prosecution. The Prosecution tendered fourteen (14) exhibits. The case of the Prosecution was closed on 17th March 2016.



The defence opened on 4th May 2016 with the evidence of the Defendant who testified as DW1. He was a lone witness. Through him, only one exhibit was tendered and admitted.

The evidence before the court can be summarized thus;

PW1 was one Chief Uba Onubogu. He is the incumbent National president of Ikenga Ogidi Family Union, and the Complainant in this case. His case is that the Accused was elected into the office of National President on 20th December 2008 and was removed on 28th November 2009 through a vote of no confidence passed on him by the Union. The Defendant in an attempt to resist the removal, organized a group of thugs whom he used to go into communal land at Okereuche land, Ogbetiti land, Ndiagu land and Ugwuinyi land which lands had been previously surveyed by a qualified surveyor and had either been given out or sold by the Ikenga Ogidi Community. The accused re-plotted the said lands with the use of unqualified surveyor, reducing the size of the plots. Before this, the community had plotted most of the lands at Okereuche and Ogbetiti land in acres for industrial and commercial use.

Thereafter, the Defendant gave out some of the re-plotted plots to his thugs free of charge in order to fully gain their loyalty. He sold the remaining plots and paid the income accruing there from into his personal Bank Accounts at Unity Bank Plc, Nkpor, and Zenith Bank Plc, Ogidi. Some of the owners of the land sold by the Defendant petitioned the new Executive but they were advised to channel their complaint to the police.

Furthermore, the Defendant sold 32 plots of land at Okereuche belonging to Diocese on the Niger, Anglican Communion. One plot of land at Okereuche land Ogidi and the Ikenga Ogidi Housing Estate was sold to one Mr. Jude Nwangwu. Four plots of land was sold to one Mr. Augustine Chukwuka at Okereuche land.

It is alleged that the accused also single-handedly collected development levies meant for the community, using his complimentary card to issue receipts, notwithstanding that the family union has Bank Account at First Bank Plc, Ogidi which is still functional.

Consequent upon the activities of the accused, the PW1 wrote a petition to the EFCC. The said petition addressed to the Executive Chairman, EFCC dated 18th January 2010 was admitted as marked as Exhibit P1.

Under cross-examination by the defence counsel, PW1 conceded to have filed a suit against the accused compelling him to hand over. The said suit is

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still pending in court. He admitted that the Defendant also filed a suit against him praying court to restrain him from effecting his duties, which is also pending in court. PW1 concedes that there was provision for auditors in their constitution but admitted that no audit report indicting the accused was carried out. He added that the said constitution did not give power to the National President to deal with communal land that such power lies with the land committee. He further admitted that the land committee did not send any report to the EFCC as at the time he wrote the petition but contended that as an incumbent National President, he was constitutionally empowered to protect the interest of the family union.

PW1 denied filing petitions at the SSS Awka, State CID Awka and Command Monitoring Unit Awka against the Defendant. He however conceded writing a petition to SARS Awkuzu. He stated that the meeting where the accused was purported to be removed was held at Chief Adolphus Igboka's compound due to disturbance at the Civic Center where the said meeting was to be held.

PW2 was one Chief Christian Chukwurah. He is the Vice President of the Ikenga Family Union. His case was that prior to 2009, the accused started working without the Executive and contrary to the constitution. He collected money and issued receipts with his personal complimentary card.

PW2 stated that the Defendant sold communal lands, collected the monies and paid directly into his personal account at Unity Bank and not into the Union's account at First Bank, Ogbunike. The Financial Secretary and the Treasurer complained to the community against the Defendant. On 28/11/2009, the community had a congress where a vote of no confidence was passed on the Defendant as the National President and was thereby removed. An election was held immediately where the Defendant was replaced by One Bar. Uche Onubogu as the National president. They further petitioned the EFCC and on 13/4/2010, the PW2 was invited by the EFCC at Enugu where he made a statement. He also handed over some of the said complimentary cards of the Defendant to the EFCC.

Under cross-examination, PW2 confirmed that it was the Defendant that gave him the complimentary cards through the financial secretary which he handed to the EFCC. He also admitted that he did not receive the Defendant's complimentary card through or from any developer. He contended that the Vote of No Confidence was passed on the Defendant at one Chief Adolphus Ngoka's residence instead of the Civic Center where the meetings of the union are usually held, because the Defendant prevented easy access to the hall. He



maintained that the reason why he filed a suit in court was to stop the Defendant from parading himself as the National President.

PW2 further admitted that the Union has a constitution which made provisions for auditors. However, he stated that no audit report indicting the Defendant before and after they petitioned the EFCC, as there was nothing to audit. He conceded to the fact that the financial secretary and treasurer did not forward any report indicting the Defendant to the EFCC, stating it was due to lack of records.

PW3 was one Jude Nwangwu. He told the story of how he was approached by some people informing him about a certain land for sale. On inquiry, he discovered that the land was owned by the Ikenga Family. The people then invited PW3 to their family meeting and that was where he met the Defendant. After negotiating and agreeing on price, he paid for three (3) portions of land to the Family Union in cash in two installments after which an agreement was prepared and signed. He mentioned that he appeared in court pursuant to the witness summons issued to him. He conceded to have in his possession the original copies of the land Agreements.

The three number land agreement marked "Memorandum of Customary Grant of Land were admitted at trial as follows;

- a. Exhibit P2 – dated 20/1/2010
- b. Exhibit P3 – dated 18/11/2009
- c. Exhibit P4 – dated 24/3/2010.

PW3 subsequently received a letter of invitation by the EFCC. He honoured the invitation and made statement. The statement of Mr. Jude C. Nwangwu dated 12/5/2010 was admitted and marked as Exhibit P5.

Under cross-examination, PW3 mentioned that the people who introduced him to the lands he bought told him that they were the family Union executives of Ikenga Family Union. He maintained that when he went to the family meeting, he met the Defendant and other Executives of Ikenga family Union. He further maintained that the Ikenga land committee negotiated the land with him.

PW4 one Chief Augustine Okechukwu Chukwuka. He concedes knowing the Defendant when an election was conducted at Ikenga Ogidi which saw the emergence of the Defendant as the President of the Ikenga Ogidi Family Union.



He conceded to have bought three plots of land for 2.3 million at Ndiagu Ikenga Ogidi which he got to know about through one Mr. Christopher Molokwu, a member of the Ikenga land committee. The land was shown to him by the land committee in which the Defendant is the President General of the Union.

At the EFCC, he erroneously stated the amount he purchased the land to be 3.5 million. He stated to have paid in installments. The 1st installment was paid to the Union through Christopher Molokwu by Zenith Bank Cheque. The two other installments were paid by cheque in the names of one Igwe and Christopher Molokwu respectively. He further received temporal receipts from them and have handed same to EFCC I.P.O called Mr. Asuquo.

The following were admitted in evidence through the PW4.

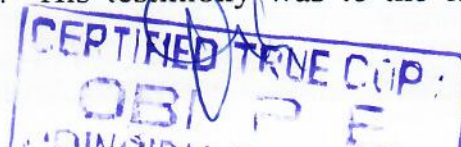
- a. Exhibit P6 – Memorandum of Customary Grant of Land made in 2010, between Ikenga Ogidi Family Union and Chief Augustine O. Chukwuka.
- b. Exhibit P7 – The receipt dated 10/6/2010 for the sum of 2.3 million.
- c. Exhibit P8 – Statement of the witness made at EFCC office on 26/4/2010.
- d. Exhibit P9 – Additional statement made on 4/5/2010.

Under cross-examination, PW4 admitted that Exhibit P7 was issued to him by the land committee of Ikenga Ogidi Family Union.

PW5 was one Okoh Uche Udoka. He works with First Bank Plc Ogidi. He testified as to the statement of the Defendant which he generated for Ikenga Ogidi Family in respect of their account domiciled in their branch as requested by the EFCC. He stated that he generated the hardcopy of the statement while the soft copy is in the computer system and very secure. The statement was printed in a bank letter headed paper with the official Bank Stamp. The Certified True Copy of statement of account for Ikenga Family Union with First Bank was admitted in evidence as Exhibit P10.

It is on record that the PW5 was not cross-examined by the defence counsel.

PW6 was one Inuwa Alexander Obekpaja, a banker with Unity Bank Plc, Nkpor Branch. His testimony was to the fact that upon receipt of a request



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letter from the EFCC, he generated the statement of account of the Defendant from the bank's computer system. The said Unity Bank Plc statement of account for Obianagha Emmanuel was admitted in evidence as Exhibit P11.

Under cross-examination, he promised to show to the court the said request letter from the EFCC if given a little time.

PW7 was one Chief Innocent Ndubuisi Okonkwo. He is the National Financial Secretary of Ikenga Ogidi family Union, elected together with the Defendant and others in 2008. He told the story of how the accused sold 4 plots of land which the executives were mandated by the General Congress to sell, on his own. Defendant also made use of some land agents as purported land committee and he did not hand over the money realized from the said sale to the financial secretary.

The Defendant also sold 3 plots of the land at Ogboetiti at Ogidi to Augustine Chukwuka for N2.3 million. He even sold more than the four plots of land approved and marked for sale. This prompted the PW7 writing a petition to the Defendant and the community complaining that the Defendant as president was also carrying out his own duties as the financial secretary. Consequent upon this, the Defendant was removed as the president during the general meeting of 28/11/2009 and one Barr. Uba Onubogu appointed as the new president. The new president after looking into the complaint, petitioned the Defendant who was equally recovering and collecting development levies.

It is the case of PW7 that the Defendant also sold 3 plots of land to one Jude Nwangwu for N3.2 million. He contended that the Defendant disregarded the constitution of the Union and was directly collecting money from the purchasers of all the land he sold.

Under cross-examination, he admitted that though their constitution provided for land committee, they are yet to have one. He further admitted that the people that purchased the land did not consult any land committee. He stated that there was no Audit report indicting the Accused/Defendant before the petition to EFCC because there were no receipt or documents for the Audit to work on.

He also denied owing the Defendant and rather claimed that it was the Defendant that owed him and had paid with cheque. He reinstated that the meeting where the Defendant was removed was not held at the Civic center because the Defendant's youth blocked the civic center. He confirmed that in their constitution, for any land sale to be valid, it has to be by the land committee.

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PW8 was one Asuquo Okon. He is an Assistant Superintendent of Police and a police detective attached to the EFCC, South East Zone and was formerly attached to advanced Fee Fraud Unit of EFCC but not in the general Investigation Unit.

He gave evidence of how a petition was assigned to his team on 18/1/2010, written and signed by Bar. Ube Onubogu of Ikenga family Union alleging that the accused fraudulently diverted the Union funds and fraudulently sold lands belonging to the union. The petitioner was contacted and he backed up his petition with the constitution of the Union. The past leaders of the Union and the purchasers of the land were invited. They honoured the invitation and made statements.

In the course of their investigation, they obtained statement of account from first bank Plc and discovered that the monies were not lodged in the account of the Union. They requested for the statement of account of the Defendant's personal account with Unity Bank and it was issued. The Defendant was invited. He reported and volunteered statement under caution.

The Defendant admitted selling the plots of land belonging to the union and lodging part of the money in his account with Unity Bank, and using some money in settling cases which involved him and the Petitioner in different courts. It was further discovered that the Defendant obtained monies from the tenants of the Union and developers on behalf of the Union without remitting same to the financial secretary. On inquiry, the Defendant's response was that there were no such officers. They eventually made a report and forwarded same to their Head of Operations. It is further shown by the constitution that what the Defendant did was illegal.

The PW8 contended that their team discovered so many receipts issued out by the Defendant to various purchasers of land. He also issued receipts for development levy and bush entry (Iwa ofia). The 17 number receipts were admitted in evidence as a bundle and marked as Exhibits P12, P12 a - p respectively.

They further discovered the constitution of the family Union which provided that monies received on behalf of the Union should be deposited in the Union Bank account within 48 hours. Copy of the Ikenga Ogidi Family Union (Rules and Regulations 2000) was admitted and marked as Exhibit P13.

The PW8 also obtained statement from the Defendant. The Defendant at this point mentioned that it was pW8 that dictated what he should write down

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and insisted that the Defendant must sign it. Copy of the said statements by the Defendant, five (5) in number were admitted as Exhibits p14, P14 a – d.

Under cross-examination, the PW8 denied dictating the Defendant's statement for him to write down. He denied asking for money from the Defendant on one of his visits and maltreating him on refusal to give him the money he requested for which caused the Defendant to write a petition against him.

PW8 still under cross-examination stated that it was assumed that any money found in the Defendant's account related to the sale of Ikenga Ogidi Family Union land. He stated that no statements were gotten from the alleged purchasers of the land and the thugs of the Defendant as they did not come as invited.

PW8 insisted that the constitution of the Union was unanimously signed by the Ikenga family Union Executives and not just by one person. He however conceded that it was improper to assume that the monies in the Defendant's account was for the family union. PW8 further denied the allegation by the Defendant that one J. C. Nwobodo and Chief Nwachukwu Nwasike made statements in favour of the Defendant and that was why they were excluded from the prosecution witnesses.

With this, the prosecution as earlier indicated, closed their case on 17/3/2016.

Defence opened on 4th May 2016. The Defendant testified as DW1. His version was that he was never at any time removed as president of the union by any vote of no confidence. He contested the election alongside Bar. Uba Onubogu on 20/12/2008 and emerged as winner. The complainant Bar. Uba Onubogu who was embittered promised to deal with him.

DW1 contended that the Ikenga Ogidi has a constitution. The copy of the constitution of Ikenga Ogidi family Union 2009 was admitted and marked as Exhibit D1,

DW1 reinstated that there was no audit report indicting him in any way, or any report from the land committee against him. He contended that he never collected any money from the people mentioned in the charge as that was solely the duty of the land committee to handle the family land transactions. The job of the executives, which he was a part of, was to sign the title documents. As at the time the PW1 caused a petition to the EFCC, he was not holding any position in the family.

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HIGH COURT
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DATE 27/12/18

Defendant alleged that they were all in good terms as at the election stage but he subsequently discovered that the Vice President, Financial Secretary, Treasurer and some Provosts belonged to one camp and the Defendant in another camp.

He denied using his complimentary cards to issue receipts and stated that he was mandated by the meeting to issue temporary receipts for the money to be paid to the treasurer because the purchasers refused to pay as there were no receipts to be issued to them. Substantive receipts were later issued by the treasurer and the Defendant's complimentary cards were retrieved.

The DWI basically denied all the allegations of the prosecution witnesses and maintained that the charge against him was merely to avenge the defeat he gave the PW1.

Under cross-examination, DWI denied stating in his statement to police that he sold land to Jude Nwangwu and others. He insisted that those were mere concoctions from the complainant and the EFCC. He stated that this necessitated this writing a petition against the police officer. He denied collecting any money from purchasers of the lands or collecting money on behalf of the Union and maintained that it was for the treasurer to do so.

DWI maintained not to have collected money from all the people mentioned by the prosecuting counsel. He maintained that only one constitution was in use at the time he was the president. He further contended that it was Mr. Asuquo that wrote and forced him to sign his statement.

With the close of case for the defence, both counsel obliged and filed written addresses duly adopted as final addresses on 16/11/17.

I have read the charge, (14 counts) record of proceedings, several exhibits. I have also noted and appreciated the final addresses of both counsel as duly adopted. They are not reproduced as they are documented and already form part of the records. Both counsel in their written addresses, each adopted one issue for determination. They are actually similar in purview though in different expressions. One issue is therefore penciled down for determination as follows,

“Whether the prosecution has proved its case beyond reasonable doubt as to achieve conviction”?

Section 135 (1) of the Evidence Act provides –

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HIGH COURT
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DATE 27/12/18

“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 all reasonable doubt”.

As a matter of fact, and particularly in criminal trials, the burden never shifts. It is always on the Prosecution and it is a heavy burden. The Defendant as a matter of fact is entitled to even remain silent.

See the case of UWA VS THE STATE
2015 8 NWLR PART 1450
Pg 438.

As was rightly submitted by the learned Prosecution counsel, the phrase beyond reasonable doubt, does not mean beyond all shadow of doubt.

Indeed in the case of
ADEKUNLE OLUWAFEMI ALO
VS THE STATE
2015 LPELR – 24404 SC,
the Court (Supreme Court) stated

“The commission of a crime must be proved beyond reasonable doubt – it is also the law that proof beyond all reasonable doubt does not mean proof beyond all shadow of doubt. If on the entire evidence, the trial court is left without doubt that the offence was committed by the accused person, that doubt is discharged and the conviction of the accused person will be upheld even on the credible evidence of a single witness”.

See also the case of ALABI VS STATE
1993 7 NWLR PART 507
Pg 511 at 551.

It is not in doubt that the Prosecution in proving their case can rely on

- (1) Direct evidence of an eye witness
- (2) Confession by the Defendant.
- (3) Circumstantial evidence.

See the case of



There are a total of 14 counts in this charge for which the Defendant has been subjected to trial. Incidentally, the entire counts border on stealing by conversion contrary to section 343 (f) of the Criminal Code, Revised Laws of Anambra State. It provides thus,

Section 343 – A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents; Section 343 (f) – In case of money, an intent to use it at the will of the person who takes or converts it, although he may intend after words to repay the amount to the owner”

The above is the section under which the Defendant is directly charged.

To make the charge more appreciated, it is necessary to make reference to section 342 where stealing itself is defined.

Section 342 – “A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen is said to steal that thing”.

The higher courts have given judicial guidelines to element of stealing.

In the case cited by Prosecution counsel i.e. Onwudume Vs FRN 2006 ALL FWLR Pg 774 at 810, the Supreme Court stated

“In order to establish a charge of stealing against an accused person, the Prosecution must prove the following ingredients of the offence as follows;

- (1) That the thing stolen is capable of being stolen.
- (2) That the accused has the intention of permanently depriving the owner of the thing stolen.
- (3) That the accused was dishonest.
- (4) That the accused has unlawfully appropriated the thing stolen to his own use”.

Indeed in the case of

ALAKE VS STATE
1992 LPELR – SC 289 OR
1992 NWLR PART 265

Pg 260, the Supreme Court stated

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OBI P. E.
PRINCIPAL/REGISTRAR

HIGH COURT
NEW
DATE 27/12/18 16

“the mens rea consist of an intention not only to take away the moveable property in question from the possession of the owner, but also of an intention to permanently deprive him of such property, the burden of proof that a moveable property is stolen, is like the burden in other offences, on the prosecution”.

In considering the case of the Prosecution, I wish to start with the extra judicial statement of the Defendant which were tendered and admitted through PW8 (IPO) as exhibits P14, P14a – d. This has become imperative to consider the strength and impact bearing in mind that confessional statement is best evidence if properly admitted and if it so qualifies as one and is direct. Moreover the Prosecution in the instant case placed heavy reliance on same notwithstanding that the Defendant insisted in his evidence that he was cajoled and forced to sign the said statement contending that he subsequently had to write a petition against PW8 who was the Investigating Police Officer.

It is worthy to note that these statements of the Defendant were tendered by PW8. They were not really objected to and the issue of involuntariness did not arise at the stage of tendering. In my view, for the Defendant to state such during defence was more like an after thought and did not make much impact as it can be viewed rightly as belated.

The statements of the Defendant were admitted as Exhibits P14, P14(a) – (d).

The Prosecuting Counsel made reference to some portions of the statements which he felt were confessional in nature contending that the said confessions combined with evidence before court were enough bases to achieve conviction. He placed reliance on the case of

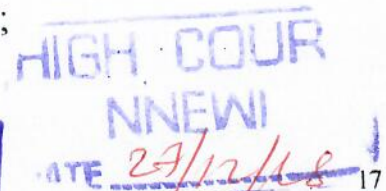
HABIBU MUSA VS STATE

2013 53 NSLQR Pg 91

where the Supreme Court stated per May Peter Odili JSC

“It needs be restated that this court, the apex court had decreed that a free and voluntary confession alone properly taken, tendered and admitted and proved to be true is sufficient to support a conviction once it meets the six point step stated above”.

The various portions referred to were as follows;



1. Exhibit P14 – “We are the owners of the land, the Ikenga Community. I cannot categorically state how many plots of land my regime have sold, first the general assembly approved number of plots to be sold. Depending on the site, the least is sold for N700,000=. I know one Ozo Nwayo, I did not sell plot of land to him, I sold land to Jude Nwangwu but I cannot remember the number, I sold land to Olozue and I have the mandate for the sale. I did not know one Uba talk of selling a land to him. I know one Chief Austin Chukwuka, and I sold land to him but I need to cross check our book.

In exhibit P14 (a) – “The money belongs to the Union and being that I am one of the trustees who has Account, then I was permitted in our General executive meeting to lodge the money there.

These were the main areas the Prosecution relied heavily on.

Let me say quickly that in exhibit P14, the persons that was mentioned there that appeared directly in the charge are Jude PW3 Nwangwu & PW4 – Chief Chukwuka. I will come to their evidence in detail, but suffice it to say that their evidence never implicated the Defendant at all.

In Exhibit P14, even though the Defendant made admissions with regards to some monies collected, yet these so called admissions did not have direct bearing on the counts before the court.

Further perusal of the said exhibit P14 (a) show the Defendant stressing that monies collected were collected on behalf of the family Union and spent by the family union. He stressed that his cards used were as authorized by the union when the union lacked receipts. He maintained that he was then in Power as the President and used money to run the union. Whether it was properly spent or not must be for another forum and not the issue here.

On the face of it, I am convinced that the said Exhibits P14, P14(a) – (d) though baptized as confessional were more or less general statements made by the Defendant with regards to how far they were running the Association and could not amount to confession bearing in mind the contents of the charge before the court.

It must be born in mind that the relevant evidence must relate to the charge before the court. The court can only convict if the guilt of the Defendant is proved as per the charge.


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 PRINCIPAL/REGISTRAR 29/12/18 18

This is not the forum to determine as between the PW1 and Defendant who was the rightful President General. That I understand from the proceedings is already a subject of civil litigation before a court. I will leave it at that.

It is interesting to note that both parties concede that the Union either through the land committee or indeed by any Audit committee has not submitted or made available any report whatsoever indicting the Defendant in any manner.

Notwithstanding my impression of exhibits P14, P14(a) – (d) as confessional, I intend without prejudice to still proceed with the test to see if the alleged confessional statement can qualify, though on its face it is doubtful.

The court is enjoined to be mindful of the following

- (1) Is there anything outside the confession to show that it is true?
- (2) Is it corroborated?
- (3) Are the relevant statement made in it on facts true as they can be testified?
- (4) Is the confession possible?
- (5) Is it consistent with the fact which have been ascertained and have been proved?

See HABIBU MUSA VS STATE (Supra)

Count 1, 2, and 3 relate to various sums of money namely N1,700,000=, N1,700,000= and N1,500,000= allegedly belonging to Ikenga family union but received and converted by the Defendant in respect of sale of certain portions of land.

PW1 was Chief Bar Uba Onubogu. He started his evidence in chief on the 6th December 2011.

Hear him – “These lands had previously been surveyed by Ikenga Ogidi accredited Surveyor and most of the lands either been given out or sold by the Ikenga Ogidi Community”.

Further in his evidence in chief he stated thus;

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HIGH COURT
NEWI
DATE 27/12/18 19