

**IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN.**

**BEFORE THE HONOURABLE JUSTICE J. O. IGE – ACTING CHIEF JUDGE
ON MONDAY THE 16TH DAY OF APRIL, 2007.**

SUIT NO. I/32C/03

BETWEEN:

THE STATE

PLAINTIFF/APPLICANT

AND

- 1. GANIYU SHITTU**
- 2. AKINOLA OLAJIDE**
- 3. ADEBAYO ADEDEJI**
- 4. OLUFEMI ADEDIRAN**

DEFENDANTS/RESPONDENTS

JUDGMENT

All the accused persons are employees of the Oyo State Government working in either the Ministry of Establishments and Training or the office of the Auditor General. They were all arraigned before this Court on an information of two Counts as follows:

STATEMENT OF OFFENCE

***"Conspiracy to commit felony to wit:
Stealing contrary to and Punishable under Section
516 of the Criminal Code, Cap. 30, Volume II, Laws of
Oyo State of Nigeria, 1978.***

PARTICULARS OF OFFENCE

GANIYU SHITTU 'M', AKINOLA OLAJIDE 'M', ADEBAYO ADEDEJI 'M' and OLUFEMI ADEDIRAN 'M' on or before the 21st day of November 2001 at the Ministry of Establishment and Training Secretariat, Ibadan in the Ibadan Judicial Division conspired together to steal the sum of ₦108, 593:2k (One Hundred and eight Thousand, five hundred and ninety three Naira, Two Kobo) through six numbers of Cheques leaves of Fountain Trust Bank Plc., Ibadan, property of Ministry of Establishment and Training Secretariat, Ibadan.

STATEMENT OF OFFENCE

Stealing contrary to and Punishable under Section 390 (5) of the Criminal Code Cap. 30 Vol. II Laws of Oyo State of Nigeria 1978.

PARTICULARS OF OFFENCE

GANIYU SHITTU 'M', AKINOLA OLAJIDE 'M' ADEBAYO ADEDEJI 'M' and OLUFEMI ADEDIRAN 'M' on or about the 21st day of November 2001 at the Ministry of Establishment and Training Secretariat, Ibadan in the Ibadan Judicial Division stole the sum of ₦108, 593:2k (One Hundred and eight Thousand, five hundred and ninety three Naira, Two Kobo)) through six numbers of Cheques leaves of Fountain Trust Bank Plc., Ibadan, property of Ministry of Establishment and Training Secretariat, Ibadan."

The pleas of each of the Accused persons were taken on 12/05/2004 when they all pleaded not guilty. The prosecution called eight witnesses while each of the accused persons gave evidence but called no witnesses.

The 1st P. W. who is an Accountant with the Ministry of Establishment, Training & Poverty Alleviation is Mrs. Fidelia Adejare under whom the 1st Accused was working in the Accounts Division while the other three Accused persons are External Auditors in the Auditor General's Office of Oyo State. She told the Court that on 19/11/2000, the 1st accused brought one A. A.

Akinyemi P. W. 6 to her office with the complaint that Chief Akinyemi who came to collect his harmonization cheque could not collect it because his cheque could not be found among the cheque books with 1st accused. She said she had to pacify Chief Akinyemi that day because he lost his temper when he heard what had happened. Chief Akinyemi was asked to go and come back two days later. When Chief Akinyemi left, the witness said she had to call for the payment register which 1st accused was keeping and she found that the place where Chief Akinyemi was supposed to sign was blank. The witness said when she asked 1st accused what actually happened to the cheque because it was in his custody; she said 1st accused said he knew nothing about it. Because the cheque was a Fountain Trust Bank cheque and uncrossed, the witness said she ran to that bank to stop it, but on getting there she was told that the cheque came from Afribank for clearing and had been cashed. On getting to Afribank she was told that the cheque came from Olomoyoyo Community Bank. When the witness returned to her office she said she reported the matter to her Director and also instructed the 1st Accused to go to Olomoyoyo Bank the following day to enquire about the person who brought the cheque.

Testifying further the witness told the Court that the Representative of Olomoyoyo bank came to the Ministry the following day, he was taken to the office of the Director who told that Representative that they should refund the money since the cheque was cleared by their bank but the man refused hence he was taken before the Commissioner who also spoke with him about the stolen cheque, but since he maintained his stand, the Commissioner had to call in the Police and both Olomoyoyo bank's Representative and the 1st Accused were handed over to the Police.

Explaining the Procedure for pension cheque collection, the witness said the 1st accused had been directed to pay cheques to Pensioners

whenever each Pensioner comes. 1st Accused must first ask for the Pensioner's Identification Card to ascertain that the person who wants to collect the cheque is the real owner, and on being satisfied about the identity of the collector, the 1st Accused will ask the person to sign the Payment Register against his name, and after that the Pensioner is given his cheque. The witness later discovered that several cheques and cheque leaves were missing when going through the Payment Register and the cheque book which were never signed for in the Payment Register. She said when she made this further discovery of eight cheques like the first missing one which are all supposed to be in 1st accused custody she had to go and inform the Police again.

With respect to the 2nd, 3rd and 4th Accused persons, the witness told the Court that they came to her Ministry as Audit team to audit the payment of harmonization to Pensioners. According to her the 2nd - 4th Accused persons went through the Payment Register and cheques with the 1st Accused in the course of their audit work.

In her answer during cross examination by 1st Accused's Counsel, she told the Court that 1st Accused had been working with her in the Accounts Division and she had to pull him out of the Accounts Section and then gave him specific assignment of paying harmonization cheques to Pensioners. She stated that Accounts job generally are delicate and 1st Accused having been an Internal Auditor before knew the implication.

Answering questions by 2nd Accused Counsel, she said she was present on the first three days the disbursement started, but was not in the office on the day the cheque in question was given out, she said no cheques had ever been found missing since the time 1st Accused had been working with her except the ones in this case. She further said that the 1st Accused wrote the cheque and the names on the Payment Register in accordance with Financial Regulations.

In answer to question by 3rd Accused's Counsel, the witness told the Court that she was checking the Register and cheque books daily, and apart from paying the harmonization cheques, the 1st Accused had also been used in paying salaries and other disbursements. She said that the team of Auditors, that is 2nd - 4th Accused persons had not audited the Accounts until this matter started, and also that the Auditors were never in custody of the cheques but were sitting beside the 1st Accused while doing their Audit job. To the question by the Counsel to the 4th Accused person, the witness told the Court that she did not know the job description of the Auditors.

The Branch Operations Manager of Fountain Trust Bank Plc, Mr. Afolabi Sorunke testified as 2nd P. W. He was in Court to produce 9 cheques but was able to produce six. The said cheques are the cheques issued by the Ministry of Establishments and Training drawn on Fountain Trust Bank Plc and made payable to various payees. The cheques were admitted in evidence as Exhibits "B - G".

Under Cross Examination by 1st Accused's Counsel, he said the Account for the Ministry of Establishment was opened in 2001 and the Ministry has always complied with the bank's conditions of payment of cheques drawn on it - that is there must be sufficient funds in the Account and the mandate on the cheque must tally with the bank's record. He said if a cheque is crossed and a payee wants to pay through an account, it is the responsibility of the collecting bank to ensure that the person they are collecting the cheque from has a good title to the cheque. The witness was shown the cheques **Exhibit "B - G"** and he stated that the effect of the endorsements is that the collecting banker, that is Agbeni Ogunpa Bank and Afribank are convinced that they had collected the amount on the cheques for the rightful owners. -

An Auditor in the office of the Auditor General of Oyo State who was in the Audit team that went to audit the payment of harmonization pension and arrears at the Ministry of Establishment testified as P. W. 3 – his name is Olatunji Kunle. He knew all the Accused persons as his former colleagues at the Auditor General's Office. On 15/10/2001, he told the Court that he led a team of Auditors including six others namely – Femi Adeniran, 4th Accused person, 2nd Accused, 3rd Accused; Lukman Hassan, Mrs. Olajire and an Industrial attachment student – Abiola by name to the Ministry of Establishments & Training to investigate the amount of ₦11,131,884:70k released to the Ministry of Establishments for payment of harmonization pension arrears of 150% & 30% to the Pensioners of State owned Parastatals who retired on or before 31/12/90. When they got to the Ministry, he said P.W.1, the Ministry's Accountant made available to them documents relating to the payments like Payment Register, cheque stubs, harmonized pension forms and schedule of payment prepared by the Ministry. He said he assigned members of the Audit team certain duties. For instance 2nd, 3rd and 4th Accused persons, Mrs. Olajire and the I. T student were asked to be posting the cheque stubs to the Payments Register prepared by the Ministry. The names and amount on the cheque stubs were cross-checked with what is on the Register. The cheque stubs were also checked with the bank payments and any record found correct is marked with green biro. He said he also instructed the 2nd & 3rd Accused and the I. T student to go to the office of 1st Accused who had custody of all cheques already written and signed but not yet collected to go and sum up total of such cheques. The arrangement was carried out as instructed and he was told that it was the 1st Accused who made the uncollected cheques available to them in the course of the investigation.

About a month after the audit investigation, P. W. 1 and the 1st Accused went to the office of the witness to inform him that a cheque was found missing in the course of the audit work and the matter had been reported to the Police and the Police would like to interrogate them. The witness said he was on leave when he received a letter from the Auditor General that he and others were wanted by Police in connection with the matter when they got to the Police Station he said the 4th Accused volunteered to speak on behalf of all of them and he told the Police about the (3rd P. W.) Lukman Hassan, Mrs. Olajire and the I. T student knew nothing about the missing cheque but the 4th Accused, 2nd and 3rd persons knew about the missing cheque which they assisted some people to cash. All of them were detained and their statements obtained one after the other. He said when they went back later to see the Police, they were informed that he (the witness) Lukman Hassan, Mrs. Olajire and the I. T student knew nothing about the missing cheques. He stated that only one cheque was missing initially but the Police later found out that the missing cheques were many. He further told the Court that it is not part of their duty as Auditors to help any pensioner cash his/her harmonization cheques.

In answer to questions under cross examination, the witness told the Court that when he came back from leave, he was given a query as well as the other members of the Audit team, and after the query he appeared before a Panel and the report of Panel favoured him while the 2nd - 4th Accused persons were given letters of dismissal. He was shown the cheques **Exhibits "B- G"** and he told the Court that the names of 2nd, 3rd & 4th Accused persons are not in any one of them.

Further still under cross examination by Mr. Oyelade for the 3rd Accused person, the witness stated that the 4th Accused told the Police in his presence that he that is 4th Accused, 2nd & 3rd Accused persons knew about

the missing cheque. He said the Audit work at the Ministry of Establishments was between 15/ 10/ 01 and 26/ 10/ 01 and that was the second audit work involving him and the 3rd Accused person.

The 4th P. W. Mrs. Kehinde Adeleke a staff of Agbeni Ogunpa Community Bank testified as P. W. 4. She said she knew the 1st Accused person as a staff of the Ministry of Establishments & Training Secretariat, Ibadan.

On 7/11/01, she told the Court that the 1st Accused came to call her at her banks branch office within the Secretariat Complex to come and attend to some Pensioners who were collecting cheque. She said her bank used to assist Pensioners who operate only savings account or Pensioners who cannot wait for four days for cheque clearance. That is that her bank used to exchange cheque for cash for the Pensioners. She described the procedure as follows:

"The Pensioner wishing to exchange cheque for cash will also produce to us their Pensioners Identification card".

The bank will deduct 3% interest and then pay the cash balance to the particular Pensioner who will sign the bank's register for collecting money from the bank. She told the Court that the bank register got burnt and the fire incident was reported to the Police.

On the 7/11/01 which the witness mentioned earlier, she said they did not get to the Ministry of Establishments on time on that day. She said the 1st Accused told her that he had collected four cheques from Pensioners who came from far places and who had approached him for cash collection in place of the cheques given to them. She stated that after the cheques had been endorsed at the back and having been screened by the 1st Accused, the 1st Accused handed over the cheques to her, and after they had deducted 3%

value of all the four cheques, the remaining cash balance value of the four cheques was then released to the 1st Accused person who signed for collecting the cash in respect of the four cheques he gave to her and the total value of the four cheques is ₦34, 638.00k. The four cheques which the 1st Accused brought to her in exchange for cash were identified by the witness as **Exhibits B, C, E & F** and none of the cheques bear the name of the 1st Accused person.

Testifying further the witness told the Court that about five weeks after, the Accountant of the Ministry came to her bank to inform them that some cheques were found missing and had been traced to her bank. When they brought out the bank register it was discovered that the cheques are the four cheques which the 1st Accused signed for and when the 1st Accused was confronted with the bank's register, he agreed that he was the one who signed for collecting the cash value of the four cheques and he agreed to pay back the amount to the Ministry.

Answering questions under cross examination by Counsel for the 1st Accused, the witness told the Court that there was signature of the 1st Accused at the back of **Exhibits B, C & E** that is the cheques he assisted to exchange for cash and also that the 1st Accused had paid back the money.

The Assistant Supervisor of Olomoyoyo Community Bank, Adeyemi Ganiyu who was with his former boss one Bayonle Anwo Falana on 19/11/ 01 when they went to the Ministry of Establishments to cash cheques for Pensioners. He testified as P. W 5. On that day the witness told the Court that they paid some cheques to some Pensioners and the 1st Accused gave them a particular cheque to cash. When the 1st Accused was asked about the where about of the owner he said he told them the owner was not around but that he was his relation. He told the Court that when they insisted on the

owner's I. D. Card the 1st Accused gave them the photocopy of his own I. D. Card to show that he was the one who collected the money and they then gave him the cash value of the cheque which was about ₦3, 000.00. And again after 1st Accused had collected the cheque he was given a form to sign as evidence of collection of the cash and he signed it but he could not lay his hand on the original of the document because armed robbers burgled their bank in December 2002. He stated further that the 1st Accused also signed the undertaking in the presence of the Bank's Manager and Accountant to refund the amount he collected on the cheque for the Pensioner.

The witness told the Court further that 1st P. W came to their bank later to inform them that some cheques were missing, and it was later discovered that one of the missing cheques was the one brought to them by the 1st Accused. When the 1st Accused was confronted with the photocopy of the cheques he collected, he admitted and promised to refund the money. He said he knew all the Accused persons although he was not there when the 2nd, 3rd & 4th Accused persons were collecting money from his boss and his boss had to go to the Ministry to invite them to the Bank. He said they came to the bank and gave letters of undertaking to refund the money they had collected on behalf of the Pensioners and he (witness) and his boss - Mr. Bayo Falana collected the individual I. D Cards of the 2nd, 3rd & 4th Accused persons and after verifying the I. D. Cards the 2nd - 4th Accused person were asked to sign the undertaking. The undertaking signed by the 2nd - 4th Accused persons were all identified as Exhibits N. O. and P1 respectively.

He went further to state that after signing the undertaking 3rd & 4th Accused persons refunded the money to the bank while the 2nd Accused only gave his Land Agreement documents to the bank and 1st Accused promised to pay but he never did. He said the sum collected by 3rd & 4th Accused persons are ₦14, 099 on Exhibit G ₦43, 944.87 on Exhibit D respectively.

Under cross examination the witness identified the cheques **Exhibits D & G** and stated again that the two cheques were collected by the 3rd & 4th Accused persons. Still, under cross examination, the witness told the Court that if a relation of a Pensioner brought a cheque to them for collection, such relation will be asked to produce his I. D Card and will be made to sign for collecting such cheque. He said he was not around when the 2nd - 4th Accused persons collected the monies on behalf of Pensioners. He also stated that there was no Policeman with them at the time the Accused persons were signing the undertakings.

The 1st Accused maternal cousin, Chief Akin Akinyemi testified as P. W. 6. He told the Court that he did not know where 1st Accused worked until one Saturday in October 2001 when he came to inform him that the second part of his Pension harmonization was ready for collection. He said he went to the 1st Accused's office at the Ministry of Establishments the following morning and he found him there. When the ledger was brought out, he said he found his name among the list of the people to be paid but left blank to show that nobody had signed as having collected his cheques and when the 1st Accused brought out the cheque ^{leaves} with him, his own cheque could not be found. He said he reported the matter to the Ministry's Accountant, Director of Supplies - Mr. Adeyemi because both Permanent Secretary and Commissioner were not around then. He said he was advised by Mr. Adeyemi to come back later at 3 p.m. to see the Acting Permanent Secretary and Commissioner.

At the meeting in the office of the Commissioner at 3 p.m. were the following people - The Commissioner himself and the Acting-Permanent Secretary, Mr. A Adeyemi Director of Supplies, 1st Accused and the Accountant. At the meeting, the Commissioner asked for details about the missing cheque and was informed that the search conducted revealed that

the missing cheque had been paid to Olomoyoyo Community Bank which in turn had collected the sum of ₦35, 174 being the value of the cheque. The Commissioner rebuked the Accountant and 1st Accused and later asked when they would make the money available and the 1st Accused said at the meeting that he will make the money available the following day at 9 a. m. when the meeting was to reconvene. The following morning which was Tuesday, the meeting reconvened and 1st Accused brought an envelope containing the money which he counted in the presence of everybody.

Before the witness, that is Chief Akinyemi accepted the money, he insisted that a note should be written that he ought to have been paid his crossed cheque and not cash but that he was being paid cash because of the Malpractices of the officials of the Ministry of Establishments. A Letter of Complaint which he wrote to the Commissioner on the matter was admitted as **Exhibit I**.

The witness finally told the Court that he gave no one any authority to collect his Pension cheques on his behalf.

An official of Agbeni Ogunpa Community Bank, Mr. Fatai Mustapha who was subpoenaed to tender some documents on the fire incident at their bank was the 7th P. W. The two reports were admitted as evidence as **Exhibits J & J1**.

The investigating Police Officer Sgt. Omoyele Ojetunwase testified as P. W. 8. He was serving at the Iwo Road Agodi Divisional Police Station at the time of this incident the report of which he said was made to his office by P. W. 1 - Mrs. Adejare. A report of the missing cheque **No. 00030719** for the sum of ₦35, 174 for one Chief A. A. Akinyemi P. W. 6 was lodged specifically when the case was referred to him for investigation, he said he obtained the

statements of both 1st P. W. and 1st Accused wherein the 1st Accused indicted the team of Auditors that came for the audit of Pensioners Account as being responsible for the missing cheque. He said he later invited the Ministry of Establishments as well as the Olomoyoyo Community where he discovered that the cheque had been claimed after which 1st Accused was granted bail. When the 1st Accused refused to show up, a team of detectives went to the Olomoyoyo bank to find out what was happening, on getting there, he said they met the 1st Accused writing an undertaking for the bank that he was responsible for the missing cheques. He was there and then arrested and the statement thereafter admitted as Exhibit L. After the 1st Accused had confirmed being responsible for the missing cheques, the 1st Accused made another statement confirming taking the money which he stated he used to pay his children school fees. The witness told the Court further that while at the Olomoyoyo bank, the team of detective's discovered that three of the audit team members had made undertaking to refund the value of the cheques they cashed. The Letter of undertaking signed by the 2nd Accused person together with the Survey Plan of his land were tendered and admitted as **Exhibits N & N1** respectively. A similar undertaking signed for the Olomoyoyo Bank by the 3rd and 4th Accused persons together with their I. D. Cards were made and admitted as **Exhibits O & O1** respectively.

Consequent upon the letters of undertaking, the witness stated that each member of the audit team was individually cautioned and they all made voluntary statements that they cashed the cheques at Olomoyoyo Community Bank, that 2nd Accused cashed two of the cheques, the 3rd and 4th Accused persons cashed one cheque each like the 1st Accused person did.

He told the Court that the Accused persons were released on bail with a warning to produce the people who gave them the cheques to cash but such people were not produced. The statements of each of the 2nd, 3rd & 4th

Accused persons were later obtained and marked **Exhibits Q, R & S** respectively.

After the witness had obtained the statements, he and his team moved to the Ministry of Establishments where they discovered from the Ministry's diary that between 15/10/01 and 26/10/01 nine cheques had been removed from the Ministry's register and among the 9 cheques, the 1st Accused person cashed 5 cheques at both Agbeni and Olomoyoyo Community Banks. He (1st Accused) also signed an undertaking for Agbeni bank to refund the amount of the stolen cheques. The 2nd Accused took out of the 9 cheques while the 3rd & 4th Accused persons took one cheque each and cashed them at Olomoyoyo Community Bank. The letter of undertaking signed for Agbeni Ogunpa bank was admitted as **Exhibits T - T3**.

He told the Court that while going through the Register in the Ministry, they discovered that some of the cheques were signed for by the Accused persons while others were not signed for. Relevant copies of the pages from the Register were admitted as evidence and marked **Exhibits U - U4** where the areas with asterisks are the ones stolen. The witness further told the Court that he obtained statements from one Mr. Anwo Bayonle & Mrs. Kehinde both cashiers of Olomoyoyo Community Bank, Agbeni Ogunpa Community bank respectively and the cashiers in their statements identified the four Accused persons as the persons who brought the cheques to them. Their statements were identified as **Exhibits V & V1** respectively.

Under cross examination by Counsel for the 2nd Accused witness told the Court that the 2nd Accused was arrested based on the reference to him in the statements of 1st Accused **Exhibits K - M** that the team of Auditors one of who was 2nd Accused was responsible for the missing cheques. He said when some of the retirees were sent for, none, except Chief Akinyemi P. W. 6

came after Police had completed investigation. He said the 2nd Accused did not sign any part of **Exhibit U** – The Register in the Ministry. He told the Court that when the 2nd Accused was confronted with his undertaking **Exhibit N** and was given the opportunity to produce the people he said he helped, he was not able to produce anybody.

Still under cross examination, the witness told the Court that apart from the undertaking which the 3rd Accused signed and his statement to the Police, the 3rd Accused did not sign any other documents. With respect to the 4th Accused person, the witness also told the Court that he did not sign the Register for receiving any of the stolen cheques but he signed something for Mr. Amos Falana, the representative of Olomoyoyo bank before he cashed the money. With the evidence of the I.P.O the Prosecution closed its case.

All the four Accused persons gave evidence one after the other in their defence. The 1st Accused in his defence told the Court that he spent 22 years in the service of Oyo State Government. He was the paymaster when he was working at the Ministry of Establishments and Training. At first he said he had nothing to do with Pensioners, but later he said part of his duties was to pay Pensioners normally by cross cheques which had been prepared by the staff of the Pension's Office. Whenever the cheques were received he said he would distribute the cheques to their respective owners. He explained the procedure for payment as follows. Before handing over the cheque to any Pensioner, he calls his name, when the Pensioner enters his office he will ask for his name and identity card, and if satisfied with the identification, he will ask him to sign the register after which he will hand over the cheque to him.

He said it was true that he cashed four cheques which did not belong to him. Three of the cheques were presented to Agbeni Ogunpa Community Bank while the fourth was presented to Olomoyoyo Community Bank.

The total value of the four cheques is ₦34, 000.00. He said he presented the cheques to the banks on behalf of those Pensioners who approached him for assistance because they had no bank account. The particular Pensioner came from Oke- Ogun area of Oyo State. When he cashed the monies, he said he kept them in his cabinet and had not paid the owners before his arrest.

He said he had paid back the money to the Ministry of Establishments & Training. He admitted knowing P. W. 6 - Chief Akinyemi, his Cousin. He said when P. W. 6 came to collect his cheque, the cheque was found missing. It was discovered that the cheque was paid to Olomoyoyo Community Bank but he said he would not know the person who presented it but he and 1st P. W. Mrs. F. A. Adejare paid back Chief Akinyemi's money. In all, he said nine cheques were missing, but he can only account for four of the cheques. He said he knew the 2nd - 4th Accused Persons who were among seven of the Auditors who came to his office to work.

Under cross examination, he told the Court that the unclaimed cheques are always in his custody and no other person had access to the cabinet where the cheques are kept apart from him. He said he cannot remember the names of the Pensioners he assisted to cash their cheques. He recognized **Exhibit M** - his statement to the Police wherein he stated that he cashed Mrs. Shittu's cheque because he needed the money to pay school fees.

The 2nd Accused, was one of the seven Auditors who went to the Ministry of Establishments on 15/10/01 to carry out the audit of the harmonization and Pension Allowance of that Ministry. When they arrived at the Ministry, he said they saw some Pensioners collecting their cheques from the 1st Accused person, and they told the 1st Accused to stop paying the Pensioners because they wanted to carry out an official assignment.

They asked the 1st Accused person to bring out all the cheques in his custody one after the other calling out the names and amount on each cheque while the student on attachment with the Auditors was asked to be recording the names and accounts as read out by the 1st Accused.

He told the Court that when they finished their assignment with the 1st Accused, they left for the Conference room of the Ministry, on his way to the Conference room he said he met one Bayo Falana a member of his church and a staff of Olomoyoyo Community Bank who told him that he was at the Ministry to assist Pensioners convert their cheques to cash particularly those who have no Bank Account. He said he was about to climb the staircase when an old man and one woman approached him. They showed him the cheques they had just collected and told him to assist them as they had no bank account, he then introduced them to Bayo Falana staff of Olomoyoyo Community Bank. At the end of their assignment they went back to write their report. The following Sunday he said he saw Bayo Falana in the Church, and Falana told him that the people he (2nd Accused) introduced to him were not the rightful owners of the cheques. He said Falana then pleaded with him to follow him to the Bank to let the Manager know that he (Falana) did not know anything about the cheques. He said he did and explained to the Manager that he too did not know the particular Pensioners and what he did was on humanitarian ground. The Manager told them to refund the money but the 2nd Accused insisted that he had no money whereupon the Manager told 2nd Accused to write an undertaking and the matter will be settled within the bank. He said he wrote the undertaking **Exhibit N** which he identified. He also identified the Survey Plan **Exhibit N1** which he also admitted to the bank as collateral. He denied stealing any money.

In his own evidence, the 3rd Accused stated that when he and the other Auditors got to the Ministry of Establishments & Training, they called at the office of the Permanent Secretary as well as that of the Director (Finance & Supplies) where they reported that their assignment was to audit the harmonization Allowance for Pensioners. He said they were given documents on which to work like bank statements, payment schedules etc, and they worked on the documents for 10 days at the Ministry's Conference room. They later worked in the office of the 1st Accused on 25/10/ 01, that is the 3rd Accused, 2nd Accused the I. T student one Abiola but he that is (3rd Accused) had no specific assignment or job to perform in the office of the 1st Accused.

On the third day of their arrival at the Ministry, the Accused said he was climbing the staircase around 8. a.m when one old woman approached him and solicited for assistance to convert her cheque to cash. When he went back to the Conference room, he said he asked the 2nd Accused whether he knew any of the bank staff, and 2nd Accused introduced him to Bayo Falana and he (3rd Accused) took the old woman to Bayo Falana for him to assist the old woman to collect her cheque. In December 2001, he stated that Bayo Falana came to his office to inform him that he had been arrested because the cheque presented to him by the woman he introduced to him was stolen and the woman's address at the back of the cheque is false. He said Bayo Falana kept on calling at the office of the 3rd Accused person and pleading with him to assist him to refund the money. He eventually borrowed a sum of N14, 000 representing the amount on the cheque stolen and handed same over to Bayo Falana. He identified **Exhibits O & R**, the commitment letter he wrote for the bank and the statement he made to the Police respectively. He denied collecting any money as stated in **Exhibit R** nor did he conspire with anybody to steal any cheque.

One of the Auditors sent to the Ministry of Establishments to audit harmonization of Pensioners was the 4th Accused person. He was assigned the duty of posting of cheque stumps. He told the Court that on his way to the office on 18/10/2001 a Pensioner approached him and requested for assistance in getting his cheque cashed with the Olomoyoyo Community Bank. He said he agreed to do the favour because the particular Pensioner was in haste to go back to his town at Shaki. He said he took the Pensioner to Bayo Falana (the Olomoyoyo bank official introduced to him by the 2nd Accused). The Pensioner presented the cheque to Falana who in turn gave him cash. He said he appealed to Falana to assist the Pensioner because he was in a hurry and also having malaria.

He identified the undertaking signed by him at the Olomoyoyo Community Bank - **Exhibit P**. Later the officer of the bank, Falana came to tell him to produce the Pensioner whose cheque was cashed or have the value of the cheque refunded because the cheque was a stolen cheque. He had to follow Falana to the bank and after he had explained what happened to the Manager, the Manager insisted on the money being refunded if the Pensioner could not be found. As he could not locate the Pensioner, he agreed to refund the money and also signed an undertaking for the bank which he said was written by force. He identified **Exhibit D** - photocopy of the cheque he was allowed to have assisted the Pensioner to cash. He also identified the statement he made to the Police **Exhibit S**.

Under cross examination, he told the Court that he personally handed over the cheques to Bayo Falana in the presence of the Pensioner and Bayo gave him the value of the cheque in the presence of that Pensioner. He admitted that his duty at the Ministry of Establishments was to audit harmonization of Pensioner's Account and not to work with Pensioners. With this evidence the Accused persons closed their defence.

As agreed by Learned Counsel for the State and the Accused persons, it was mutually agreed that written addresses be filed and exchanged. The written addresses were filed and adopted by Counsel.

It was the submission of Mr. Akindele, Counsel for the 1st Accused person that there is a lacuna whether in actual fact the Accused persons conspired, and none of the Accused persons admitted to have conspired, therefore the Prosecution has failed to prove the offence of conspiracy.

As regards the offence of stealing under Sec. 383 (1) of the Criminal Code, it was submitted that proof that the goods stolen belong to some persons is an essential ingredient of the offence and it is the duty of the Prosecution to adduce evidence. Learned Counsel referred to the evidence of the 1st Accused person, as showing clearly that the 1st Accused had no intention to deprive the owners of their money. It was the argument of Learned Counsel that to sustain conviction an intent to steal, the Prosecution should have called the original owners of the cheques **Exhibits B, C, D & E** to contradict the evidence of the 1st Accused and failure to call them is fatal to the case of the Prosecution.

On the evidence of P. W. 6, Chief Akinyemi it was the argument of Mr. Akindele that Chief Akinyemi's cheque was not part of the cheques cashed by any of the Accused persons. Learned Counsel finally submitted that the mens rea of the offence of stealing is lacking, and consequently the Prosecution has failed to prove the necessary ingredients of the offence. He urged the Court to discharge the 1st Accused person on the two Count charge.

In the written Address of the 2nd Accused person submitted on 8/01/07, Mr. Bayo Alade Learned Counsel submitted that the onus of proving the offences of conspiracy and stealing is on the Prosecution. It was contended by Counsel that there is no direct evidence of any witness or any admission or confession of the offence of conspiracy by the 2nd Accused, and therefore the evidence against him must of necessity be circumstantial to ground conviction. Having given a summary of the testimonies of P. W. 4 & P. W. 5, it was the argument of Learned Counsel that there was no evidence whatsoever to link the 2nd Accused person with the commission of the offence of conspiracy to steal.

On the 2nd Count of stealing under Sec.383 of the Criminal Code, Counsel cited and relied on the case of **ALAKE v. STATE** (1991) 7 N. W. L. R. (Pt.205) 567 at 595 on what the Prosecution must prove to secure conviction. It was submitted that proof that the money stolen belongs to a person is an essential ingredient of the offence. It was submitted by Learned Counsel that none of the witnesses called led evidence to show that the 2nd Accused did present any cheque either the property of the State Government or of an individual for encashment. He therefore submitted that there is a doubt in the evidence of the Prosecution witnesses. He urged the Court to resolve the doubt in favour of the 2nd Accused person.

It was also his arguments that none of the documents tendered as Exhibits implicated the 2nd Accused as he did not receive a sum of ₦108,593.2k or any money at all from the 1st Accused or on behalf of anybody.

Addressing the Court on the crossed cheques **Exhibits B – G** which P. W. 2 said cannot be cashed over the Counter except through the Payee's account, it was the argument of Counsel that the cheques as at the material time were not of the Oyo State Government but the beneficiaries because

title in the cheques had passed to the rightful owner who has every reason in law to complain. It was therefore submitted that the Oyo State Government has no locus to complain let alone arrest the 2nd Accused person.

On **Exhibits N 1 & N 2** which are undertakings extracted from the 2nd Accused person to refund the money mistakenly paid to some beneficiaries. It was the argument of Learned Counsel that the documents were made in anticipation of this suit and therefore inadmissible. He relied on section 91(3) of the Evidence Act. He urged the Court not to place any reliance on it. It was his further submission that the Prosecution has failed to discharge this burden placed on it by section 138 of Law Evidence Act. Finally, it was the contention of Learned Counsel that having dismissed the 2nd Accused person from the service, it will amount to double jeopardy to further punish him as he is presumed to be innocent.

In his own written address for the 3rd Accused person, Mr. Tunji Oyelade formulated four issues for determination having referred to the evidence led in the matter as follows:

- 1. Whether the Prosecution has proved its case beyond reasonable doubt against the 3rd Accused person.**
- 2. Whether the statement of the 3rd Accused person Exhibit 'R' constitute a confessional statement against the 3rd Accused person.**
- 3. Whether the Letter of undertaking with I. D. Card Exhibit O & O1 are enough to indict the 3rd Accused person.**
- 4. Whether this trial is not unconstitutional the 3rd Accused person having been presumed guilty by the Ministry of Finance and dismissed before the commencement of trial.**

On issue No.1, it was submitted that it was never mentioned anywhere that the 3rd Accused person agreed with 1st, 2nd & 4th Accused Persons to carry out an illegal act or a legal act in an illegal manner. He also referred to evidence of the 1st Accused that he did not know the 2nd, 3rd & 4th Accused persons. It was submitted that the Prosecution must prove that the Accused persons were ad idem to carry out an unlawful purpose or to carry out lawful purpose in an unlawful way. He then cited and relied on the case of **SHODIYA vs. STATE** (1992) 3 N. W. L. R. (Pt. 230) 457 at 499 for the legal meaning of conspiracy. He submitted further that the evidence of the Prosecution witnesses did not reveal any direct evidence nor any circumstantial evidence to convict the Accused person of conspiracy to steal.

On the offence of stealing, Learned Counsel cited and relied on the case of **CHIANUGO vs. STATE** (2001) F. W. L. R. (Pt. 74) 242, 250 – 251 on the ingredients of the offence which stated to include:

- i. The ownership of the thing stolen is capable of being stolen.*
- ii. That the thing stolen is capable of being stolen.*
- iii. The fraudulent taking or the fraudulent conversion.*

It was submitted that the Prosecution has not proved the above ingredients which must be proved conjunctively to sustain a charge of stealing.

As regards the cheques in respect of the monies involved, Counsel referred to the evidence of the 1st P. W., 1st Accused person, 2nd P. W., 3rd P. W. and argued that the cheques have been properly screened and certified by the 1st Accused person before handing it over to the owners, it was also pointed out that the Prosecution did not call Mrs. Abulude the owner of the cheque alleged to have been collected by the 3rd Accused person and there is

no evidence that Mrs. Abulude complained about her missing cheques and whether another cheque was written for her.

As regards the evidence of the 4th P. W. who was said to have given a professional evidence of discounting of cheques it was contended by Learned Counsel that her testimony does not adversely affect the 3rd Accused person in any way.

After a review of the evidence of 6th & 7th P.Ws and the other Prosecution witnesses, it was submitted that as far as the evidence of the 1st Accused person is concerned the 3rd Accused person did not come to his office at all and therefore the 3rd Accused could not have stolen any cheque. Again, on the evidence of 3rd P.W., 1st - 4th Accused persons that they spent only one day at the office of the 1st Accused person said it was difficult to steal cheques in such a situation. He submitted therefore that the Prosecution has not proved its case conclusively and convincingly against the 3rd Accused person - See Obiakor vs. State (Supra) Alabi vs. State (1993) 9 S. C. N. J. 117, 118.

On issue No.2, whether the 3rd Accused statement **Exhibit R** made to the Police constitutes a confessional statement against him. It was submitted that **Exhibit R** does not admit of the guilt of the offence rather it is consistent with the viva voce evidence 1st Accused person as to how one woman approached him before he ever had any contact with the 1st Accused person and before he ever had any dealings with the cheques generally. The Court was urged to expunge Exhibit R as it does not constitute a confessional statement - See Bob Daniel vs. State (1991) 8 N. W. L. R. (Pt.212) 715.

On issue No. 3 whether the Letter of undertaking with the 3rd Accused I. D Card **Exhibit O & O1** are enough to indict the 3rd Accused person.

It was the argument of Learned Counsel that **Exhibit O & O1** are not enough to indict the 3rd Accused person owing to the evidence of the 3rd Accused person and the circumstances in which **Exhibit O & O1** were obtained. Learned Counsel referred to the evidence of the 3rd Accused person and submitted that payment of the amount of the cheques back to the bank by the 3rd Accused person is not an admission of guilt rather the payment negates any intent to permanently deprive the owner of the thing alleged to have been stolen. He submitted further that **Exhibit O & O1** were obtained by inducement and by promise not to sack Bayo Falana who happened to be a Church member of the 2nd Accused person it was further submitted that the evidence against the 3rd Accused person by 1st P. W. and the 1st Accused person rest on suspicion which cannot ground conviction no matter how strong- See **State vs. Ogbubunjo** (2001) **F. W. L. R.** (Pt. 37) **1097, 1113.**

Finally on whether or not this trial is constitutional which is issue No.4, Learned Counsel referred to the evidence of the 3rd Accused person that he has been dismissed from the Ministry and submitted that in view of the provisions of sections 36 (5) & (9) of the Constitution of the Federal Republic of Nigeria 1999, the 3rd Accused person having been dismissed was presumed guilty by the Ministry. It was also the further intention of Counsel that the trial amounts to a double trial or jeopardy of the 3rd Accused person. He urged the Court to evaluate all the evidence before it and be sure that the case for the Prosecution has been proved beyond reasonable doubt; and if there is any doubt such doubt should be resolved in favour of the Accused person – **Ibeh vs. The State** (1997) 1 **N. W. L. R.** (2001) **F. W. L. R.** (Pt. 37) 1117.

For the 4th Accused person the two issues formulated by his Counsel Mr. Ike David are as follows:

1) Whether the 4th Accused person conspired with anybody to steal in accordance with Sec. 56 of the Criminal Code Laws of Oyo State of Nigeria 1978.

Learned Counsel referred to the evidence in Chief of the 4th Accused person as to how he introduced on Pensioner to Bayo Falana a banker of the Olomoyoyo Community bank for the purpose assisting the man to cash his cheque not knowing that the man he helped has alleged presented a stolen cheque which the bank do not detect. When the fraud was later detected Bayo Falana prevailed on the 4th Accused to refund the missing money hence the signing of the undertaking to refund the money. It was the contention of Counsel that the only document which linked the of 4th Accused person to the missing cheques is the undertaking which he made due to the pressure mounted on him by the Olomoyoyo Community Bank Management Learned Counsel further cited and relied on the case of **Clarke vs. State** (1986) 4 N. W. L. R. (Pt. 36) 38. It was also his contention that the Accused person never at any time removed my cheque belonging to any Pensioner and the Prosecution has failed to convince the Court otherwise. He urged the Court to acquit the 4th Accused person.

Miss Oguntinyinbo Principal Legal Officer who appeared for the State also filed a written address on behalf of the State. She referred to the evidence of the Prosecution witnesses and urged the Court to believe their evidence as the truth According to Learned Counsel, the issue for determination is whether the Prosecution from the circumstances of the case could be said to have proved its case beyond reasonable doubt.

First on charge of conspiracy Learned Counsel relied on the case of **Amache vs. Nigerian Army** (2003) 3 N. W. L. R (Pt. 807) 256 that the proper step for a Court to take where an indictment contains charges for a substantive offence and conspiracy to commit the offence is to first deal

with the substantive offence and then proceed to consider whether the charge for conspiracy ought to have been made and at all and whether it is made out as the answer to the question would decide the fate of the charge for conspiracy.

On the charge of conspiracy, Learned Counsel listed out the ingredients to prove as laid down in the case of **Onagoruwa vs. State** (1993) 7 N. W. L. R. (Pt.303). She submitted that the thing stolen in the instant case are cheques valued at ₦108, 593.2k which are immovable objects as borne out by the evidence of the 1st P.W and the Accused persons who stated that the cheques passed through them in the course of their assignment.

On the other ingredient of the offence of stealing, that is, that the thing stolen was fraudulently taken and fraudulently converted, Learned Counsel referred to the evidence of P. W. 3. Olatunji Kunle Daramola that the cheques stolen were for the harmonized Pension arrears due to Pensioners and were supposed to be kept by 1st Accused who would give the cheques to the Pensioners after they might have signed the register book. It was during the time when 6th P. W. Chief Akinyemi wanted to collect his own cheque that it was discovered that nine such cheques were missing from the custody of the 1st Accused person who was unable to account for them or offer any reason why the relevant register was not signed by the respective owners of the cheque. The Court's attention was also drawn to the evidence of P. W.5 Adeyemo Ganiyu Rotimi that the 3rd Accused brought the cheque **Exhibit 'B'**, cheque issued in the name of one Abolade S. B. (Mrs.) for ₦14, 099k and also that the 4th Accused person brought the cheque **Exhibit 'D'** drawn in the name of S. Oluade and these cheques were later found to be among the missing cheques. It was therefore submitted that the 1st accused person acted fraudulently and dishonestly when she took the Pensioners cheques in his custody to Agbeni

Ogunpa Community Bank and Olomoyoyo Community Bank to cash the cheques thereby depriving the owner, the Ministry Establishments and Training the permanent use of the money. It was also the argument of Learned Counsel that the 2nd - 4th Accused persons too acted dishonestly by not facing their assignments at the Ministry of Establishments where they were sent to audit the harmonized Pension arrears instead of helping people to cash cheques as they claimed in their testimonies. Learned Counsel therefore urged the Court to hold that the four Accused persons permanently deprived the Ministry of Establishments & Training the owner of the cheques stolen as the cheques stolen could not be used for the purpose for which they were meant.

Now on the count for conspiracy, Learned Counsel cited and relied on the case of Clark vs. State (1986) 4 N. W. L. R. (Pt.35) 381 on the definition of conspiracy that the essential elements of the offence lies in the base agreement and association to do an unlawful thing which is forbidden by law. It was the argument of Counsel in this case there was an agreement between the Accused persons to commit a crime as shown by the following facts: - They all worked together on the register book and the cheques, they all severally went to Olomoyoyo and Agbeni Ogunpa bank cashiers with cheques, 2nd & 4th Accused persons went to the same person, one Bayonle whom they claimed they knew before the incident, again they all raised the same defence of trying to help some untraceable persons, the 1st Accused person was the one in charge of the register book and the cheques e.t.c Learned Counsel submitted that the evidence before the Court established a grand design clearly executed by the Accused persons, and that that acts show a connivance to steal the cheques and to cash them. She urged the Court to disregard the defence of the Accused persons, that all they did was to render assistance to certain unknown persons, to cash their cheques.

Finally, Learned Counsel submitted that in criminal cases where the Prosecution carries the burden of proof, the guilt of the Accused person must be proved beyond reasonable doubt.

In the instance case, it was the argument of Counsel that all the essential ingredients of the offence of stealing have been established against the Accused persons.

As regards the Count for conspiracy, which is the agreement by two or more persons to do an illegal act by illegal means. I agree with the submission of Learned Counsel for the State that as the indictment contains charges for the substantive offence of stealing and conspiracy to commit the offence, it is the substantive offence that should first be dealt with and thereafter the Court will proceed to consider whether the charge for conspiracy ought to have been made at all and whether it is made out, as the answer will decide the fate of the conspiracy charge. The actual agreement alone constitutes the offence. Conspiracy is a matter of inference from certain acts of the Parties - See Benson Obiakor vs. State (2002) 10 **N. W. L. R.** (Pt.776) 612.

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 - See Sec. 383 (1) of the Criminal Code Law of Oyo State. In the instant case the cheques meant for payment of harmonization arrears including the ones missing in this case as well as the cheques Register **Exhibit U** were all in the custody of the 1st Accused person. One may ask, if the 1st Accused person had not met any of the Auditors, that is 2nd - 4th Accused persons how then did the missing cheques **Exhibits B, C, E & F** get to the 2nd - 4th Accused persons who later cashed them for the purported unknown Pensioners.

I am of the view that from the facts, it is not difficult to infer a prior agreement between the Accused persons to perpetrate fraud by stealing the Pensioners' monies with the active support of the 1st Accused person.

The 1st Accused made confessional statements Exhibits **K, L & M**. In **Exhibit K**, he said ***"I am now agreed to refund N38,418.36k to the bank by four times as from ending of December by the grace of God"***.

In **Exhibit 'M'** he said

"I volunteered that I will refund the money back to the Ministry of Establishments & Training and it has been paid. I am the one who claimed the money at the Ministry of Establishments & Training Secretariat, Ibadan".

The confessional statement made by 1st Accused is free voluntary and direct. The confession is consistent with other facts which have been proved in this matter. There are also abundant facts outside the confession to show that the confession is true.

There was also the episode at the office of the Commissioner for Establishments and Training where the 1st Accused in the full glare of everybody where the 1st Accused promised to refund the value of the cheque meant for P. W. 6 – Chief Akin Akinyemi. He brought the money that is N35,174 the following day, counted it, and before P. W. 6 accepted it the 1st Accused person was made to write a note that P. W. 6 was being paid cash instead of crossed cheque because of the malpractices of the officials of the Ministry of Establishments.

I have not the slightest doubt in my mind that the Prosecution has succeeded in establishing a case of stealing against the 1st Accused person.

As for the 2nd Accused person, there is evidence which I believe that he, 3rd & 4th Accused persons were part of the Audit team that came to the Ministry of Establishments to audit payment of Pensioners harmonization arrears and in that respect they went through the payment register and cheques with the 1st Accused person in the course of the audit work. There was the story by P. W. 3 Olatunji Kunle the Audit team leader who led the team of auditors including the 2nd - 4th Accused persons to investigate the payment of harmonization arrears to Pensioners at the Ministry of Establishments. When the matter of missing cheques came to light and the Police were invited, this witness told the Court that at the station one of the Accused persons, that is the 4th Accused volunteered to speak on behalf of the others and the witness said to the hearing of everybody that he (that is the spokesman 4th Accused person) 2nd & 3rd Accused person knew about the missing cheques which they assisted some people to cash. The 3rd P. W. was not seriously taken up on this piece of evidence.

Now, coming to the undertaking **Exhibits N & N1** given to the Community bank to refund the value of the cheque which he was alleged to have cashed, the argument of Mr. Alade, Learned Counsel to the 2nd Accused was that the statement was made as a result of the threat by the Commissioner for Finance that Mr. Bayo Falaria should return the money and risk being arrested by the Police, this made him to promise the Commissioner that they would trace the beneficiaries. It was also Mr. Alade's further argument that **Exhibits N & N1** are inadmissible as they were extracted from the 2nd Accused person when this charge was anticipated.

Perhaps one may at this stage refer to the contents **Exhibit N** - the undertaking signed by the 2nd Accused. **Exhibit N1** is the Survey Plan of his land which he attached to **Exhibit N**. It states thus:

***"I Akin Olajide of the above address encashed following cheques No. 080319 for ₦11, 983.28 and 030719 for ₦35,174.94 drawn by Ministry of Establishment
I hereby pledge to make a payment of ₦47,158.22 the bank on or before 13th December 2001 and I am supporting my pledge with my Survey Plan No.AKN/01/2500/2000 situated at Kumapayi area of Olodo against the pledge."***

Although **Exhibit N** was undated, it was made on 10/12/01 or thereabout like the undertakings by the other Accused person. The Information was not filed until 23/10/2003. Section 91 (3) of the Evidence Act provides as follows:

"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish"

In the case of **Alhaji Ibrahim Y Abdulahi vs. Alhaji Abubakar Hashidu** (1999) 4 **N. W. L. R.** (Pt. 600) 638 at 645. **Pat - Acholom J. C. A.** (as he then was) stated that documents made in the course of proceedings, after pleadings have been filed and served are of no evidential value and should not be admitted in evidence.

In the instant case, the time **Exhibit 'N'** was made and the time when the Accused person were arraigned was almost about 2 years interval. Certainly, **Exhibit N** cannot by any stretch of the imagination be said to have been made in anticipation of this case.

As to whether the undertaking **Exhibit 'N'** was obtained by threat and therefore inadmissible, section 28 of the Evidence Act provide thus:

"A confession made by Accused person is irrelevant in a Criminal proceeding if the making of the confession appears to the Court to have been

caused by any inducement threat or promise having reference to the charge against the Accused person, proceeding from a person in authority....."

"A person in authority means, generally speaking, any one who has authority or control over the Accused or over the proceedings or the Prosecution against him" – See page 650 – Documentary Evidence Cases and materials Vol. 1 by Hon. Justice Onemade.

In this case, the alleged threat was made by the Commissioner for Finance to Mr. Bayo Falana, the bank official to return money on risk being arrested. Bayo Falana is not a staff of the Ministry of Establishments or that of the Auditor General's office and Falana is not even an Accused in this case.

I therefore fail to see in what way the Commissioner can be described as a person in authority vis – a – vis Bayo Falana. The case would have been different if the threat had been made to the 2nd Accused. **Exhibits N & N1** are therefore clearly admissible in evidence.

Each of the other two Accused persons signed a similar undertaking. For example the 3rd Accused person signed on 10/12/01 to pay Olomoyoyo Community Bank the sum of ₦14, 099 that is **Exhibit 'Q'** while the 4th Accused person undertook by **Exhibit 'D'** made on 10/12/01 undertook to refund ₦43,944 which he helped a woman who was unknown to him to cash.

The undertakings signed by the 3rd & 4th Accused persons **Exhibits O & P** respectively, going by the earlier observation are clearly admissible.

The defence of the 3rd Accused person is anchored mainly on **Exhibit 'R'** his statement to the Police and **Exhibit 'O'** -the letter of undertaking to refund the amount involved. I have dealt with the latter defence. Even though **Exhibit 'R'** is consistent with the viva voce evidence of the 3rd Accused person that a woman who approached him for help to discount a

cheque for her was later introduced to Bayo Falana, a banker, why at all should he make such introduction when the woman was unknown to him and when his assignment at the Ministry of Establishment did not include rendering such service. Both in his evidence in Chief and under cross examination, P. W. 3 the leader of the Audit team told the Court that in his presence the 4th Accused person told the Police that he himself, 2nd & 3rd Accused persons knew something about the missing cheque and was just trying to be clever.

I find as a fact that the Letters of Undertakings were issued not as a result of any inducement or threat but rather as clear admission of his liability for the crime.

Now, as regards the 4th Accused person it is instructive to note that both under cross examination of the 3rd P. W. who told Court that 4th Accused said he and 2nd & 3rd Accused persons knew everything about the missing cheques and even in his own evidence in Chief, the 4th Accused do not say a word about this evidence of P. W. 3.

Like the others he too was approached by a Pensioner to assist in getting his cheque cashed hence he took the Pensioner to Bayo Falana, the Olomoyoyo bank official who had been introduced to him by his colleague, the 2nd Accused person. His own defence about **Exhibit 'P'** the undertaking he signed was not that he signed it under any threat, but rather when the Bank Manager insisted on the value of the cheque being refunded and the Accused person knew that he could not locate the Pensioner, he agreed to sign the undertaking and refund the money which he did.

I now come to a defence which is common to all the Accused person, that is, that the trial is unconstitutional, the Accused persons having been

found guilty by the Ministry of Finance and dismissed from service before the commencement of this trial. Section 36 (9) of the 1999 Constitution of the Federal Republic of Nigeria was cited in support of the argument provides as follows:

"No person who shows that he had been tried by any Court of competent jurisdiction or tribunal for Criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior Court"

This common Law Rule is generally referred to as the rule against double jeopardy on criminal trials. By the Rule the State is barred from instituting criminal proceeding against its subjects ad infinitum. The special plea can succeed only under the following conditions:

- a) There must have been a trial which resulted in an acquittal or conviction.***
- b) The earlier trial must be a criminal case. The special plea cannot succeed if the case was a civil matter or which bordered on disciplinary measures- See R. V. JINODU (1984) 12 W. A. C. A. 368.***
- c) The subsequent Prosecution must be for the same offence or for an offence for which the Accused could properly have been convicted at the earlier trial.***
- d) The Accused must have been convicted or acquitted at the earlier trial that is plea of autrefois acquit and autrefois convict.***
- e) The Accused must show that the earlier charge was dismissed on the merit.***
- f) Finally the Court which adjudicated on the earlier trial must be a Court of competent jurisdiction.***

In the instant case there cannot be said to be any trial before the dismissal of any the Accused persons. None of them was tried and convicted on any criminal charge.

Their dismissal from the Ministry was as a result of disciplinary measures taken by the Ministry. Such an action cannot sustain a plea of autrefois acquit. Quite honestly, I think the issue to be resolved is strictly whether the dismissal of the Accused persons is in keeping with the terms and conditions of their service.

As I said their dismissal borders on disciplinary measures taken against them by the Ministry in line with their terms of employment. Thus: Katsina - Alu J. S. C. in the case of **Samson Olarenwaju v. Afribank Nigeria Plc.** (2001) **11 S. C. M.** 179 at 192 same at page 192 as follows:

"Where therefore an employee has been found guilty by a disciplinary Committee if any of the gross misconduct highlighted above, the master has a choice either to exercise his or its discretion in favour of prosecuting the erring servant or dismissing him summarily as in the instant case. In other words prosecuting before Court of Law, in the circumstances, is not a sine qua non for summary dismissal".

I do not think that the provisions of section 36 (5 & 9) of the 1999 Constitution will apply in the instant case where the accusation against the Accused persons who are Civil Servants is such that borders on criminality. Their trial before this Court is Constitutional and I so hold.

From the facts and circumstances of this case, it can safely be inferred that there was an agreement between all the Accused persons to commit crime, that is stealing via the Pensioners cheques for harmonization arrears. The 1st Accused who had custody of the cheques and the register where those who collected cheques signed was unable to account for the missing cheques. The 2nd - 4th Accused persons who are Auditors from the office of the Auditor General also had one thing or the other to do with the missing cheques.

The rather suspicious way in which they all opted to assist unknown Pensioners to cash their cheques leads one to infer some agreement between the man who was supposed to have custody of the cheques and the auditors that is 3rd - 4th Accused persons who were in the office of 1st Accused to work for a short period; they could not have had access to the cheques if they had no agreement with the 1st Accused person.

From the totality of the evidence led by the Prosecution in this case, I am not in doubt that the Prosecution has proved its case against each of the Accused persons beyond reasonable doubt. If they have any conscience at all, they should realise that they have no defence whatsoever to this charge. I find each of them guilty as charged and I convict them accordingly.

Allocutus:

Oguntinyinbo - There is no criminal record about any of the Accused persons.

Akindele - 1st Accused had refunded the total amount stolen. He is 65 years old. He has served the Government for 22 yrs. He has no criminal record. I urged Court to caution and discharge him.

Awokunlehin - I also plead for discharge and leniency for the 2nd Accused person.

Mr. Oyelade - The 3rd Accused had no criminal record, he had served Government for about 18 yrs. He has been dismissed about six years ago. He cannot even feed his family or pay Counsel fee. He has also refunded the money said to have been collected. He has gone through the rigours of trial.

Sentences:

In passing sentences I have taken into serious consideration the passionate plea of Learned Counsel for the Accused persons. I also bear in mind the following factors namely:

- i. Each of the Accused person has been dismissed from the service of Oyo State Government.*
- ii. The amount stolen via the cheques have been paid back. However, the Court will be failing in its duty if appropriate punishment is not meted out to the Accused persons as a way of checking such malpractices in the Ministry of Establishments and other Government departments.*

Accordingly, each of the Accused persons is sentenced as follows:

1st Accused person:

1st Count – 2yrs I. H. L. with an option of ₦5, 000.00.

2nd Count – 2yrs I. H. L with an option of ₦5, 000.00 - sentences to run concurrently while the fines are cumulative.

2nd Accused person:

1st Count – 2 yrs I. H. L. with an option of ₦5, 000.00 fine.

2nd Count – 2yrs I. H. L with ₦5, 000.00 option of fine. Sentences to run concurrently while fines are cumulative.

3rd Accused person:

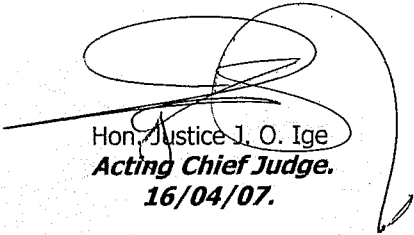
1st Count - 2 yrs I. H. L. with an option of ₦5, 000.00 fines.

2nd Count – 2 yrs I. H. L. with an option of ₦5, 000.00 sentences to run concurrently while fines are cumulative.

4th Accused person:

1st Count - 2 yrs. I. H. L. with an option of ₦5, 000.00 fine.

2nd Count - 2 yrs. I. H. L. with a fine of ₦5,000.00 option sentences to run concurrently while the fines are cumulative.



Hon. Justice I. O. Ige
Acting Chief Judge.
16/04/07.

Mrs. O. Oguntinyinbo, Principal Legal Officer for the Prosecution.
Mr. A Akindele for 1st Accused person
Mr. Bayo Alade for 2nd Accused
Tunji Oyelade Esq. for 3rd Accused person
Mr. Ike for the 4th Accused person.