

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT COURT 11 KADUNA
DELIVERED THIS 21st DAY OF FEBRUARY, 2019

BEFORE THE HONOURABLE JUSTICE D.H. KHOBO—JUDGE

KDH/KAD/6/EFCC/14

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

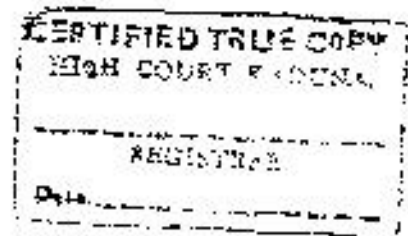
.....PLAINTIFF

AND

MUHAMMAD IBRAHIM SODANGI

.....ACCUSED

The Defendant in Court S/E
Sylvanus Tahir Esq for Prosecution
A.S. Moyosore Esq. for the Defendant



JUDGEMENT

Pursuant to the leave of the Honourable Court granted on the 15th May, 2014, the Accused person was arraigned on the same date on a 13 count of charges bordering on allegation of impersonation as contained in count 1 of the charge and theft or stealing as contained in count 2—13 of the charge dated 5th May, 2014 and filed same date. Upon his arraignment, the accused person pleaded not guilty to all the 13 count charge.

Trial commenced on the 19th June, 2014, wherein the prosecution called five (5) witnesses and tendered thirteen (13) Exhibits, namely:

- Exhibit 1 CIC of Kaduna States pension pay-roll.
- Exhibit 2 EFCC letter of investigation activities to FCMB dated 4/4/13
- Exhibit 3^o FCMB reply to EFCC dated 22/4/13.

- Exhibit 3^a Account opening package of the accused in the name of Mohammed Sodangi.
- Exhibits 3^b Statement of Account of the Accused
- Exhibit 3^d Certificate of Identification in compliance with Section 84(4), Evidence Act
- Exhibit 4 EFCC letters of investigation activities to Keystone Bank dated 4/4/2013.
- Exhibit 5^A Keystone Bank reply to EFCC dated 8/4/2013.
- Exhibits 5^B Account Opening package of the Accused with Keystone Bank in the name of Mohamed Ibrahim.
- Exhibit 5^C Statement of Account of the Accused with Keystone Bank;
- Exhibits 5^D Certificate of Identification in compliance with Section 84(4) Evidence Act.
- Exhibit 6 Memo forwarding petition that is addressed to EFCC Chairman dated 13/2/2013.
- Exhibit 7 Statement of the Accused made to the EFCC dated 11/7/2013.
- Exhibit 8 Statement of the Accused made to the EFCC dated 12/7/13.
- Exhibit 9 Statement of the Accused made to the EFCC dated 23/7/13.
- Exhibit 10 Statement of the Accused person made to the EFCC dated 26/8/13
- Exhibit 11 Statement of the Accused person made to the EFCC dated 3/9/13.
- Exhibit 12 Statement of the Accused person made to the EFCC dated 7/10/13
- Exhibits 13 Attestation form-confessional statement of an accused dated 12/7/2013.

The case of the prosecution as recounted by its witnesses is as follows; PW1 was one Umar Shehu Mohammed, who affirmed and stated that he is a civil servant with the Kaduna State Pension Board as the Director of Finance and Supplies. He stated that he started work with the Kaduna State Pension Board sometimes in March, 2017, but that before then he had worked with the Ministry of Lands and Survey,

Ministry of Finance, Ministry of Health, Teachers Service Board and the High Court of Justice,, Kaduna State.

He stated that as the Director of Finance with the Pension Board, Kaduna his duties includes;

Management of the Kaduna State pension fund

Preparation of budget

Payment of pension and gratuities;

Liaise with other MDAs in connection with the activities of the pension board;

Bank reconciliation

Custody of security documents like cheque books, bank statements and other accounting reference.

Monthly rendition of accounts to the Accountant General office etc.

PW1 identified the accused in the dock as the Bureau Consultant in charge of preparation and generation of pension pay roll.

He stated that the major business of the pension bureau is the payment of pension and gratuities to the pensioners in Kaduna State. He testified, that before one gets pension as a retiree the process includes;

Submission of files from MDAs, government agencies, parastatals and ministries, and the files must contain Notification of retirement, first appointment of retiree, Record of Service, last pay certificate etc. That upon receipt of the aforesaid documents, the file will be sent to the Director Pension who will prepare a computation which will be send to the office of the auditor-general of Kaduna State for verification and certification. That after certification by the office of the auditor-general, the file will be sent back to the office of the Director Pension where the list of new pensioners will be prepared and sent to the account section of the pension board with the files after certification.

He further stated that from the accounts section, these files will be sent to the desk officer in charge of calculations of pension benefits. He stated that after the calculation the list and the files with the calculated amount for payment in respect of each pensioner will be sent to him being the DFS. And from his office, the list with the calculation will be sent to the consultant of the bureau (i.e. accused person) who will input the said data into the computer system and he (accused) will then

prepare the total of the monthly pension for the state referred to as the pension pay-roll, and the said consultant will thereafter returned the said monthly pension pay-roll to the bureau, where the bureau will then write a covering letter and forward the said monthly pension pay-roll to the accountant-general of Kaduna State requesting for funds for the payment of the monthly pension to the beneficiaries.

He stated that upon receipt of the bureau's letter and the monthly pension pay-roll, the Accountant General will send the entire document to the audit department of the Ministry of Finance for checking and certification, after which same will be returned to the accountant general for payment.

PW1 testified that the pension pay-roll is divided into two sections, the first section being the existing pensioners, while the second section is for new pensioners. That the total amount for the month will be sent to the pension bureau bankers by the accountant general. That from the pension bureau bankers account for new pensioners, the bureau writes cheques against each pensioner and for the old pensioners the system of payment is e-payment through the pensioner's respective bank accounts.

He stated that people that are eligible for pension are those whose files have been certified by office of the auditor-general of the state, and such persons have put in ten years in service and must have attained the age of 45 years or has attained the mandatory 35 years of service, and the person must have worked for Kaduna State.

He stated that from his experience as DFS of the Bureau, the lowest pension is ₦7,450 while the highest pension is paid to Judges and Directors and it is between ₦900,000 and ₦1,000,000 monthly.

PW1 further testified that sometimes in June 2013, he was invited by the EFCC Abuja for investigation based on a petition written in respect of allegation of financial scam involving the officials of the Kaduna Pension Bureau. That during the cause of the investigation, he was shown a copy of the petition which alleges the commission of fraud in pension board officials. That he made a statement to the EFCC stating his name,

designation, schedule of duties, the bureau bank accounts, list of pensioners, the pay-roll etc.

He stated that he does not know one Shehu Abdullahi, but that he knows the accused person in the dock as the consultant of the bureau, but that the accused person is not a pensioner of Kaduna State. That he submitted the pay-roll of all the pensioners in Kaduna State which is over 10,000 and will therefore not know them by names. He stated that in the course of his working career with the pension bureau, he did not come across any company called Adav System Limited. That the pensioners' pay roll he submitted are for 3—4 years. The Certified True Copy of the Kaduna State Pension pay roll was tendered through PW1 and same was admitted as Exhibit 1.

PW1 further testified that on Exhibit 1, the name highlighted in marker in page 1 is Mohammed S. —First Inland Bank, Yakubu Gowon Way now FCMB. Page 2 is Mohammed Ibrahim, Platinum Habib Bank now Keystone Bank. Page 3 and 4 is Mohammed Ibrahim Platinum Habib Bank now Keystone Bank. Page 5 is Mohammed S. FCMB. Page 6 is Mohammed Ibrahim Platinum Habib Bank now Keystone Bank etc. He finally stated that he does not know one Bala Adamu who was a director of pension.

Under cross-examination by the learned counsel for the accused PW1 stated thus;

"I am two years old with the Kaduna State Pension Bureau"

"I authorized one of the staff under me to prepare Exhibit 1. The name of the officer who prepared Exhibit 1 is Ja'afaru Ibrahim who is still in the service of the kaduna state pension bureau"

"Ja'afaru Ibrahim is a principal accountant"

"Exhibit 1 contains the list of pensioners. Pages 1—7 of Exhibit 1 which contained the name of Mohammed S. or Mohammed Ibrahim with the corresponding Banks are for the month of April, 2008"

"page 1 is for the month of April, 2008. Page 2 is for the month of April, 2008. Page 3 is for January, 2009. Page 4 is for February, 2009. Page 5 is for February, 2009, page 6 is for March, 2009. Page 7 is for April, 2009.

Under further cross-examination, PW3 stated as follows:-

"it is correct that I was invited to the EFCC pursuant to a petition and that I wrote a statement in EFCC.

I went to the EFCC several times and made several statements in respect of this case.

the evidence I gave before this court are contained in my several statements to the EFCC.

I made the several statements to three officers of the EFCC i.e. Michael Wetkas, Celestine Jinka and Kabiru.

Exhibit 1 was submitted to Celestine Jinka"

There was no re-examination.

PW2 was one Aminu Yusuf who described himself as a civil servant with the Bureau for State Pension Board as a Principal Executive Officer. That his schedules of duties includes:

"Computation of retirement benefits, contracts and death benefits and compilation of new pensioners who are eligible for payment of pension.

PW2 stated that he knows the Accused in the dock as Mohammed Sodangi, the Consultant to the Bureau for State Pension Board. He stated that he has been working with the Kaduna State Pension Bureau since 2008, and that he knew the accused as the Consultant to the Bureau.

The witness testified that the process of computing retirement benefits includes;

The receipt of files from the Mother Ministry where an officer retires together with the required documents such as the

officer's personal file, Record of Service, Notification of Retirement, last pay salary certificate. That from this point the department will proceed to calculate the benefit based on the pension law and circular issued by the state government. Thereafter, the files are sent to the office of the Auditor-General for checking and certification before the bureau will proceed to compile the list of those eligible to be enrolled into the pension and forward same to the Accounts Department of the Bureau for enrollment into the monthly pension.

He stated that the criteria for eligibility for pension and gratuity is that the officer must have served the government for a minimum of 10 years and maximum of 35 years, and the officer must attain the age of 45 years by birth.

PW2 testified that the role of the consultant in the payment of pension in Kaduna State is the enrollment and preparation of pension pay-roll in the computer. He stated that he knows one Bala Adamu, a one-time Director of Finance and Supplies of the Pension Board, but that he is now deceased though he cannot remember when the said Adamu died.

He further stated that he does not know a company called Adav System Limited. He testified, that he was invited by the EFCC sometimes in June, 2013 in respect of a petition against the Management of the Kaduna State Pension Bureau alleging pension scam. That he was shown the petition at the EFCC and read same. That the petition alleged that there were three names which were alleged to be in the pension pay roll namely; Mohammed Ibrahim, Mohammed S. and Shehu Abdullahi. That he was requested to ascertain whether or not those three names above are true pensioners, to which he said he informed the commission that he has to go back to the office to confirm those names in the pension documents.

He stated, that he came back to their office and checked their index files but did not find the above listed three names, and went back and confirmed his findings to the EFCC that those names have no records in the Kaduna State Pension Bureau. That he does not know how the three names got into the Bureau Pension pay roll.

PW2 further testified that the payment of retirees is effected at the end of every month through their various bank accounts. He stated, that for the three names, that of Mohammed Ibrahim his payment was in Keystone Bank, while that of Mohammed S. was made in Finbank now FCMB, and that of Shehu Abdullahi was made in Access Bank.

Under cross-examination by the counsel for the accused, PW2 stated as follows;

"I know one Umar Shehu Mohammed. He is the Director Finance and Supplies of the Bureau (PW1). I know Ja'afaru Ibrahim as the Cashier to the Bureau"

"I know who made Exhibit 1. Same was made by the Consultant (Accused). This is because the consultant comes every month to make the voucher"

Ja'afaru Ibrahim the cashier works in the account department. I do not know Shehu Abdullahi"

Under further cross-examination PW2 stated thus;

"The accounts department keeps custody of the existing list of pensioners in the state. When I came back from the EFCC, Abuja to confirm the three names, I went to the Registry where the pensioner files are kept"

"I went to EFCC in respect of this investigation for about five (5) times and made only one statement to the EFCC particularly to one Celestine Ajinka"

There was no re-examination.

PW3 was one Juliet Anarado who affirmed and described herself as the Relationship Officer of the First City Monument Bank (FCMB), Constitution Road, Kaduna. She stated that her job schedule includes liaising with the customers of the bank and ensuring that they do their business properly with the bank.

She identified the accused in the dock as Alhaji Mohammed Sodangi, a customer of their bank. She stated that on 2/4/2013 her organization

got a letter from the EFCC mandating the bank to provide Account Opening documentation and statement of account of their customer Alhaji Mohammed Sodangi. That on receipt of that letter, the bank responded by a letter enclosing a copy of Account Opening documentation and Statement of Account of the customer and authenticated the documents by certifying them by the Head of Compliance of the bank namely Olando whose signature she said she is familiar with. She further stated that the customers information with the bank are kept vide JYP computers and that on daily basis the debit and the credit entries are made into the account of the customers and the balance is recorded. That every customer's record has his name, address and all transactions done in the account are recorded on daily basis.

She further stated that the integrity of the computer is genuine as it records all transactions done by the customers in the account. She stated, that the bank made copies of the Account Opening package of the customer and generated the customer's statement from the Account and sent all these documents to the EFCC. She identified the letter the EFCC sent to their bank through the EFCC logo and that same was signed by one Olufunke Adekoya. The said EFCC letter dated 4/4/13 was tendered through PW3 and same was admitted as Exhibit 2.

PW3 testified that the bank respondent to Exhibit 2 through the bank's letter signed by Hauwa Saïdu and co-signed by the Branch Manager Simon Idoko, and that this letter forwarded the customer's account opening package and the statement of account together with the bank's certificate of identification. These four documents were tendered through PW3 and were admitted as Exhibits 3A, 3B, 3C, and 3D respectively.

Under cross examination by the learned counsel for the Accused person PW3 stated as follows:

"I have been with FCMB for the past 8 years. In the last 8 years, I worked at Ali Akilu Road when the branch of the bank was there before it was moved to constitution road, its current location.

"The Head Office of our bank is situate in Lagos.

"Exhibit 2 was addressed to Abuja. There is another office in Abuja that can receive letters for our M.D. That office in Abuja is a branch of the Head Office of our bank"

"I have never worked in this branch of the head office in Abuja. I was not the officer that received Exhibit 2 in Abuja."

Under further cross-examination PW3 stated thus:

"Our compliance officer informed me of the arrival of Exhibit 2 in our branch. Our compliance officer who informed me is one Olando Umaru. He is still serving with the bank."

"I know Hauwa Saidu. I worked with her at Constitution road branch of the bank."

"I am not the author of Exhibits 3A, 3B, 3C and 3D. I was aware when Exhibits 3A—3D were prepared."

"I did not sign or co-signed Exhibits 3A—3D. The signatories to Exhibit 3A—3D are all my officers."

"I was detailed by Olando Umaru to come and testify in this case"

There was no re-examination.

PW4 was one Mahmood Waziri who affirmed and stated that he is the Relationship Officer of Keystone bank which started as Habib Bank and later merged with Platinum bank to become Platinum Habib Bank and later rebranded themselves as Bank PHB and finally later became Keystone Bank. That as a relationship officer of the bank his schedules includes liaising with customers in a bid to streamline their transactions to enable the bank provide them good service, and that he also source new customers for the bank.

He stated that he knows the Accused person in the dock as a customer of the bank. That sometimes on the 4/4/2013 the EFCC sent a letter to the bank asking the details regarding the customer of their bank namely Mohammed I. Sodangi. The details requested include; Account Opening

Package, Statement of Account and the mandate. He stated that pursuant to the above request, the bank on the 8/4/13 replied the EFCC's letter of request above and attached the documents requested for i.e. Accounts Opening Package, Statement of Account and Mandate through a letter signed by the bank's compliance officer namely Onyii Uche Abaghara who also signed the certificate of identification which was also included, but that the covering letter was signed by one Antonia Shallukwu and Taiwo Sanusi respectively.

PW4 testified that information of customers of the bank are kept vide IBM servers which captures transactions of customers on daily basis. That the integrity of their system is very secured as they have been in use for as long as their bank became computerized. He identified the EFCC's letter to the branch through the EFCC logo and that same was signed by Olufunke Adetayo. The said EFCC letter dated 4/4/13 was tendered through PW4 and was admitted as Exhibit 4.

PW4 also identified the response of the bank to Exhibit 4 with the attachments thereto i.e. Accounts Opening Package of Mohammed I. Sodangi; Certified Copy of the Statement of Account, and Bank's Certificate of Identification. These four documents were tendered through PW4 and same were admitted as Exhibits 5A, 5B, 5C and 5D respectively.

Under cross-examination by the learned counsel for the Accused person, PW4 stated as follows:

"I am one year, two months old with the bank"

"the office of our MD is in Lagos. I have never worked in the Office of our M.D."

I did not sign Exhibits 5A, 5B, 5C and 5D or co-signed them.

"the accused person opened an account under Habib bank. I was not a party to the opening of the account by the accused person.

"Apart from the Koduna branch of the bank I have never worked in any other branch of the bank.

Under further cross examination PW4 stated thus;

"I know the accused person here, because I am the account officer for that account. I have never met the Accused person as a customer of the bank"

"In the documents we submitted there is a mandate card which carries his picture, hence when I saw the accused this morning I recognized him. The copy of the mandate card which has his picture is not in Exhibits 5^{a-d}."

"Nobody told me the accused in court."

"The accused's account was opened on 8/10/2001."

"I knew the accused person as my lecturer in Ahmadu Bello University, (ABU) Zaria."

There was no re-examination.

PWS was one Michael Wetkas who affirmed and described himself as a public servant and an operative with the EFCC as a Detective Superintendent. He stated that as an operative with the EFC, his basic schedules includes, investigation of cases assigned to him and any other task assigned to him to carry out.

The witness stated that he knows the accused in the dock. He stated that the circumstances under which he knew the accused is that the EFCC Zonal Office, Kano received a complaint on the 18/3/2013. That the petition itself was dated 2/2/2013.

He stated that in the said petition, the accused was alleged by the writers of the petition i.e. "Movement for better future" that there was massive fraud going on in Kaduna State Pension Bureau. According to the petitioners, the management of the pension bureau conspired with the consultant of the bureau to steal pension funds. They said it was perpetrated through the enlistment of ghost pensioners in the pension list and payment of gratuities and death benefits to ghost pensioners. They mentioned some of the names used as ghost pensioners to include Mohammed Ibrahim with an account with the then Bank PHB, Keystone Bank, Mohammed S. with an account with FCMB and lastly Abdullahi Shehu with his own account in Access bank.

PWS testified, that on the date the petition was received in the Kano Zonal Office of the EFCC, the then Zonal Head Mr. Salisu Ishaq raised A Memo forwarding the petition to the headquarters and addressed same to the Executive Chairman for further directive. He stated that from the Office of the Executive Chairman the petition was sent to the Economic Governance Section of the Commission which is the section himself and his team work for further investigation. That the sectional head thereafter forwarded the petition to his team for investigation and to report their findings.

PWS stated that his team is economic governance team '9' and the members of the team include Celestine Ajinka, Kabiru Mohammed and Amarachi Ebirim. He stated that on receipt of the petition, the team made efforts to contact the writers of the petition to have an interaction with them, and the only contact thereon was a phone number as there was no address on the petition. That when they called the said phone number, the person who answered same denied knowledge of the petition. Hence the team thereby treated the petition as anonymous petition. He stated that usually in such a case, the commission will investigate the matter irrespective of the fact that same is anonymous with a view to establishing the veracity or otherwise of the complaint.

The witness stated, that the team consequently wrote to the various banks listed in the petition i.e. Keystone bank, FCMB and Access bank Plc respectively and demanded for the account opening package and statements of account. That the banks obliged and furnished them with the requested documents.

That the team also contacted the Kaduna State Pension Bureau. That the Director Finance and Deputy Director Pensions one Umar Shehu and Mr. Aminu reported. They are PW1 and PW2, and the team had interactions with them as regard enlisting pensioners in the bureau. That they explained and clarify the procedure to the team. He stated that the team further requested them to furnish the team with the list of pensioners and the payroll between 2007 and 2013 which they obliged the team with the documents.

He further stated that the team also requested that the duo furnish the team with month by month and year by year releases by the state

Ministry of Finance to the Pension Bureau for payment to pensioners and these documents were also made available by these officers to the team.

PW5 further testified that the team also made request to the office of the Accountant-General of Kaduna State to furnish the team with all the releases from the office of the Accountant General of the State, Ministry of Finance to the Kaduna State Pension Bureau together with the month to month and year to year requests forwarded by the Pension bureau with a list of pensioners and the cost implication that was usually forwarded by the Bureau to the Ministry of Finance. That the Accountant-General furnished the team with the requested releases and explained therein that they could only forward the releases month to month and year to year from 2007—2013 to the Pension Board and that the Bureau do not used to furnish the list of pensioners together with their request, but only the cost implication for payment. That the Ministry of Finance used to make transfers to the Pension Bureau's account with Zenith Bank, Eco bank and United Bank for Africa (UBA).

The witness testified, that from the documents received from the bank and the pension pay-roll furnished by the State Government officials the team found out that indeed the names of Mohammed Ibrahim, Mohammed S. were listed as pensioners, and monies were indeed paid into those accounts from the pension funds. He stated that from the documents, it was revealed that Mohammed Ibrahim and Mohammed S. is one and the same person, and the address of the said person was shown as Ahmadu Bello University, Zaria while the address of the other person namely Abdullahi Shehu was showing Kaduna State Water Board.

PW5 stated that he dispatched members of his team to visit those places. That the Registrar of Ahmadu Bello University, Zaria was contacted and said he will verify and will get back to the commission. The Management of the State Water Board was also contacted, they searched their record and said they do not have anybody as Abdullahi Shehu in their records.

He stated that the interaction of the team with the government officials that came led the team to request that the government officials provide the team with the records of employment of Mohammed Ibrahim,

Mohammed S. and Abdullahi Shehu. That the government officials searched their records and reported back that they do not have such names as Mohammed Ibrahim, Mohammed S. and Abdullahi Shehu in their records. He stated that this made the team to believe the allegation in the petition. He further stated that he could not remember receiving a response from the Registrar, Ahmadu Bello University (ABU) Zaria regards the identity of Mohammed S. and Mohammed Ibrahim.

The witness stated that the team wrote back to the Permanent Secretary of the Kaduna State Pension Bureau to inform the former Chief Executive of the Bureau between 2007--2013, namely Mr. Abba Dawal Director Pensions, namely Mr. Job Boyis and Consultant to the Bureau namely Mohammed Ibrahim Sodangi (accused) that the EFCC is investigating the matter. That Mr. Abba Dawal and Mr. Job Boyis all denied knowledge of anything like that or being part of it. That the team discovered that Mr. Mohammed Ibrahim Sodangi, the consultant to the bureau (accused before the court) used his account in FCMB and Keystone bank earlier referred to using the name Ibrahim Mohammed in keystone Bank and Mohamed S. in FCMB and receiving funds under the guise of being a pensioner under the Kaduna State Government.

He testified that the said Mohammed Ibrahim Sodangi (accused) was confronted with the team's findings which reveals that between 2007 and 2013 his account with Keystone Bank had received ₦38,684,913.05k while his account in FCMB within the same period had received ₦27,786,657.23k. The aggregate total of the money that went to the accused was about ₦66,471,571.01k. He stated that when confronted by the team, the accused Mohammed Ibrahim Sodangi admitted that these are his personal accounts and admitted that the payments into these particular accounts but stated that his name was enlisted by one Late Alhaji Bala Adamu who was Director of Finance of the Pension Bureau. The accused further stated that he had two cheque books each for the accounts which he said he kept one each and gave the other cheque books to the said Bala Adamu. He also stated that most of the withdrawals were done by the late Bala Adamu.

PWS testified that the accused was asked of his own role in the Kaduna State Pension Bureau and he said he was engaged through the company

Adav System Limited to convert the Kaduna State Pension pay-roll from analogue to a computerized pay roll system. He was ask for a copy of his letter of his engagement but he said his letter of engagement was burnt in his residence.

The witness stated that they refuted the above claim of the accused that the late Bala Adamu was the one making withdrawals from his accounts, because from the instruments used for withdrawals from the accounts same were all written and signed by the accused person, and that the accused person also made withdrawals through ATM card.

The witness stated that the accused finally admitted collecting the monies into his account and using the monies. He stated that the accused was asked whether he was an indigene of Kaduna State to which he said no; that he is from Katsina State. That when the accused was asked if he has ever worked for any Kaduna State Government Establishment or Agency to entitle him to receive pension, the accused said he has never worked for any Kaduna State Government Establishment or Agency to entitle him to pension, and expressed regrets and said he was going to refund the moneys. That the accused was then asked if he was willing to reduce the above discussions had with him into writing, to which he answered in the affirmative.

PWS further testified that the word of caution was then administered to the accused, and same was read to the accused and he understood it, and then volunteered his statement by himself in his own hand writing after he had signed the word of caution. The witness stated that the accused person made various other statements to the team on various occasions when he reported to the commission.

PWS testified that so far the accused was only able to pay the sum of N10,000,000 out of the total sum which was registered with the Exhibit keeper of the commission. The witness said he can identify the memo forwarding the petition to the Executive Chairman of the Commission through the Commission's letter head and logo and the petition annexed thereto. The said memo from EFCC Zonal Office Kano dated 18/3/2013 and forwarding the annexed petition letter to the executive chairman of the EFCC was tendered through this witness and same was admitted as Exhibit 6.

PW5 further identified the accused cautionary statements to the commission through the statement, logo of the commission and the cautionary word administered. It is however imperative to state here that when the prosecution sought to tender the several extra-judicial statements of the accused made to the EFCC during investigation through the said PW5, the defence objected to the admissibility of the statements on the grounds of involuntariness thereof, hence on the 3/5/2016 the Honourable Court ordered for a trial-within-trial to determine the voluntariness or otherwise of these extra-judicial statements of the accused person sought to be tendered by the prosecution through PW5.

At the end of the trial within trial (TWT) the court in a considered Ruling delivered on the 20/7/17 admitted all the seven (7) statements made by the accused to the commission dated 11/7/13, 12/7/13, 23/7/13, 26/8/13, 3/9/13, 7/10/13 and 11/4/14 as voluntarily made and same were admitted as Exhibits 7—13 respectively.

PW5 identified Exhibits 1 as the Kaduna State Government Pension payroll, and stated that the name of the Accused appears at pages 3, 4, 5 and 6 of Exhibit 1. PW5 also identified Exhibits 2 and 3 as the letter written by the EFCC to FCMB and the response from FCMB respectively. He also identified Exhibits 4 and 5 as the letter written by the EFCC to Keystone Bank and the response of Keystone Bank thereto. PW5 also identified Exhibit 6 as the Memo from the Kano Zonal Office of the Commission dated 8/3/13 forwarding the original petition annexed thereto the Executive Chairman of the Commission for further directive.

PW5 Finally stated that the totality of the amount refunded by the accused person is the sum of ₦10,000,000

Under cross examination by the learned counsel for the accused person, PW5 stated thus;

"We received only one petition from the nominal complainant. The petitioner did not put his name, therefore the petition is anonymous."

"Yes, I recall PW1 to be Umaru Shehu Mohammed. PW1 was invited to our office in his official capacity to furnish the commission with some relevant information on the investigation we were conducting. I am not sure now because of the timing whether PW1 submitted documents to the commission or not.

Oh yes, in the course of our investigation we indeed discovered that the defendant was not a pensioner. The outcome of the investigation informed the above decision.

"Secondly the confession of the defendant himself.

"I remembered we obtained a list of pensioners and the amount due to them. I believe it is before the court. Exhibit 1 identified as the list of pensioners.

From Exhibit 1 first page you have the name of the defendant Mohammed S. 2nd page of Exhibit 1 down to the bottom you have the defendant's name Mohammed Ibrahim. The 3rd page, Mohammed Ibrahim serial No. 54. The 4th page serial No 56 Mohammed Ibrahim. The 5th page serial No. 96. The 6th page serial No. 67 also. The 7th page serial No. 67. The 8th page serial No. 95. The 9th page serial No. 95 too. The 10th page serial No. 66. At the 11th page serial No. 66. At page 13 serial No. 96. At page 14 serial No. 98. At page 15 serial No. 65.

"yes the defendant's name that appeared on all the pages of the pension pay roll (Exhibit 1) are either Mohammed S. or Mohammed Ibrahim.

Under further cross-examination PW5 stated as follows;

"Yes from the petition some names were given to us as ghost pensioners, namely Abdullahi Shehu; Mohammed S. and Mohammed Ibrahim.

"Our investigation revealed that Mohammed S. and Mohammed Ibrahim are one and the same person and that is the accused person in this case"

Regards Abdullahi Shehu frantic effort where made to trace the said Abdullahi Shehu but he could not be traced through the said Kaduna State Water Board where he was said to be working

"Yes the payments done to ghost pensioners were done through the banks.

"Yes I traced the account of Abdullahi Shehu to Access Bank but cannot remember the amount we traced to Abdullohi Shehu in Access bank.

"I need to add also that why investigation was centered on the defendant is because he was the key player as he was the one who uploaded all the names on the pension pay roll including his names.

"Yes we were furnished with procedure leading to payment of pension in Kaduna State the defendant here did no fulfill"

"It is correct that names of pensioners to be period are normally generated from Kaduna State Pension Bureau. It is true that from the Pension Bureau. It is true that from Pension Bureau of the State it gets to the Auditor-General of Kaduna State who verifies and confirms the list sent by the pension bureau, but do not know if the Auditor-General issues a certificate thereafter.

"Thereafter the entire list of pensioners is uploaded from analogue to digital platform which was the work of the defendant in this case.

Still under cross examination PWS stated thus;

"Yes, it is from the list of pension payroll that I carried our investigation to the bank. I used the list together with what I get from the bank.

"Yes the defendant does not generate the list of pensioners but his role is that of uploading the pension payroll in the state.

"Yes payments were done by the Accountant-General of Kaduna State.

The accused is prosecuted for the moneys in his account and for the role he played in the entire process.

To the best of my knowledge the investigation did not link PW1 to any act to the issues in this case. PW1 even stated that he was not in that office when these acts were committed.

There was no need for the investigation of the offices of the Auditor-General and Accountant-General of Kaduna State regards their role in this case”.

There was no re-examination. Thereafter the prosecution closed its case, hence giving the way for the accused person to open his defence.

It is imperative to state here, that the accused person at this point sought for and obtained the leave of this court to recall PW1 Umar Shehu Mohammed for further cross examination.

On the 3/5/2018 the said PW1 Umar Shehu Mohammed was recalled for further cross-examination by the counsel for the accused person wherein he stated thus:

“At the time I gave evidence before this court I was the Director of Finance with the Kaduna State Pension Board.

“it is correct that in the payment of pension procedure in Kaduna State, the following four offices are involved namely; the office of the Director of Finance of the Bureau, Office of the Internal Audit of the Bureau, Office of the Internal Audit Ministry of Finance and Office of the Auditor-General of the State.

“The main schedule of my department is making payments but before such payments there are certain procedures, e.g. for new pensioners, their files come from various Ministries requesting for payments of their pension gratuity. The files go to the office of the permanent secretary of the bureau for endorsement and thereafter same will be transferred to the pension department for computation of the benefit of the retiree. Thereafter the file with the computations will be transferred to the office of the auditor-general of the state for verification. After verification the

file will be brought back to the internal audit of the bureau for re-examination regard the name of the retiree and the computed figures. Thereafter the file goes to the office of the Director of Finance of the Bureau for payments.

“That that the accounts department will prepare the list of pensioners stating their names, the computed amount and the ministries they come from. Thereafter the list of new pensioners will be added to the existing pensioners. Thereafter the consultant for the bureau will raised payments vouchers for the existing and the newly added pensioners in the payroll for the month.

Thereafter these payment vouchers prepared by the consultants will go back to the internal audit of the bureau for verification and from there to the pension department where the document is processed and sent to the permanent secretary of the bureau with a request for the payment by the ministry of finance of kaduna state from the office of the permanent secretary. The whole document is sent to the ministry of finance requesting for payment of monthly pension for pensioners in Kaduna State. The ministry of finance will sent same to the internal audit for verification, and from there a letter is sent to the office of the accountant general of the state requesting him to pay and approval of a specific amount to be paid for that month as monthly pension will be given by the accountant general of the state.

That upon receipt of this approval from the office of the accountant general, the pension will be paid via e-payment by the accountants department of the Bureau through the consultant of the bureau to each beneficiary through their names, account number and amount to be paid monthly.

Under further cross examination PW1 that was recalled stated as follows:

“As of that time the Bureau had only one consultant. The Kaduna State Government employed the consultant.

The consultant does not have an office, he operates in my office.

The consultant was employed as a company, but I cannot remember the consultant's company's name, as I call him by his name

"the main duty of the consultant is to make payments. He holds the ace as the old and new list are control by the consultant.

Ja'afaru Ibrahim is the cashier of the bureau, but I cannot remember if he prepared Exhibit 1. The said Exhibit 1 is prepared by the pension department, but I cannot say precisely who prepared Exhibit 1.

The signatories to the account of the bureau are DFS, Permanent Secretary and Director of Personnel of the bureau.

I have never per chance seen the accused person's letter of appointment. Exhibit 1 does not contain the name of the person who prepared it".

Under further re-examination by counsel for the prosecution, PW1 stated thus:

"Yes the essence of hiring a consultant is due to migration from analogue to computerized system of payments.

"Yes after the entire process, the final list is given to the consultant for uploading of pension payroll.

At the end of the further cross examination and further re examination of the recalled PW1, the accused person in this case opted to make a no-case submission. The honourable court then ordered the respective counsel to the parties to file written addresses on the no case submission which was complied with, and the written addresses of the parties on the no case submission were subsequently adopted before the court.

In its considered ruling delivered on the 24/7/2018, the Honourable Court dismissed the defendant's no case submission and thus ordered the defendant or accused person to enter his defence.

Subsequently the defendant opened his defence and called three (3) witnesses. However, mention must be made here that only DW1 and DW3 (the accused) testified in defence of this case. The said DW2 called by the defendant turned out to be PW2 (Aminu Yusuf) earlier called by the prosecution, who had testified, was cross-examined by the defence and duly discharged by the court. Upon an objection raised by the prosecution as to the competence of DW2 to testify as a defence witness, having earlier on testified as a prosecution's witness as PW2, the court sustained the objection and DW2 was disqualified from testifying as a defence witness. Thus apart from the oral testimonies of DW1 and DW3, the defence did not tender any documents in his defence.

DW1 was one Sa'adu Dabo who affirmed and stated that he is 70 years old and that the defendant is known to him over 20 years ago and the defendant is his neighbor. He stated that between 2007—2013 he was familiar with the defendant.

DW1 stated that he is surprise that the defendant is in court to face charges of theft of funds from Kaduna State Pension Bureau, this is because he knows the defendant as an honest person. He further stated that he does not know the time the defendant worked with the Kaduna State government. That he DW1 worked with the Federal Ministry of Establishment under Federal Training Centre but that he is no longer in service.

Under cross-examination by the learned counsel for the prosecution, DW1 stated thus;

"I am Alhaji Sa'adu Dabo. I am 70 years old.

"Yes I am educated and hold a secondary school certificate obtained in 1972.

"Yes, I was employed with the Federal Civil Service from April, 1973 to March 1978. I resigned in 1978.

"After my resignation from the Federal Civil Service, I worked with Peugeot Automobile in Kaduna State.

Under further cross examination DW1 stated as follows:

"No I do not know the details of the charges against the defendant who is my neighbor.

I do not know what the defendant is being accused of before this court, but I am surprised that the defendant is standing trial before this court".

There was no re-examination.

As observed earlier, DW2 was one Aminu Yusuf called by the defendant. He affirmed but before he gave evidence, it turned out that the said DW2 was earlier called by the prosecution as PW2 who had testified and was cross examined by the defence and was discharged.

Upon an objection taken by the prosecution to the competence of DW2 to testify as a defence witness, having earlier testified as a prosecution witness, the court sustained the objection, hence, DW2 was disqualified from testifying as a defence witness.

DW3 was Mohammed Ibrahim Sodangi (the defendant in this case). He affirmed and described himself as an Accountant, a lecturer and a consultant.

He stated that he is aware that the State has brought a 13 count charge bordering on stealing and impersonation against him. He confirmed that the 13 count charge was read and explained to him by the court to which he pleaded not guilty.

DW3 stated that he opened accounts with FCMB and Keystone banks. He identified Exhibits 3C and 5C pages 2 when same were shown to him as the Accounts Opening Packages by him. He also admitted that he opened the two accounts before the transaction leading to this case.

DW3 testified that he was not employed by Kaduna State Government per se, but that Kaduna State Government appointed Adav Systems Nigeria Ltd as payroll consultant and that he works with Adav System Nigeria Ltd.

He stated that sometimes in 2013 he was informed by the then Director of Finance, Umar Shehu (PW1) of Kaduna State Pension Bureau that there was a letter of invitation from the EFCC inviting him (DW3), the former Executive Chairman of the Bureau and the former Director of Pension of the Bureau and gave him a copy of the letter of invitation which bears the three names listed above. That the said Director of Finance of the Bureau asked him to come to the Bureau so that the three of them invited along with other members of the bureau will go to Abuja together, give statement and come back same day. He stated that they went together, but that he was in his personal car. That on reaching the EFCC's office and before they entered Umaru Shehu told him that there has been a petition written and that they have been going to the EFCC and have been giving testimonies. That he also told him what to write and added that they will come back home the same day.

DW3 testified that when they entered the EFCC's office, they were interviewed separately and their statements taken. That at the end of the statements taking, the head of the investigation team Michael Wetkas said that if he does not detain him over night it will be viewed as something else, but that he will be given bail the following day. He stated that this was during the month of Ramadan and he was fasting. That he was detained without food to break his fast, and was not afforded the opportunity to consult his lawyers or family members. That the following day he was asked to write a further statement which he said he did, and was given his phone to make contacts to get surety. He called his brother Ismail Sodangi who fulfilled the bail conditions and he was released on bail on that day being Friday. That thereafter he was given several appointments to report to the commission which he did unflinchingly.

DW3 further testified that the 1st statement he wrote on a Thursday was on the instruction of PW1 and that same does not depict the true position of the facts of the case. For instance the name of Alhaji Bala Adamu which appears in the statement as deceased and former DFS of the Bureau actually died in July 2006 a date before the payments that went into the accounts in this case.

That he was asked by the investigators if he has Bala Adamu's death certificate to which he said no, but that same could be obtained from his file with the bureau. Thereafter he said he became aware that staff of the bureau submitted Certified True Copy of the death certificate of Bala Adamu purporting that he died around 2012 after the payments were made while he said he is aware Bala Adamu died in 2006.

He stated that another statement that was made was that he obtained additional cheque books which he gave to Alhaji Bala Adamu to be making withdrawals from the accounts. He stated that this is in spite of his knowledge that the two accounts are savings accounts for which there were no cheque books but only withdrawal slips. That the third example is that Bala Adamu was the one that brought Adav systems Nig. Ltd for engagement by the Kaduna State Government, while he knows Bala Adamu never had anything to do with Adav Systems Nig. Ltd.

DW3 admitted that he made payments of ₦10 Million Naira to the EFCC, and stated that he was instructed by PW1 to accept and make some payments so that the case will be settled and he (DW3) will not be prosecuted. He stated that he considered his integrity built over the years is worth more than any payment he will ever make to protect same. He stated that he started lecturing in A.B.U. Zaria in 1988 and have mentored thousands of accountants over the years, some of whom are in very high positions then and even now. He identified Exhibit '8' as containing the narration he made above to the court. He stated that when he made Exhibit '8' he was not shown the petition allegedly written to the EFCC. He added that he has never seen the petition written in respect of this case physically. That he cannot remember the officer to whom he made Exhibit '8'.

DW3 testified he has been operating the two accounts with Keystone Bank and FCMB since 2001 and 2003 respectively. He stated that there are other transactions in these two accounts other than the pension funds, e.g. the Forch Bearers Consultants Nig. Ltd. and Kor Computers Systems Nigeria Ltd. are the most notable transactions in the accounts. He stated that there are months that pension funds did not get into these two accounts.

He further stated that he did not input his name on the pension payroll. That normally the DFS of the Bureau will call him at the end of the every month to assist in the preparation of the pension payrolls. That the payrolls are domiciled in the Desktop Computer in the office of the Director of Finance and Supply DFS of the Bureau. That (DFS) will bring the list of the variations to be entered for the month which they normally do in DFS's office and in his presence in that particular computer. That thereafter, the entire payroll will be printed on a bank by bank basis in four copies and forwarded to the internal audit within the Bureau along with all the supporting files for the variations entered in the month.

He stated that the audit will verify and certify the payroll and stamp them as such, and will retain one copy and forward a copy to the internal audit of the State Ministry of Finance along with all the supporting documents for the variation for the month, wherein the internal audit of the state ministry of finance will further verify same and will advise the accountant general to release the needed funds for payment of a particular month. He further stated that if any error is detected by the two audit units, the payroll will be returned to the DFS of the Bureau for correction and re-printing. In such a case he stated that the DFS will call him to come to his office for such a re-print. Where there are no corrections and upon release of funds by the accountant-general to the Bureau, the DFS will write cheques for the amount of the total pensions to be paid to each bank and will attach the copy of the payroll to the cheques and deliver to each bank to effect payments into the pensioners' account.

The witness testified that in 2012, e payment was introduced thereby putting paid to the use of cheques being issued to banks. That United Bank for Africa were the bankers selected to handle the e-payment from the year 2012. That the said UBA Plc brought a format which requires upload to their e payments platform. He stated that he assisted the bureau to convert the pension payroll into that e-payment format. That when the payrolls are certified and the accountant-general releases funds to the bureau for payment of a particular month, that e payment schedule will be uploaded to the UBA platform. That when the upload is completed, the platform will generate a summary on a bank to bank

basis indicating for each bank the total pensioners to be paid and the amount payable which always agree with the physically printed payroll except where there are pensioners who for one reason or the other are not to be paid, such pensioners will be excluded.

DW3 further testified that the payment sequence of the platform requires the DFS to authorize the payments while the secretary of the bureau approves the payment after they are satisfied that same tally with the payroll. That it is only then that the pensioners receive direct credit from UBA Plc through the e-payment platform. He stated that he is not a signatory to the pension bureau account. However that through his association with the bureau, he got to know that the DFS and the Secretary were the signatories to the pension Bureau accounts.

Under cross examination by the counsel for the prosecution, DW3 stated as follows;

"Yes I have been a lecturer for almost 30 years with ABU Zaria. I am still a lecturer on part-time basis with the same ABU Zaria, department of accounting.

"Yes, other than lecturing I also do consultancy. I am still in the business of consultancy."

"I am no longer a consultant with the Kaduna State Pension Bureau. I stopped being consultant with the pension bureau towards the end of 2015 i.e. more than a year after this case started"

"No, basically my job was not to migrate the Kaduna State Pension payroll from analogue to digital. My job was in respect of programming and handling of the pension payroll in the Kaduna State"

"Yes, my appointment as a consultant was based on my competence.

Under further cross-examination DW3 stated thus:

"I am not the one of the Directors of Adav System Nigeria Ltd. I do not know who are the Directors of Adav System Nig. Ltd. I

have never seen the memorandum and Article of Association of that company. I was only employed by Adav System Nig. Ltd and do not know the signatories to Adav System account.

"I also do not know if the company has a bank account"

"The mode of payment for consultancy services rendered by Adav System Nig. Ltd to Kaduna State Government is not known to me, but later, a maintenance agreement was signed between Kaduna State Government and Adav System Nigeria Ltd resulting in the payment of ₦30,000 maintenance fee per month which I used to collect monthly from the Ministry of Finance Kaduna State on behalf of Adav System Nig. Ltd The maintenance fee was reviewed upward to ₦60,000 and I kept collecting some on behalf of Adav System Nig. Ltd but was keeping some for myself.

"Some of the senior people in Adav System Nig. Ltd include Haruna Sayeed and Habibu Suleiman. Yes Haruna Soyeed is the former accountant-general of Kaduna State"

Still under further cross-examination, DW3 stated as follows:

"Yes my job includes upgrading of analogue pension payroll to digital pension payroll.

"Yes, my job includes input of variations on a monthly basis to the pension payroll"

"No I am not an indigene of Kaduna State, I am from Katsina State.

"No, I have never worked as an employee in Kaduna State.

"Yes I am not a pensioner in Kaduna State.

"Yes, I maintain one account with FCMB and the other in Keystone bank.

"In keystone bank the name is Mohammed Ibrahim Sodangi, while in FCMB the name is Mohammed Sodangi.

When Exhibit 1 pages 1, 2, 3 and 4 were shown to DW3, he stated thus:

"The name in Exhibit 1 page 1 item No.2 for April, 2008 is Mohammed S. The net pension is N185,226.23. The Account is FCMB A/C No. 203450224901. That this is the highest amount of pension paid in that list. That the least pension payable on page 1 of Exhibit 1 item No. 8 on the list is the sum of N1,643.27k. That the average payment on page 1 of Exhibit 1 is N6,691.85 in favour of Peter Bodam.

"At page 2, the name on the highlight is Mohammed Ibrahim. The net payable is N1,426,050. The lowest payment on page 2 serial No. 43 is the sum of N1,721.84 payable in favour of Mollam Maiwado. The average Net payment is N24,383.80 payable in favour of serial No. 36 Joseph Audu Kadima"

"Yes, you are right that in all the pages of Exhibit 1 either Mohammed S. or Mohammed Ibrahim has the highest amount payable as pension.

Under further cross-examination DW3 stated as follows;

"I cannot confirm that the total amount paid to my Keystone bank overtime amount to over N37 million because I do not have the figures. Same with the total amount in my FCMB Account.

"Yes I made a statement dated 12/7/13 i.e. Exhibit 8.

When DW3 was made to read Exhibit 8 page 1, lines 21—24 and pages 2 lines 1—3, he stated thus;

"Yes, I confirmed that I stated in Exhibit 8 where I read that the total pension fund paid into these two accounts are over N37million and N28million respectively.

The total amount of pension fund paid into these two accounts amount to over N65 million"

"Yes, in the course of investigation by the EFCC certain refunds were made. I can recall that the sum of N10million noira was refunded.

Still under cross-examination DW3 stated thus;

"From my work with the pension bureau as a consultant, a pensioner is not suppose to maintain more than one pension bank account for the purpose of pension payment.

"Yes in the course of my job I became aware of the conditions for a pensioner to be entitled to pension payment. They include;

You must have worked for a ministry, department, agency or scheduled service of the state government for a minimum of 10 years subject to a maximum of 35years or when you reach the retirement age of 60 years, and you will not be entitled to start drawing pension until you reach the age 45years.

Your ministry, department or agency must forward your file to the pension bureau for them to compute your entitlement and sent same to the Office of the Auditor General of the State for verification.

Yes, I did not fit into any of these conditions outlined above".

There was no re-examination.

Thereafter the defendant closed his defence, and pursuant to Order of this court, the defence and the prosecution filed and adopted written addresses and reply address.

The defendant's final written address is dated the 22nd day of November, 2018 but filed on the 23/11/18 by A.S. Moyosore Esq. the defendant's learned counsel wherein he formulated three issues for the determination of this case to wit;

Whether from the evidence led by the prosecution and the defence, the prosecution has proved the charges against the defendant beyond reasonable doubt to warrant a conviction.

Whether it is not the duty of the prosecution to prove that Exhibit '8' the alleged confessional statement admitted as such in the trial is voluntary in view of the allegation of the involuntariness raised by the defence.

Whether the court ought not to expunge Exhibit '8' from its record where the court found from the evidence led that the statement was not voluntarily made and ought not to be admitted in the first place.

On issue No. 1, the counsel submitted, that by our criminal adjudication in this country, the constitution presumes a person innocent until the contrary is proven, thus where the commission of a crime by a party to a proceeding is directly in issue, such must be proved by the prosecution and the standard of proof is a proof beyond reasonable doubt. He argued that it follows therefore that the burden of prove lies on the prosecution who alleged that the defendant committed an offence and as listed in the 13 count charge before the court. He relied on Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 as amended; Section 135(1) and (2) of the Evidence Act, 2011 and the case of **ALMU VS STATE (2009) 10 NWLR (Pt. 1148) 37 at 50-53**

The counsel submitted that apart from the allegation contained in count one (1) of the charge sheet which borders on impersonating of public officers contrary to Section 132 of the Penal Code, Laws of Kaduna State of Nigeria, that all other count listed as Nos. 2—13 are offences of theft contrary to Section 287 of the Penal Code Laws of Kaduna State, which has the effect that one and the same argument will be used and adopted in support of counts 2-13 of the charge sheet since the same evidence are adduced in support of same, and the ingredient of the offence is the same on all the counts listed as Nos. 2--13 of the charge sheet. He stated that reference shall be made to each of the counts and arguments canvassed as appropriate.

He argued that the prosecution in proof of its case against the defendant called five (5) witnesses in the main trial. That PW1 and PW2 are official witnesses who testified as officers of the Kaduna State Pension Bureau (the nominal complainant). He stated that PW1 and PW2 were officers occupying strategic positions at the time of the alleged crime at the Kaduna State Pension Bureau. That PW3 and PW4 are official witnesses from the banks where the two accounts allegedly used in the commission of the crime were domiciled viz Mrs. Keystone Bank and FCMB all based in Kaduna. That PW5 is the head of the investigating team from the Economic and Financial Crime Commission (EFCC). He is the investigating officer in the case.

He stated that the prosecution in the course of the trial tendered bundles of documents viz. the payroll, the banks statement of accounts,

accounts opening forms for the defendant, the defendant's alleged pre-trial statements and other relevant bank documents. That the documents were severally admitted as Exhibits. Thus we have Exhibit 1, the payroll; Exhibit 2 EFCC letter of 4/4/2013, Exhibit 3A, B, C & D are other correspondence between FCMB and EFCC office; banks' certificate, statement of account, and account opening packages; Exhibit 4 is the letter from EFCC to Keystone Bank; Exhibits 5^a - 5^b are correspondence between Keystone Bank and EFCC, i.e. the Keystone bank account opening package, statement of account and banks' certificate; Exhibit 6 is the EFCC's letter forwarding the petition to their head office while Exhibits 7, 8, 9, 10, 11, 12 and 13 are the pre trial statements of the defendant. That among the pre-trial statements aforementioned, Exhibit 8 was treated as a confessional statement by the investigator and adopted by the prosecution as such as same was accompanied by the EFCC attestation form.

The counsel submitted that the prosecution's case is built on the oral and documentary evidence enumerated above. Essentially that the prosecution's case is built on the following;

- i. The defendant's bank documents including the statement of account.
- ii. The nominal complainant's payroll tendered and admitted as Exhibit 1.
- iii. The alleged confessional statement of the defendant admitted and marked as Exhibit 8 and,
- iv. The allegation that the defendant has an opportunity to commit the offence based on the allegation that he was employed as a consultant to the Kaduna State Government.

He argued in respect of count 1 of the charge wherein the defendant was alleged to have between February, 2007 and March, 2013, at Kaduna falsely pretended to be a retired officer/civil servant in Kaduna state civil service and in such assumed character did fraudulently enlist his names into the pension payroll of Kaduna state civil service using two separate accounts. The offence is alleged to be contrary to Section 132 of the Penal Code, Laws of Kaduna State of Nigeria.

The counsel reproduced the said Section 132 of the Penal Code, Laws of Kaduna State and submitted that a quick perusal of this section reveals that for the state to succeed in establishing this offence against the defendant the following ingredient must be established:

- i. That the defendant personated a public servant or that he pretended to hold the post of public servant.
- ii. That he was not such a public servant or did not hold the post pretended.
- iii. That he acted falsely or that he knew that he did not hold the office in question.
- iv. That he, when assuming the character did or attempted to do something under colour of his assumed office.

It was submitted that the section punishes a person who pretends to hold public office as a public servant or who falsely pretends to hold public office as a public servant or who falsely pretends to be any other person holding such office and does any act in the guise of such a public servant.

The counsel argued that in prove of the offence in this count, the prosecution called five witnesses. The PW1 and PW2 are officers of the Kaduna state pension bureau who worked with the defendant. PW3 and PW4 are bank officers from FCB and Keystone bank and PW5 is the officer from EFCC who investigated the case. That PW1 testified and tendered Exhibit '1' which is the bureau payroll on which it is alleged that the defendant's names are contained. PW3 and PW4 tendered the account opening forms, the statement of account purportedly for the defendant and correspondence between the bank and EFCC. PW5 also testified and tendered the defendant's alleged confessional statement made at EFCC office in Abuja. The witness also added that the defendant paid the sum of N10,000,000 out of the total sum.

The counsel submitted that none of the ingredients of the offence as defined in Section 132 was proved. He argued that a detailed perusal of the evidence before the court reveals that the defendant was not brought within the definition of the offence of personating a public servant. That the charge contained in count 1 is a bare narrative and does not fall within the provision of Section 132 of the Penal Code Law.

That it was not shown that the defendant personated a public officer or that he pretended to hold the post of a public servant. That it is not in evidence either oral or documentary that the defendant pretended to hold a public office as a public servant. It was submitted that the charge as couched in count 1 is strange to Section 132 of the Penal Code Law. That while the charge talks about falsely pretending to be a retired officer/civil servant in Kaduna state civil service, the section only punishes a person who pretends to hold any particular office as a public servant.

He submitted that it is the law that the prosecution has a duty to prove the ingredients of the alleged offence in the charge sheet as defined in the law making such act or omission an offence.

That the charge must use the exact words and phrases as contained in the section making the act an offence. That where the prosecution has chosen to list the ingredients of an offence, those ingredients must be proved beyond reasonable doubt against the accused. That once certain elements are included and the accused pleaded to it, then those elements must be proved. He relied on the case of **MAIDERIBE VS FRN (2014) 5 N WLR (Pt. 1399) 68 at 97.**

The counsel argued that in the instant case, the prosecution went outside the provision of the law to import into the charge a retired officer/civil servant which words were not used in section 132 under which the defendant was charged. That the omission or deliberate attempt to bring the defendant into the prosecution definition of the offence in section 132 of the penal code law has the effect of asking the defendant to answer to a charge not covered by the law, and submitted that the defendant cannot be punished for an offence not provided for by law. He has relied on Section 36(8) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the cases of **GEORGE VS FRN (2014) 5 NWLR (Pt. 1339) 1 at 22; TAFIDA VS FRN (2014) 5 NWLR (Pt. 1339) 129 at 149; AYIDA VS TOWN PLANNING AUTHORITY (2013) 10 NWLR (Pt.1362) 226 at 252—253.**

He further submitted that the nature of the charge as framed in count 1 coupled with the lack of confidence linking the defendant to the offence would necessarily raise doubt in the mind of the court as to whether or

not the defendant committed the offence for which count 1 alleged. That the prosecution has not adduced any evidence to prove that the defendant is a public officer/civil servant. He submitted that there must be doubt in the mind of the court i.e. that the defendant committed the offence charged. He argued that where doubt exist at all it must be resolved in favour of the accused person. He has relied on the case **AITUMA VS STATE (2006) 10 NWLR (Pt. 986) 432 at 470.**

Based on the above submissions, the counsel urged the court to hold that the prosecution has failed woefully to establish by sufficient evidence the guilt of the defendant, and urged the court to discharge the defendant on count 1 of the charge.

On count 2--13 in the charge sheet which alleged the offence of theft as defined in section 287 of the penal code, the counsel submitted that the same evidence was relied upon by the prosecution in proof of all the counts. That the ingredients and wordings are the same in all the counts and the only difference is in the timing of committing the offence and the amount involved. He argued that it follows therefore that counts 2—13 can be taken together and the same argument canvassed in support of the defendant's position.

He submitted that it is the law that the prosecution has the onus to proof and it is the duty of the prosecution to establish by cogent evidence that the accused committed the offence by bringing in admissible evidence linking the defendant to the offence allegedly committed. He argued that the entire case of the prosecution is centered on the oral testimonies of PW1--PW5 and the bundle of documents. He stated that Exhibit 1 was tendered through PW1. Exhibit 2, 3^{A-D} were tendered through PW3. Exhibits 4, 5^{A-B} were tendered through PW4. That PW3 and PW4 are bank officers from FCMB and Keystone Banks respectively. Exhibits 7—13 were the alleged confessional statements of the defendant tendered by PW5 the investigating police officer in the case. That the summary of the prosecution's case according to PW1 and PW2 are that the defendant was employed by the Kaduna State Government as consultant to computerize the payment of pensioners in the Kaduna State Civil Service. That the two witnesses explained their schedule of duties and

went further to tender Exhibit 1 which is the alleged pension payroll containing the name of the defendant. That PW3 and PW4 are official witnesses from the 2 banks involved. Their evidence short as it were was that the defendant is their customer and maintain account with the banks. They both tendered relevant documents and statement of accounts earlier enumerated in this address. That PW5 the IPO testified to explain his role in the investigation and tendered the alleged confessional statements of the defendant.

It was submitted in this regard, that there is nowhere in the totality of the evidence before the court where the defendant was linked with the commission of the offence. He argued that the documents tendered are of no evidential value as the documents were either legally inadmissible or were linked to the defendant viz-a-viz the alleged offence. He argued in this regard that Exhibit 1 is the pension payroll tendered by PW1. That the said PW1 agreed under cross examination that the Exhibit was not prepared by him. He mentioned one Ja'afaru Ibrahim as the officer who prepared Exhibit 1. He argued that the said Ja'afaru was not called as a witness to come and tender the document. That PW1 also admitted that Exhibit 1 was not signed by the person who allegedly prepared same. He therefore submitted that the law is that a statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made, produced by him with his own hand or was signed or initialed by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible. He has relied on the Section 83(4) of the Evidence Act, 2011.

He further submitted that for Exhibit 1 to be treated as legally admissible evidence, it is the duty of the prosecution to either call the author Ja'afaru Ibrahim or give evidence in proof of the actual execution of Exhibit 1 by the said Ja'afaru. He referred the Court to the Section 93(1) of Evidence Act, 2011. He further argued that Exhibit 1 is a computer generated evidence governed by Section 84 of the Evidence Act, 2011. That Section 84(2) listed the conditions which must be fulfilled to make Exhibit 1 admissible, and in addition there must be a certificate of authentication pursuant to Section 84(4) which the prosecution never provided. He relied on the case of **KUBOR VS DICKSON (2013) 4NWLR**

(Pt. 1345)534 at 578; **OMISORE VS AREGBESOLA (2015) 15 NWLR (Pt. 1482) 205 at 295.**

He submitted that Exhibit 2, 3 and 4 are mere correspondences between the banks and EFCC and never linked the defendant with the commission of the offence of theft contrary to Section 287 of the penal code law. That similarly Exhibits 3^A, 3^B and Exhibit 5 are bank documents which also did not connect the defendant to the offence of theft alleged in all the count 2-13 of the charge. He argued that the only seeming evidence before the court are Exhibits 3^C, 3^D and Exhibits 5^A-^D. These Exhibits are the alleged statements of accounts from FCMB and Keystone bank.

He submitted these documents are inadmissible and the court ought not to place any legal reliance on them because PW3 and PW4 who tendered them testified that they are not the authors. He further argued that by nature Exhibits 3C, 3D, and 5A-D are computer generated evidence governed by section 84 of the Evidence Act, 2011. He submitted that where such documents is not produced by the maker or author, before it becomes admissible in law, it must be accompanied by a certificate pursuant to Section 84(4) of the Evidence Act, 2011 since PW3 and PW4 testified that the Exhibits are generated from their system. He referred the court to the case of **OMISORE VS AREGBESOLA (2015) 15 NWLR (Pt. 1482) 205 at 295.** He further argued that the witnesses did not in any way connect the documents with the defendant. He submitted that the law is that a party relying on the documents in proving his case must relate each of such documents to the specific area of his case in respect of which the document is tendered. He refer the court to **ANPP VS USMAN (2008) 17 NWLR (Pt. 1100) 1 at 89.**

He submitted in this regard that it behoves the prosecution through PW3 and PW4 who tendered the statement of account to show to the court where a particular credit transaction is made, what amount and within which period. That the above is necessary so that the Exhibits are not just dumped in court without linking same to the defendant. Simply put, that the witness did not speak to the documents. He relied on the case of **INIAMA VS AKPABIO (2008) 17 NWLR (Pt. 116) 225 at 299.** He further submitted that the only competent witness who can testify on

those Exhibits (statement of account) is either the author or the witness through whom they are tendered. He urged the court to discountenance the bundle documents tendered by the prosecution as there was no linkage to the defendant in whatever form and to hold that the counts dealing with theft has not been established by the prosecution.

The counsel further submitted that the prosecution by their presentation of the case has left the court in the dark as to whether or not the defendant committed the offence in count 2—13 of the charge which alleged theft of various sums of money mentioned in the charge and that same was stolen by the defendant over time between 2007 and 2013.

He argued that the offence of theft is clearly defined in Section 286 and 287 of the Penal Code Law. That the said section provides the ingredients that must be established before the court can hold that sufficient evidence has been led against the defendant. They include:

- i. That the property allegedly stolen is movable.
- ii. That the property was in possession of a person
- iii. That the accused moved the property whilst in the possession of that person
- iv. That he did so without the consent of that person
- v. That he did so with intent to cause wrongful gain to himself and wrongful loss to that person.

He argued that going by the allegations contained in the various counts listed as Nos. 2—13, it is the duty of the prosecution to prove by evidence the following ingredients which run through the counts viz;

- a. That the defendant is a consultant engaged by the Kaduna State Government
- b. He took money mentioned in the count dishonestly.
- c. That he enlisted his name into the pension payroll.
- d. That the money was paid into the various accounts belonging to the defendant and on the mentioned dates.

The counsel argued that the issue of consent of the custodian of the monies allegedly stolen is of great importance. He submitted that there

is no proof by the prosecution that the monies were taken without the consent of the people in custody is the money. That it is in evidence that the defendant had no opportunity to unilaterally put his name on the payroll, Exhibit 1. That PW1 and PW2 gave detailed procedure the bureau follow to get pensioners' name on the payroll i.e. that the list is subject to two form of audit i.e. the bureau internal auditors and the external auditors of the Ministry of Finance who checked and rechecked before the final payroll is prepared for payment. He argued that it is therefore not just possible for the defendant to get his name on the payroll and have monies transferred into his account without the consent of the other officers of the pension bureau, the state ministry of finance and the two audit departments.

The counsel further argued that it is in evidence that for every pensioner to qualify for payment must have a file with the Bureau which is generated from the data provided by the retiree. He submitted that there is no evidence that a file was created and/or opened for the defendant. That the lie in the prosecution's case is the imaginary number being interchanged in Exhibit 1. In some instance the name Mohammed S. will carry No. RB/3099 while Mohammed Ibrahim will carry No. RB/3100 and the number can be exchanged at will. He submitted that the effect of the above is that the contents of Exhibit 1 are self contradictory which makes the prosecution's case unreliable and unsafe to convict on it.

The counsel submitted that there is no proof that the defendant ever engaged as a consultant. That PW1 who should know better admitted under cross examination that he has never seen the letter of appointment appointing the defendant as a consultant. He did not know whether the defendant was engaged at all and by whom. He also admitted that the consultant engaged is a corporate body and not a natural person as the defendant. That PW1 admitted that Exhibit 1 was not produced by the defendant but by one Ja'afaru who was not called as a witness in this case.

He submitted that the prosecution also failed to adduced evidence to show that any sum of money was stolen either physically or by sieged of arm as the charges suggest. That Exhibits 3, 4 and 5 series which are

alleged to be the defendant's statement of account did not prove that money was stolen and by whom to satisfy the requirement of the law. Furthermore that these Exhibits are not admissible in law as they were dumped on the court for the court to be making conjecture of figures and dates.

The counsel further submitted that before a case can be said to be made against an accused person in a criminal trial, the essential elements of the offence must be established against him, and there must be no doubt in the mind of the court. Where there is doubt at all, it must be resolved in favour of the accused person.

He argued that the main plank upon which the prosecution based their case are the payroll Exhibit 1 and the statement of accounts of the two banks admitted as Exhibits 3B and 5D. He submitted in this regard that the two documents are materially contradictory when read together with the content of the charge sheet. That while Exhibits 1 carry different figures, Exhibits 3B and 5D did not tally with what is contained in the charge sheet. He submitted that these contradiction ran through counts 2—13 of the charge sheet and argued that the effect of this in law is for the court not to believe the evidence adduced by the prosecution. That it is the duty of the prosecution to prove with exactitude the actual amount that was allegedly stolen. That there must be proof by evidence that the monies were actually stolen by who and by what means and the proof must be in tandem with the words and figures used in the charge sheet. He relied on **MAIDEREBE VS FRN Supra at 97.**

The counsel further argued that the pertinent question the court must ask itself in view of the above submissions made on the apparent contradictions in the evidence of the prosecution and the charge before the court are; whether it is in the interest of justice for the court to supply the missing link in the prosecution's case; will not amount to the court descending on the arena of the conflict if the court will have to embark on investigation in its bid to resolve the apparent conflict?; will it not be better and in accord with justice and our acquisitorial jurisprudence for court to resolve doubts created by the material contradiction in favour of the accused person. The counsel urged the

court to answer all these questions posed in favour of the defendant and on the whole he urged the court to hold that the prosecution has not proved the offence of theft against the defendant.

Issue No. 2 and 3 as formulated above by the defendants' counsel were argued together in the defendant's final written address.

The counsel submitted that a voluntary confessional statement made by an accused person is relevant and admissible against him at the trial. That as a matter of law, a defendant may be convicted alone if;

- a. Confessional statement is free and voluntary.
- b. There are facts in the evidence for the prosecution which shows that the confession is true. He has relied on the case of **IGRI VS STATE (2012) 11 NWLR (Pt. 1327) 522 at 550.**

He submitted in this regard that Exhibit '8' presented as confessional statement of the defendant by the prosecution did not satisfy the requirement of a confessional statements as laid down by the courts. He argued that it is on record that the defendant admitted making the statements in Exhibit '8' but from the defendant's testimony in court as DW3, he is contending that the statements were induced and obtained by promises made by PW1 in this trial and the officers of the EFCC. The defendant testified as DW3 and stated that all the statements were products of well prepared facts as instructed by PW1. He referred the court to the evidence of the defendant who testified as DW3 at the trial.

It was further submitted that the alleged confessional statement are products of question and answers as the investigators ask the questions and requested the defendant to provide a pre-determined answer, and submitted that such a statement cannot be regarded as free and voluntary. He relied on the cases of **AFOLAHAM VS STATE (2012)13 NWLR (Pt. 1316) 185 at 201-202; SALAWU VS STATE (2011) 7 SCNJ 67 at 87.**

He further submitted that the onus of proving that the statement of an accused person was made voluntarily is on the prosecution who alleged that the statement was voluntary, otherwise it will affect the accused

right to fair hearing enshrined in the constitution. He referred the court to the case of **OGUNO VS STATE (2013) 15 NWLR (Pt.1376) 1 at 23–24.**

The counsel conceded to the fact that the court in the course of the trial conducted a trial within trial and a ruling delivered, but that nothing stopped the defence from raising the issue of voluntariness in its overall defence, it is the duty of the court at the final stage to assess its credibility and found upon it. He cited the case of **FRN VS NWEKA (2011) 12 SCNJ 783 at 805.** He has urged the court to resolve the issue in favour of the defendant and to hold that the prosecution has a burden to prove that Exhibit '8' is voluntary and that their failure to convince the court should be regarded as a failure to prove its voluntariness and same ought to be discountenance.

He further submitted that once the court found from the evidence laid before it that the statements challenged but admitted is not voluntary, the court has one of two options, either to expunge the exhibit from its records as evidence or not to accord any evidential value to its contents. He urged the court to hold that the pre-trial statement of the accused admitted as Exhibit 8 is not made voluntarily and as such it ought to be expunged from the from the court's record as irrelevant but admitted wrongly in evidence.

The counsel further submitted that the defence has been able to show that the prosecution has not proved the offences against the defendant. That it has also been shown that the alleged confessional statement of the defendant did not pass the test of voluntariness to have made Exhibit '8' relevant.

That having not been able to prove beyond reasonable doubt that the defendant committed the offence of impersonating a public officer and theft as required by law, the defendant is entitled to a verdict of not guilty and the proper order of the court is to discharge and acquit the defendant from all the counts contained in the charge sheet.

The complainant's final written address, is dated the 3^d day of December, 2018 and filed the same date by Sylvanus Tahir Esq. the complainant's learned counsel wherein he formulated a lone issue for determination of this case to wit:

“Whether the prosecution has proved the essential ingredient/elements of the offences against the defendant beyond reasonable doubt to warrant his being found guilty and consequently convicted”

The counsel submitted that the prosecution in the course of the trial and in a bid to prove its case against the defendant called five (5) witnesses and tendered numerous documents, which were admitted in evidence and marked as Exhibits. That the prosecution being aware of the burden placed on its shoulders to prove the guilt of the accused beyond reasonable doubt diligently conducted a thorough investigation and also painstakingly placed both oral and documentary evidence in discharge of the burden of proof placed on it.

He submitted that in criminal cases, the law is settled that the burden of proof is on the prosecution and the standard of proof is beyond reasonable doubt. He referred the court to Sections 15 and 138(1) of the Evidence Act, 2011 and the cases of **IBEZIAKO VS COP (1963) 1 NLR 61; BAKARE VS STATE (1987) 1 NWLR (Pt. 52) 578; AFOLALU VS STATE (2010) 16 NWLR (Pt. 1220) 584 and WOOLMINGTON VS DPP (1935) A.C. 462 at 481.**

It was submitted that in discharging the burden of proof placed on the prosecution, it is generally accepted that the commission of a crime can be proved by any of the following three ways; that is;

- By direct evidence; or
- By confessional statement of the accused; or
- By circumstantial evidence.

He cited the cases **ADEYEMO VS STATE (2015) 16 NWLR (Pt. 1485) 311 at 392 paragraph A—B; MAIGARI VS STATE (2010) 16 NWLR (1220) 439 AT 467 paragraph E—G; and EMEKA VS STATE (2011) 14 NWLR (Pt. 734) 666.**

The counsel proceeded to examine the two offences of personation and theft as contained in the charge sheet, their ingredients and the evidence of the prosecution led in support of the allegation.

On the charge of personation and as contained in count 1 of the charge sheet, the counsel submitted that evidence abound directly to show that the accused person pretended to be a pensioner/retired civil servant of kaduna state entitled to payment of pension for which he enlisted his names on the payroll and was paid purported pension in two accounts at FCMB and Keystone Banks.

Counsel submitted that the case of the prosecution in count 1 against the accused person is that between February, 2007 to March, 2013, the accused falsely pretended to be a retired officer/civil servant in the kaduna state civil service and in such assumed character fraudulently enlisted his names into the pension payroll of Kaduna State Civil Service using two separate personal accounts namely; Mohammed Ibrahim and Mohammed S. in Keystone Bank Plc and FCMB respectively under colour of such office, and thereby committed an offence punishable under Section 132 of the Penal Code Law of Kaduna State.

He submitted that in support of this allegation the prosecution led evidence through PW1, PW2 and PW5 i.e. officials of the kaduna state pension bureau and EFCC Detective/Investigator to show that the accused was engaged by the kaduna state government as a consultant to migrate the pension/gratuity payment from the analogue system to computerized system of payment. That the accused used the opportunity and his vantage position as a consultant to include his names in the pension payroll (Exhibit 1) through the two bank accounts in FCMB and Keystone Banks.

He argued that PW1 and PW2 in their testimonies before the court explained the qualification/eligibility for entitlement to pension payment. That one critical entitlement to pension payment is that the pensioner must have worked for the Kaduna State Government and must have put in the requisite number of years of service and birth to be entitled to payment of both gratuity and pension. That PW5 in his testimony told the court that their investigation revealed amongst other things that the accused is not an indigene of Kaduna state, never worked for Kaduna state government and was therefore ineligible to earn pension payment for which he fraudulently enlisted his names.

Counsel further submitted that Exhibit 3^c (statement of account of the accused with FCMB) and Exhibit 5^c (statement of account of the accused with Keystone bank) were tendered. Both PW3 and PW4 officials of FCMB and Keystone banks demonstrated from the statements of accounts tendered through them the various flows by way of pension payments from the Kaduna State Pension Bureau in favour of the accused various sums of monies on monthly basis between the periods in question. Similarly, that PW5 equally highlighted both from Exhibit 1 (Pension payroll) as well as Exhibit 3C and 5C the various payments in favour of the accused in the two bank accounts.

The counsel argued that the accused person in his various statements made during investigation at the EFCC confirmed having worked as consultant to the Kaduna State Pension Bureau, the fact that he is not from Kaduna State, had never worked for Kaduna State Government, yet his name was enrolled on the payroll of pensioners in Kaduna state. That all these pieces of evidence were neither discredited in cross examination nor are they manifestly unreliable to warrant the court not to believe the prosecution's evidence as led. He has referred the court to the statement of the accused dated 11/7/2013 page 1, lines 18—24 and lines 1—5 of the next page of same statement; page 3 of the same statement dated 11/7/2013 lines 15—21; page of the same statement dated 11/7/2013 last line to page 4 lines 1--4. Counsel further referred the court to the additional statement made by the accused on the 12/7/2013 particularly at page 1 thereof lines 8—15 and lines 21—24 of the same page 1, and lines 1 --13 at page 2 of the same statement dated 12/9/2013. He also referred the court to the additional statement made by the accused dated 23/7/13 particularly page 1 lines 5-8 thereto.

Counsel submitted in this regard that the sum total of those highlighted pieces of evidence unequivocally shows that the accused although not an indigene of kaduna state, had never worked in the kaduna state civil/public service and therefore not a civil/public servant of kaduna state, pretended to be one by enlisting his names in the pension payroll. He argued that the prosecution by the evidence led has established a case of personation to warrant the accused being found guilty and convicted accordingly.

Counsel further submitted that the offence of personating a public servant is in Section 132 of the Penal Code law of Kaduna State which provides thus:

“132 -- “whosoever pretends to hold any particular office as a public servant knowing that he does not hold such office or falsely personates any other person holding such and in such assumed character does or attempts to do any act under the colour of such office, shall be punished with imprisonment for a term which may extend to three years or with fine or with both”

It is submitted that the essential ingredients/elements which the prosecution must establish in the offence of personation are;

- i. That the accused person personated a public servant or that he pretended to hold the post of a public servant.
- ii. That he was not such a servant, or did not hold the post pretended.
- iii. That he acted falsely or that he knew that he did not hold the office in question.
- iv. That he, when assuming that character, did or attempted to do something under colour of his assumed office.

The counsel submitted that the prosecution has proved all the essential ingredients of personation in the circumstances of this case and urged the court to so hold. He has referred the court to the case of **NELSON VS BORNO N.A. (1967) NNLR 12.**

In respect of the charge of theft of various sums of money constituted in counts 2—13 of the charge, the learned counsel for the prosecution argued that the accused in counts 2—13 of the charge was alleged to have stolen various sums of monies which totaled over N65million in the two bank accounts.

That in FCMB as shown in Exhibits 3C (statement of account of the accused) and the confessional statement of the accused dated 12/7/2013 (Exhibit 8) there was a total payment of over N37million,

while in Keystone Bank, as shown in Exhibit 5C (statement of account of the accused) as well as Exhibit 8 (his confessional statement) there was a total payment of over ₦28million as pension payment to which the accused is not entitled. He further argued that all these payments to himself by the accused were done dishonestly as a consultant by enlisting his name without the consent of the Kaduna State Pension Bureau, who is the owner of money.

That the counsel submitted that the prosecution has established a case of theft or stealing as alleged in the charge. He further stated that the confessional statements of the accused are relevant moreso that the accused has made a refund of ₦10 million as stated in his statements dated 3/9/13 and 7/10/13 all of which are Exhibits before the court.

The counsel submitted that Section 286 of the Penal Code Law of Kaduna State defines theft as follows;

“286(1) whoever intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to take it said to commit theft”

He submitted that essential ingredients/elements of the offence of theft which the prosecution must prove are;

- i. That the property in question is a movable property.
- ii. That the property was in the possession of person.
- iii. That he did so without the consent of the owner of the property.
- iv. That he did so with the intend to cause wrongful gain to himself or wrongful loss to that person.

On the meaning and ingredients of stealing, the counsel referred the court to the following cases; **AYENI VS STATE (2016) 12 NWLR (Pt. 1525) 51 at 76; ADEJOBI VS STATE (2011) 12 NWLR (Pt. 1261) 347 at 377 paragraphs C—E; OSHINYE VS COP (1960) 5 SC 105; CHIANGO VS STATE (2002) 2 NWLR (Pt. 750) 225.**

The counsel submitted relying on the case of **CLARK VS STATE (1986) 4 NWLR (Pt. 35) 381** for the principle that 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;

- i. An intention to permanently to deprive the owner of the thing of it;
- ii. An intention to permanently deprive any person who has any special property in the thing; and
- iii. In the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

He also referred the court to the case of **OYEBANJI VS STATE (2015) 14 NWLR (Pt. 1479) 270; MOHAMMED VS STATE (2000) 12 NWLR (Pt. 682) 596.**

On the ingredients of stealing and onus of proof on prosecution, the counsel relied on the case of **AYENI VS STATE (Supra) at 71-72 paragraphs H—D** wherein Onnoghen JSC held thus;

“In a charge of stealing as in the instant case, it is the duty of the prosecution to prove the charge beyond reasonable doubt by the production of relevant evidence. The intention is to prove that the person charged has taken or converted anything capable of being stolen fraudulently with the intent at;

- a. Permanently to deprive the owner of the thing in question;*
- b. Permanently to deprive any person who has any special property in the thing or such property.*
- c. In the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.*

In short the prosecution must prove the;

- i. Taking*
- ii. Converting and*

- iii. *Fraudulent intention in the taking and/or converting of the subject matter of the stealing/charge”*

He further referred the court to the following cases:- **AWOSIKA VS STATE (2010) 9 NWLR (Pt. 1198) 49 at 52; NWATURUOACHA VS STATE (2011) 6 NWLR (Pt. 1242) 170 at 174.**

On the ingredients of theft, the counsel referred the court to the case of **MOHAMMED VS STATE (2000) 12 NWLR (Pt. 682) 596 at 603—604 paragraphs G—A.**

The counsel argued that the mensrea of the offence of theft is the intention to deprive the owner of the goods the ownership thereof and the movement of the goods constitute the actus reus. He further submitted that it is essential to prove that the property stolen belongs to some person (i.e. ownership) and it is up to the prosecution to adduce this evidence.

In the instant case the counsel submitted that uncontroverted evidence was led through PW1, PW2 and PWS that the money stolen belonged to the Kaduna State Pension Bureau. The counsel has therefore urged the court to find the accused guilty as charged on counts 2—13 and to convict the accused person accordingly.

In response to the address of the learned defence counsel, Mr. Tahir, Esq learned counsel for the prosecution contended, that throughout the length and breadth of the defence address, no legal basis has been argued to warrant the discharge of the accused person.

He argued that the defence counsel raised the following issues in his address;

- a. The alleged involuntariness of the statements made by the accused.
- b. That the statements of accounts of the accused failed to comply with Section 84(4) of the Evidence Act, 2011.
- c. That the prosecution failed to call one Ja’afaru Ibrahim as a witness.
- d. That the prosecution dumped documents (Exhibits) on the court.

- e. That the accused was not shown to be a public officer pursuant to Section 132 of the Penal Code.
- f. Alleged discrepancies of the amounts stated in the charge Vis-Vis the amount in the pension payroll (Exhibits) and the amounts contained in the defendant's statements of account in Keystone bank and FCMB.

The learned counsel for the prosecution has responded to the above issues raised by the defence counsel in their address seriatim.

On the allegation of involuntariness of the statements (i.e. Exhibits 7—12) made by the accused, the prosecution's counsel submitted in this regard that the issue has been put to rest following the trial within trial (TWT) conducted by the court to determine the voluntariness or otherwise of the said statements. That this court on the 20th July, 2017 delivered a ruling admitting the statements of the accused as having been made voluntarily. There is no appeal against the said ruling which still subsists. He argued therefore, that it is unethical, unprofessional and irresponsible for defence counsel to attack, impeach or question the validity of documents admitted in evidence against which there is no pending appeal. He urged the court to discountenance the arguments canvassed by the defence counsel in paragraphs 6.00—6.09 of their address.

On when a confessional statement can ground a conviction, the counsel referred the court to the case of **HASSAN VS STATE (2017) 5 NWLR (Pt. 1557) 1 at 36 paragraph D—E** and submitted that once the court is satisfied that a confessional statement was free, voluntary and true, it is safe to convict on it. He also referred to the cases of **EGBOGHONOME VS STATE (1993) 7 NW LR (Pt. 306) 383**, **OBIASA VS QUEEN (1962) 2 SCNLR 402**; **OSUAGWU VS STATE (2013) 5 NWLR (Pt. 1347) 360**.

On probative value of confessional statement, the counsel has referred the court to the case of **HASSAN VS STATE (Supra) at 38 paragraph E—F**.

On the contention that the Bank documents tendered through PW3 and PW4 being computer generated evidence did not meet the requirements of Section 84(4) of the Evidence Act, 2011 as canvassed in paragraph 5.05—5.08 of the defence written address. It is submitted in this regard

that the contention is misconceived. It is argued that the defence counsel obviously does not appear to have been part of the trial. It is further argued that either the defence counsel did not appreciate the prosecution's evidence or was absent minded not to avert his mind to the documents tendered by the prosecution witnesses particularly PW3 and PW4. Exhibit 3D is the certificate of compliance pursuant to Sections 84(4) in respect of documents that emanated from FCMB, while Exhibit 5D is also the certificate of compliance in respect of the computer generated documents concerning the documents from Keystone Bank. He has urged that this argument of the defence be discountenanced for lacking in merit.

On the contention that the prosecution failed to call one Ja'afaru Ibrahim, a staff of the Kaduna State Pension Bureau as a witness to tender Exhibit 1 through him as canvassed in paragraphs 5.05—5.06 of the defence address, it is submitted in this regard, that the said contention is hallow, misconceived and lacking in merit. It is argued that it is in evidence that both PW1 and PW2 are all officials of the Kaduna State Pension Bureau. That the complainant need not to invite all the staff of the Bureau to give evidence since it is an official act.

He submitted that the law is trite, that companies and government ministries department and agencies act through their official and servants, hence any servant or agent thereof can give evidence to establish any transaction made by such government agency. Such evidence is relevant and admissible. He relied on the case of **KATE ENT. LTD VS DAEWOO NIG LTD (1985) 2 NWLR (Pt. 5) 116.**

He further argued that the defence cannot dictate to the prosecution a particular witness to call. He has relied on the cases of **ADEYEMO VS STATE (2015)16 NWLR (Pt. 1485); OKANLAWON VS STATE (2015) 17 NWLR (Pt. 1459) 445 at 481 paragraphs D—E.**

On the contention that the prosecution dumped documents on the court as canvassed in paragraph 5.08—5.19 of the defence address, it is submitted in this regard, that the above argument is misconceived. That all the prosecution witnesses ably spoke to and demonstrated the worth of the documents tendered, and urged that the above argument of the defence be discountenanced.

Another contention raised by the defence is on count 1 of the charge, dealing with the allegation of prosecuting a public servant/officer by the accused. The defence counsel has argued at paragraph 4.03—4.11 of their address that Section 132 of the Penal Code punishes a person who pretends to hold a public office as a public servant or who falsely pretends to hold a public office as a public servant and does any act in the guise of such public servant. The defence counsel has further submitted that a perusal of the evidence before the court reveals that the accused was not brought within the definition of the offence of personating a public servant. That the charge does not fall within the provision of Section 132 of the Penal Code. That the evidence does not show that the accused personated a public officer or that he pretended to hold the post of a public servant. That no oral or documentary evidence showed that the accused pretended to hold a public office as a public servant. That the charge as is couched in count 1 is strange to Section 132 of the Penal Code. That while the charge alleged about falsely pretending to be a retired officer/civil servant in Kaduna State civil service, Section 132 only punish a person who pretends to hold any particular office as a public servant.

The defence counsel concluded his argument by submitting that the prosecution failed to use the exact words and phrases as contained in Section 132 of the Penal Code Law, that the prosecution went outside the provision of the law to import into the charge a retired officer/civil servant which words were not used in Section 132 of the Penal Code under which the accused was charged.

The defence counsel has finally submitted that the omission or deliberate attempt to bring the accused into the prosecution's definition of the offence under Section 132 of the penal code has the effect of asking the accused to answer to a charge not covered by the law. That the accused cannot be punished for an offence not provided for by law citing Section 36(8) and Section 36(12) of the Constitution of the Federal Republic of Nigeria as amended and some cases to buttress the argument.

The prosecution's counsel has argued in this regard this his understanding of the argument canvassed by the defence counsel is that

section 132 of the penal code only punishes an offender who pretends to hold any particular office as public servant knowing that he does not hold such office, and in such assumed character does not or attempts to do any act under colour of such office. In other words, that the section does not punish anyone who personates a person who no longer holds a public office such as in this case.

It is submitted by the prosecution's counsel that the interpretation postulated by the defence counsel is too restrictive which portends danger and capable of doing violence to the intention of the parliament. The counsel submitted that it is the intention of the legislature that section 132 of the penal code punishes any offender who pretends to hold any particular public office as public servant or who falsely personates any other person holding such office. That to hold otherwise will defeat the meaning of the section and capable of giving a loeway or escape route for offenders who personate retired public servant/officers as in this case.

On interpretation statutes, the counsel refered the court to the case of **UHUNMUANGHO VS OKOJIE (1989) NWLR (Pt. 122) 471 at 490 paragraphs B—C**. He urged the court in the light of the above decision to purposefully interpret Section 132 of the Penal Code liberally in accordance with the intention of the legislature which is to criminalize impersonation of the public officers or those who pretend to hold public office. He argued that the fact that the accused in this case never hold any public office in Kaduna State to qualify him earn pension as a retired public servant is weighty.

On the alleged discrepancies of the amounts stated in the charge Vis-Vis the amount in the pension payroll (Exhibit 1) and the amounts contained in the defendant's statement of accounts in Keystone Bank and FCMB. The defendant's counsel has argued at paragraphs 5.15—5.23 of their address that the prosecution failed to prove the counts of the allegations dealing with theft or stealing, as contained in counts 2- -13 of the charge. It was argued that there are discrepancies between what is alleged in the charge sheet, the pension payroll (Exhibit 1) and Exhibits 3^L and 5^C (FCMB and Keystone bank statements of account respectively. It was further argued that the figures on those documents do not tally.

The learned counsel for the prosecution has submitted in this regard, that the above argument of the defence counsel is untenable. He contended that the defence failed woefully to cross-examine the prosecution witnesses who gave credible and uncontroverted evidence on the allegations contained in counts 2—13 of the charge. He further submitted that the evidence rendered by the prosecution witnesses being challenged as it were, the court has a duty to act on same. He referred the court to the case of **ESENE VS STATE (2017) 8 NWLR (Pt. 1568) 337**.

The counsel further submitted that the effect of failure to cross-examine a witness on a material fact in controversy in a case, the court can take his silence as an acceptance. That the party does not dispute the fact. He has relied on the case of **IGHALO VS STATE (2016) 17 NWLR (Pt. 1540) 1 at 15 paragraphs A—B**.

It was submitted relying on the case of **UDOM VS UMANA (No. 1) (2016) 12 NWLR (Pt. 1526) 179 at 243—244 paragraphs G—B** that cross examination plays a vital role in the truth searching process of evidence procured by examination in chief. It relates to authenticity or veracity of the witness. A court of law is entitled to place probative value on evidence which does not pass the test of cross-examination. He submitted therefore that since the defence could not confront the prosecution witnesses on any alleged discrepancies/contradictions in their evidence before the court by way of cross-examination, one wonders how learned counsel for the defence could sit in his office and dispute figures of the monies subject of the allegations of theft. He argued that the above amount to giving evidence by the defence counsel in a final written address, which is not allowed. He referred the court to **OGUGU VS STATE (1994) 9 NWLR (Pt. 366) 1 at 38 paragraphs C—D**. He has urged the court to discountenanced all the defence counsel's arguments concerning the alleged discrepancies in Exhibit 1 and 3^c and 5^c which is only a figment of his imagination of the defence counsel.

In conclusion, the counsel has urged the court to take a critical look at the evidence laid by the prosecution against the defendant, which shows that the prosecution has proved its case against the defendant beyond reasonable doubt as required by Section 135 of the Evidence Act, 2011.

On the meaning of reasonable doubt in the context of our criminal jurisprudence, the counsel for the prosecution has referred the court to the cases of **EROMOSELE VS FRN (2017) 1 NWLR (Pt. 1545) 55 at 107 paragraphs D—E; MILLER VS MINISTER OF PENSION (1974) 1 ALLER 372 at 373; ALAKEN VS STATE (1991) 1 NWLR (Pt. 205) 567; STATE VS AZEEZ (2008) 14 NWLR (Pt. 1108) 439 at 478 paragraph E.**

The counsel submitted that the prosecution has proved all the ingredients of the offences against the accused person and accordingly urge the court to find the accused person guilty as charged and to convict him accordingly.

The defendant's reply on point of law is dated the 5th day of December, 2018 but filed on the 6th day of December, 2018 by Mr. A.S. Moyosore Esq. the defendant's counsel who further argued on the alleged involuntariness of statements of the accused as follows: He conceded to the fact that a trial within trial was conducted and a Ruling delivered on it, but submitted that a ruling on the admissibility or otherwise of the alleged confessional statements at the trial within trial stage does not affect the defendant's right to raise similar issue at the defence stage and final written address, because as at that time the court have not heard the evidence of the defence to the entire case. He stated that the argument of the defence is that Exhibits 7—12 even though admitted in evidence, they ought not to be admitted in the first place and should be expunged as the court ought not to believe them, because the defendant's evidence and testimony in court amounted to a retraction of the alleged confessional statement. He has urged the court in such situation to apply the inconsistency rule. He relied on the case of **PATRICK VS STATE (2018) 16 NWLR (Pt. 1645) 263 at 282.**

He submitted that the defendant having testified in his oral testimony that every statement in the pre-trial statement are induced and not reflecting the true position of the case both the oral testimony and the alleged confessional statements ought to be discountenanced.

On the prosecution's failure to comply with Section 84(4) of the Evidence Act, the counsel submitted that their contention is not non compliance with Section 84(4) with regards to certificate of compliance as same was later tendered in evidence, but that the defendant's

position is that the none of the prosecution witnesses especially PW3 and PW4 laid proper foundation to make the documents admissible under Section 84(2)(a—d).

On the contention that the prosecution failed to call one Ja'afaru as a witness, he argued that the submission of the prosecution's counsel and the authorities cited therein are not relevant. He argued that the defence contention is that Ja'afaru as the maker of Exhibit 1 ought to be called as a witness to authenticate the documents tendered.

On the contention that the prosecution dumped documents on the court, the counsel refered the court to its records especially the evidence of PW3 and PW4 as it relates to Exhibits 3^c and 5^c i.e. statements of accounts of FCMB and Keystone respectively. He submitted that none of the witnesses gave oral testimony with regards the contents of Exhibit 3C and 5C in relation to the offences contained in the charge.

He further submitted that document admitted in evidence, no matter how useful they could be would not be such assistance to the court in the absence of admissible oral evidence by the person who can explain their purport. He has refered the court to the cases of **ALAO VS AKANO (2005) 1 NWLR (Pt.935) 16 at 179; AREGBESOLA VS OYINLOLA (2011) 9 NWLR (Pt. 1235) 458 at 611.**

On the alleged discrepancies of the amounts stated in the charge vis-à-vis the pension payroll (Exhibit 1) and the amount contained in the defendant's statements of account in Keystone bank and FCMB, the counsel submitted that the argument of the defence on this point is that following the dumping of Exhibits 1, 3C, and 5C on the court by the prosecution there was serious material contradiction in the figures in Exhibit 3C, and 5C. That it is the duty of the prosecution to prove the accuracy of the figures and sums allegedly stolen by the defendant.

He further argued that Exhibits 3C and 5C alone cannot ground liability as they remain entries in books of accounts under Section 51 of the Evidence Act. He therefore submitted that in the circumstances, the mere tendering of exhibit 3C and 5C without detailed explanation by PW3 and PW4 or any other witness cannot ground liability on the part of

the defendant. He refer the court to case of **B.E.G.H. LTD VS U.H.S. & L. LTD (2011) 7 NWLR (Pt. 1246) 246 at 286.**

He further submitted that the defence has to go into the details of the statement of accounts to bring out the discrepancies between Exhibit 3C and 5C on the one hand and Exhibit 1 on the other hand, and argued that this is the duty of the prosecution who has the burden of the proof but have failed woefully to do so. That the material contradiction is enough to create a doubt in the mind of the court as to the guilt of the defendant.

The counsel further contended that contrary to the arguments of the prosecution's counsel in paragraphs 13.5--13.7 of their final written address, that the defendant failed to cross examine on the discrepancies, he submitted in this regard that it is not the duty of the defendant to prove that the figures contained in the exhibits tendered are line with the contents of the charge. That it is the duty of the prosecution to do so. That what the defence has done is to highlight the hallowness in the evidence of the prosecution.

He has urged the court to resolve the issues raised in favour of the defendant and return a verdict of not guilty and discharge the defendant accordingly.

A careful consideration of the issues for the determination of this case as formulated by the respective counsel to the parties in their written address revealed that the lone issue formulated by the counsel for the prosecution is very apt and is therefore hereby adopted by this court as the sole issue for the determination of this case, and it is as follows:

"Whether the prosecution has proved the essential ingredients/elements of the offences against the defendant beyond reasonable doubt to warrant his being found guilty and consequently convicted"

The law is trite that in criminal cases or trial, the burden of proof is on the prosecution and the standard of proof required is proof beyond reasonable doubt. This means that it is not enough for the prosecution to suspect a person of having committed a criminal offence. There must

be evidence, which identified the person accused with the offence, and that it was his act, which caused the offence. See **AIGBADION VS STATE** (2000) 4 SC (Pt. 1) 1 at 15, **AFOLALU VS STATE** (2010) 16 NWLR (Pt. 1220) 584. See also Section 135(1) of the Evidence Act, 2011.

Furthermore, in the case of **ALMU VS STATE** (2009) 10 NWLR (Pt. 1148) 37 at 50—53; the Supreme Court held thus;

“In criminal case where it is incumbent on the prosecution to prove its case beyond reasonable doubt, all surrounding circumstances and the credible and unchallenged evidence before the court must be perused carefully by the court to determine whether in fact the accused did commit the crime.....”

It is worthy of mention here, that in discharging the burden of proof placed on the prosecution, it is generally accepted that the commission of a crime can be proved by any of the following three ways; that is:

By direct evidence; or

By confessional statement of the accused; or

By circumstantial evidence.

See **ADEYEMO VS STATE** (2015)16 NWLR (Pt. 1485)311 at 329 paragraph A—B; **BILLE VS STATE** (2016) LPELR—40832 (SC).

In the instant case, Count 1 of the charge against the accused person is for the offence of personating a public servant punishable under Section 132 of the Penal Code Law of Kaduna State. The Section provides thus;

“132 whoever pretends to hold any particular office as a public servant knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

It is my considered view here, that the essential ingredients/elements which the prosecution must establish in the offence of personation of a public servant are;

- i. That the accused personated a public servant or that he pretended to hold the post of a public servant.
- ii. That he was not such a servant, or did not hold the post pretended.
- iii. That he acted falsely or that he knew that he did not hold the office in question.
- iv. That he, when assuming the character, did or attempted to do something under colour of his assumed office.

In the case of **NELSON VS BORNO N.A (1967) NWLR 12**, the Court therein held thus;

“that it is an essential ingredient of the offence of personating a public officer that the offender should not in fact hold the office he pretends to hold, or that he should not be the person he pretends to be”

As stated earlier in the course of this judgement, the prosecution in the course of the trial and in a bid to prove its case against the defendant called 5 prosecution witnesses and tendered numerous documents, which were admitted in evidence and marked as Exhibits.

The case of the prosecution in Count ‘1’ of the charge against the accused person as recounted by its witnesses as well as the documents tendered and admitted as Exhibits before the court is that, between February, 2007 to March 2013, the accused person falsely pretended to be a retired officer/ civil servant in Kaduna State civil service and in such assumed character, fraudulently enlisted his names into the pension payroll of Kaduna State Civil Service using two separate personal accounts namely; Muhammad Ibrahim and Muhammad S. in Keystone Bank Plc and FCMB Bank Plc respectively; under colour of such office and thereby committed the offence alleged in count 1 of the charge.

In support of this allegation in count ‘1’ of the charge, the prosecution led evidence through PW1, PW2 and PW5 who are the officials of the

Kaduna State Pension Bureau and the EFCC Detective/Investigator to show that the accused was engaged by the Kaduna State Government as a consultant to migrate the pension/gratuity payment from the analogue system of payment to computerized system of payment. It is the further evidence of the prosecution that the accused person used the opportunity and his vintage position as a consultant to include his name in the pension payroll (Exhibit 1) through the two bank accounts in FCMB and Keystone Banks respectively.

PW1 and PW2 in their testimonies before the court clearly explained the qualification/eligibility for entitlement to pension payment. They stated that one critical eligibility for entitlement to pension payment is that, the pensioner must have worked for Kaduna State and must have put in the requisite number of years of service and birth to be entitled to the payment of both gratuity and pension.

In his testimony before the court, PWS stated, that their investigation revealed amongst other things that the accused person is not an indigene of Kaduna State, never worked for Kaduna State Government and was therefore ineligible to earn pension payment for which the accused person fraudulently enlisted his names.

Furthermore Exhibits 3C (i.e. the statement of account of the accused person with FCMB) and Exhibits 5C (the statement of account of the accused person with Keystone Bank) tendered by PW3 and PW4 as officials of FCMB and Keystone banks respectively and they demonstrated from the statements of accounts tendered through them the various inflows by way of pension payments from the Kaduna State Pension Bureau in favor of the accused of various sums of monies on monthly basis between the periods in question. It is also worthy of note here that PWS, the investigating officer equally highlighted both from Exhibits 1 (pension payroll) as well as Exhibits 3C and 5C the various payments made in favor of the accused person in the two bank accounts.

It is interesting to note here that the accused person in his various statements made during investigation at the EFCC confirmed having worked as a consultant to the Kaduna State Pension Bureau, the fact that he is not from Kaduna State, had never worked for Kaduna State

Government, yet his name was enrolled on the pension payroll of Kaduna State. All these pieces of evidence were neither discredited in cross examination nor are these pieces of evidence manifestly unreliable to warrant the court to believe the prosecution's evidence as led above.

The accused person for example in his statement dated 11/7/13 admitted as Exhibit 7 stated variously at page 1 lines 18—24 and lines 1—5 of the next page of the same statement as follows:

"thereafter I started consulting work and moved to kaduna with my family. The consultancy work is in the area of computerization of the kaduna state pension payroll in 1999 and also ministry of federal capital territory in collaboration with Korr computer systems in 2003. The kaduna state government appointed our company Adav systems Nigeria ltd in 1999 to undertake the computerization of the state pension payroll and program till date"

At page 3 of the same statement dated 11/7/13 at lines 15—21 therein, the accused stated as follows:

"I worked with Ahmadu Bello University, and withdrew my service in 2005 and so I am not a pensioner of the Kaduna State Government. The then Director of Finance Late Alhoji Bala Adamu created my names in the payroll using my accounts in First City Monument Bank and Keystone Bank"

Furthermore at page 4 lines 1--4 of the same statement dated 11/7/2013 (Exhibit 7) the accused further stated thus:

"As to the question whether it is possible for someone who is not a pensioner to be collecting pension money I would say I don't know, but that I know that my names were created even though I am not a pensioner"

Similarly, the accused person in his additional statement made on the 12/7/2013 and admitted as Exhibit 8, at page 1 thereof Lines 8—15, the accused on his own volition stated as follows;

"My name is on the list before it goes to the office of the accountant general for auditing and is not created at point of uploading for e-payment only. I am from Katsina State and not from Kaduna State. I have never worked for Kaduna State Civil Service in my life and I am only engaged as a consultant. I am aware that my name is included in the pensioners of Kaduna State. I cannot say off-head exactly when my name was created in the Kaduna State Pension payroll"

The accused person further stated at Lines 21–24 at page 1 and Lines 1–3 of page 2 of the same statement dated 12/7/13 thus;

"I am equally aware that my name is not supposed to be listed since I am not a pensioner of kaduna state government. Unfortunately, I consented to this as he has been helping me financially whenever I have a sproblem. The account numbers into which the pension payments were made are Keystone Bank account Number 050209000014 with the name Muhammed Ibrahim and the second is FCMB account Number 203450224901 with the name Muhammad S. which in the mandate is Muhammad Sodangi. The total amount paid into the Keystone account overtime is over ₦37,000,000 as per the statement shown to me at the commission while the lodgments into FCMB account of monthly pensions is over ₦28million Naira as per the statement at the disposal of the commission.

Finally in additional statement of the accused person dated 23/7/13 admitted as Exhibit 9 at page 1 Lines 5–8 the accused person further stated as follows:

"I wish to further state that my name was created in the Kaduna State Pension payrolls in March 2007 even though I am not a bonafide pensioner of Kaduna State"

It is my considered view here, that the sum total of these pieces of highlighted evidence both oral and documentary unequivocally show shows that the accused although not an indigene of Kaduna State, had never worked in the kaduna state civil service/public service and therefore not a civil/public servant of kaduna state, pretended to be one

by enlisting his names in the pension payroll and under that assumed character, the accused person received pension payments as a pensioner from the Kaduna State Pension Fund into separate personal accounts with Keystone Bank Account Number 050209000014 with the name Muhammad Ibrahim into which over N37,000,000 pension funds were paid into and the second is FCMB account Number 203450224901 with the name Muhammed S. which in the Mandate is Muhammad Sodangi wherein lodgements of monthly pension of over N28million was made. If the above does not amount to personation of retired officer/civil servant in the kaduna state civil service, then I wonder what else would amount to such personation of a retired officer/civil servant in the Kaduna state civil service.

The defendant has made copious submissions in paragraphs 6.00—6.09 of their written address wherein they alleged the involuntariness of the statements i.e. Exhibits 7--12 made by the accused person during investigation particularly Exhibit '8' presented as a confessional statement of the defendant by the prosecution and argued that same did not satisfy the requirement of a confessional statement as laid down by the courts. It was submitted that it is on record that the defendant admitted making the statement in Exhibit '8', but that from the defendant's testimony in court as DW3 he is contending that the statements were induced and obtained by promises made by PW1 and the officers of the EFCC. That all the statements were products of well prepared fact as instructed by PW1.

The counsel further argued that the onus of proving that the statements made voluntarily is on the prosecution who alleged that the statement was voluntary, otherwise it will affect the accused right to fair hearing enshrined in the constitution. He relied on the case of **OGUNO VS STATE (Supra)** in urging the court to resolve the above issue in favour of the defendant and to hold that the prosecution has failed to prove that Exhibit 8 is voluntary and that same should therefore be discountenanced.

It is rightly submitted by the learned counsel for the prosecution and as revealed by the records of this court with regards to the above issue of voluntariness or otherwise of the statements made by the accused that

this issue has been put to rest following the trial within trial (TWT) conducted by the court to determine the voluntariness or otherwise of the said statements.

This court on the 20th July, 2017 delivered a Ruling admitting the statements of the accused as having been made voluntarily and they were accordingly marked as Exhibits 7--12 respectively. There is no appeal against the said ruling of the court which still subsist. It is therefore rightly submitted by the counsel for the prosecution that it is unethical and unprofessional for the defence counsel to attack or impeach or question the validity of documents admitted in evidence against which there is no pending appeal.

On when a confessional statement can ground a conviction, the Supreme Court in **HASSAN VS STATE (2017) 5 NWLR (Pt.1557) 1 at 36 paragraph D—E** per Rhodes-Vivour JSC held thus;

“Once the court is satisfied that a confessional statement was free, voluntary and true it is safe to convict on it ...the trial court was satisfied that Exhibit C was voluntarily made by the appellant after trial within trial was conducted. There was no appeal against the ruling of the trial within trial, that ruling remains inviolate until set aside”

See also **EBGOGHONOME VS STATE (1993) 7 NWLR (Pt. 306) 383.**

On the issue of probative value of confessional statement the Supreme Court in **HASSAN VS STATE (Supra)** at page 38 paragraphs E—F per Ogunbiyi JSC held thus;

“it is pertinent to state there cannot be better evidence than that which is within the knowledge of the person who testify thereto, the commission of an offence. It is the best because the information given is within his frame of mind and could not have been formulated. This is especially where the confessional statement made tallies with and is consistent with the acts or events leading to the commission of the offence complained of”

In the instant case, I hold the considered view that this court was satisfied that Exhibits 7-12 were voluntarily made by the accused person before this court after the trial within trial was conducted, Exhibit '8' being a confessional statement inclusive. As stated above, there is no appeal against the Ruling of the court in the trial within trial. Hence the ruling of the court remains inviolate until set aside.

Accordingly the court having been satisfied that Exhibit '8' the confessional statement of the accused person was free, voluntary and true it is safe to convict on it. The above in my view is so, because there cannot be better evidence than that which is within the knowledge of the person who testified thereto the commission of the offence. It is given within the frame of mind of the accused and could not have been formulated. It is especially so, where the confessional statement made tallies with, and is consistent with the acts or events leading to the commission of the offence complained of. See **HASSAN VS STATE (Supra)**.

Accordingly I agree with the submissions of the prosecution's learned counsel in this regard, and hereby discountenanced with the arguments canvassed by the counsel for the defendant in paragraph 6.00—6.09 of their written address.

The learned counsel for the defendant has raised another contention with regards to count 1 of the charge which deals with the allegation of personating a public servant/officer by the accused. The defence counsel at paragraph 4.01—4.11 of their written address has argued that section 132 of the penal code punishes a person who pretends to hold public office as a public servant or who falsely pretends to hold public office as a public servant and does any act in the guise of such a public servant.

The counsel further argued that a perusal of the evidence before the court reveals that the accused person was not brought within the definition of the offence of personating a public servant. That the charge does not fall within the provision of Section 132 of the Penal Code. That the evidence did not show that the accused personated a public officer or that he pretended to hold the post of a public servant. That no oral or documentary evidence showed that the accused pretended to hold a public office as a public servant. That no oral or documentary evidence

showed that the accused pretended to hold a public office as a public servant. That the charge as couched in count 1 is strange to section 132 of the penal code law. He further submitted that while the charge alleged about falsely pretending to be a retired officer/civil servant in Kaduna State Civil Service, Section 132 only punishes a person who pretends to hold any particular office as a public servant.

The defence counsel has further submitted that the prosecution failed to use the exact words and phrases as contained in Section 132 of the Penal Code Law, that the prosecution went outside the provision of the law to import into the charge a retired officer/civil servant which were not used in section 132 of the penal code under which the accused was charged. The finally submitted that the omission or deliberate attempt to bring the accused into the prosecution's definition of the offence defined in section 132 of the penal code has the effect of asking the accused to answer to a charge not covered by the law. That the accused cannot be punished for an offence not provided for by law citing section 36(8) and 36(12) Constitution of the Federal Republic of Nigeria 1999 (as amended) and some cases to buttress his argument.

In my view, the above argument canvassed by the defence counsel seeks to portray that section 132 of the penal code only punishes an offender who pretends to hold any particular office as public servant knowing that he does not hold such office, or falsely personates any other person holding such office and in such assumed character does or attempts to do any act under colour of such office. Simply put, that section 132 of the penal code does not punish anyone who personates a person who no longer holds a public office such as in this case.

The prosecution's learned counsel has submitted in this regard, and quite rightly too in my humble but firm view that the interpretation contemplated or postulated above by the defence counsel is too restrictive which portends danger and capable of doing violence to the intention of the legislature. I hold the considered view here as rightly submitted by the counsel for the prosecution that it is the intention of the legislature that section 132 of the penal code punishes any offender who pretends to hold a particular public office as a public servant or who falsely personates any other person holding such office. To hold

otherwise will certainly defeat the meaning of the section and capable of giving leeway or escape route for offenders who personates retired public servants/officers as in this case.

In the case of **UHUNMURANGHO VS OKOJIE (1989) NWLR (Pt. 122) 471 at 490 paragraphs B—C** the Supreme Court per Nnaemeka Agu JSC on the interpretation of statutes held thus;

“..... the basic function of every court called upon to interpret a piece of legislation is to seek out the intention of the legislators as could be gathered from the four corners of the statute itself”

In the instant case, it is the duty of this court to interpret section 132 of the penal code with a view to seek out the intention of the legislature therein which in my view is to criminalized impersonation of public officers or those who pretend to hold public office.

In the case of **ADETOYE VS FEDERAL INSTITUTE OF INDUSTRIAL RESEARCH OSHODI & ORS (2011) LPELR –3615** the Court of Appeal in highlighting the difference between public servant/civil servant held thus;

“I notice however that right from the trial court, the appellant has in his prayers referred to himself as a civil servant. A civil servant is a public servant in the employment of the civil service of the federation or a state”

In the instant case the accused as stated earlier is alleged to have impersonated himself as a person entitled to drawing pension from the kaduna state government when he does not have any record of employment with the kaduna state civil service to entitle him to payment of such pension from the state pension fund. His role was that of a consultant to convert the analogue payroll of the Kaduna state pension bureau to digital payroll. The accused is alleged to have used vintage position as a consultant to the pension bureau to enlist his names in two separate personal accounts with two banks Keystone bank and FCMB respectively whercin between 2007—2013 monthly pension

payments were made in favour of the accused in the total sum of over ₦66 million Naira.

It must be noted here that the above evidence was never rebutted by the accused and no attempt was made by the accused to say that he was entitled to that payment. Furthermore, other than the accused confessional statements Exhibit 7—12 before the court, the prosecution also led sufficient evidence through its witnesses to corroborate the confessional statements of the accused person to the alleged offence in count 1 of the charge.

Accordingly I find and hold that, the fact that the accused in this case never held any public office in Kaduna state to qualify him to earn pension as retired public servant, and knew that he was not qualified to receive pension payments from the Kaduna state pension fund and under such assumed character received pension payment from the Kaduna State Pension Funds between 2007—2013 running to over ₦66 million naira is weighty and thus covered by the liberal interpretation of section 132 of the penal code which criminalizes the offence in count 1 of the charge.

I further find and hold that the prosecution here has been able to prove the said 1st count charge above against the accused person beyond reasonable doubt to warrant the conviction of the accused person by this court in respect of the said count 1 of the charge.

With regards to counts 2—13 of the charge sheet, they are all offences of theft contrary to section 287 of the penal code law of Kaduna state. The effect of the above is that one and the same argument will be used and adopted in support of the said counts 2—13 of the charge sheet, since the ingredients of the offence adduced in support is the same on all the counts listed as Nos. 2—13 of the charge sheet. The only difference therein is in the timing of committing of the offence and the amount involved. It follows therefore that the said counts 2—13 of the charge sheet can conveniently be taken together.

Section 286 of the penal code law of Kaduna state defines the offence of theft as follows;

“286(1) whoever intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to take it is said to commit theft”

In my view, a careful consideration of the definition of theft as provided for in section 286 of the penal code law of Kaduna State reproduced above, revealed clearly, that the essential ingredients/elements of the offence of theft which the prosecution must prove beyond reasonable doubt to secure a conviction of a person charged with the offence are as follows;

- (i) That the property in question is movable property
- (ii) That the property was in possession of a person
- (iii) That the accused moved the property whilst in the possession of that person
- (iv) That he did so without the consent of the owner of the property
- (v) That he did so with intent to cause wrongful gain to himself and wrongful loss to that person.

In the case of **AYENI VS STATE (2016) 12 NWLR (Pt. 1525) 51 at paragraphs B—D** the Supreme Court per Kekere-Ekun JSC on the meaning and ingredients of stealing held thus;

“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 ingredients of the offence of stealing which must be proved beyond reasonable doubt are;

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

See also the cases of **OYENBANJI VS STATE (2015) LPELR –24751 (SC)** and **OSHINYE VS COP (1960) 5 SC 105.**

Furthermore, in the case of **MOHAMMED VS STATE (2000)12 NWLR (Pt. 682) 596 at 603—604 paragraphs G—A**, the Court of Appeal per Omoge JCA on ingredients of theft held thus;

“By virtue of Section 286(1) of the Penal Code, whoever intending to take dishonestly any movable property out of the possession of any person without that person’s consent moves the property in order to take it is said to commit theft. By this definition, the vital elements of the offence of theft are:

- a. Absence of consent of the owner of the movable property.*
- b. Movement of the said property.*
- c. Intention to take the movable property.*

Still on the ingredients of stealing and the onus of proof on the prosecution, the Supreme Court in **AYENI VS STATE (Supra) at 71—72** per Onnoghen JSC held as follows:-

“In a charge of stealing, as in the instant case, it is the duty of the prosecution to prove the charge beyond reasonable doubt by the production of relevant evidence. The intention is to prove that the person charged has taken or converted anything capable of being stolen fraudulently with the intent at:

- a. Permanently to deprive the owner of the thing in question.*
- b. Permanently to deprive any person has special property in the thing or such property;*
- c. In the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner”*

In the instant case, particularly counts 2-13 of the charge sheet the defendant is alleged therein by the prosecution to have stolen various sums of money belonging to the Kaduna State Pension Bureau which totalled over N65 million into two bank accounts.

The prosecution through its witnesses and documents tendered as Exhibits have in my view been able to lead credible and sufficient evidence to prove the ingredients of the said offence of stealing against the accused person in this trial.

It is the incontrovertible evidence of the prosecution that the accused person here does not have any record of employment with the Kaduna State Civil Service to entitle him to payment of pension from the state pension fund. That the role of the accused person with the kaduna state pension bureau was that of a consultant to convert the analogue payroll of the kaduna state pension payroll to digital payroll. The above position was eloquently laid before this court by the evidence of PW1 and PW2, who are officials of the kaduna state pension bureau. Furthermore, PW5 the EFCC investigating officer stated that the accused person in his various statements made during investigation confirmed having worked as a consultant to the kaduna state pension bureau, the fact that he is not from kaduna state and had never worked for the kaduna state government, yet his name was enrolled on the pension payroll admitted as Exhibit 1.

A careful perusal of the various statements made by the accused person in the course of investigation and admitted as Exhibits 7—13, revealed the undoubted fact that the accused person in his statement dated 11/7/2013 admitted as Exhibit 7 stated variously at page 1 Lines 18—24 and lines 1—5 at page 2 of the same statement as follows;

“Thereafter I started consulting work and moved to Kaduna with my family. The consultancy work is in the area of computerization of the Kaduna State Pension payroll in 1999 and also Ministry of Federal Capital Territory in collaboration with Kor Computers Systems in 2003.

The kaduna state government appointed our company Adav Systems Nigeria Ltd in 1999 to undertake the computerization of the state pension payroll and program till date”

The accused person at page 3 of the same statement dated 11/7/13 (Exhibit 7) further stated thus at Lines 15—21 thereof;

"I worked with Ahmadu Bello University and withdrew my service in 2005 and so I am not a pensioner of kaduna state government. The then Director of Finance Late Alhaji Baio Adamu created my name in the pension payroll using my accounts in First City Monument Bank (FCMB) and Keystone Bank"

The accused further stated in the same statement dated 11/7/13 (Exhibit 7) particularly at page 4 lines 1—4 as follows:

"as to the question of whether it is possible for someone who is not a pensioner to be collecting pension money, I would say I don't know, but I know that my names were created even though I am not a pensioner"

Furthermore, in his additional statement dated and made on the 17/7/13 admitted as Exhibit 8 particularly at page 1 lines 8—15 thereof the accused on his own volition stated thus;

"My name is on the list before it goes to the office of the Accountant-General for auditing and is not created at point of uploading for e-payment only. I am from Katsina State and not from Kaduna State. I have never worked for Kaduna State Civil Service in my life and I am only engaged as a consultant. I am aware that my name is included in the pensioners of Kaduna state. I cannot say off-head exactly when my name was created in the kaduna state pension payroll"

The accused further stated in lines 21—24 at page 1 and lines 1—13 at page 2 of the same statement dated 12/7/13 (Exhibit 8) as follows:

"I am equally aware that my name is not supposed to be listed since I am not a pensioner of the kaduna state government. Unfortunately, I consented to this as he has been helping me financially whenever I have a problem. The account numbers into which the pension payments were made are Keystone bank with account number 050209000014 with the name Muhammed Ibrahim and the second is FCMB account number 203450224901 with the name Mohammed S. which in the mandate is

Mohammed Sodangi. The total amount paid into Keystone account overtime is over N37 million Naira as per the statement shown to me at the commission, while the lodgements into FCMB account of monthly pensions is over N28 million Naira as per the statement at the disposal of the commission"

Furthermore, in his additional statement dated 23/7/13 and admitted as Exhibit 9 the accused at page 1 lines 5—8 stated as follows:

"I wish to further stated that my name was created in the kaduna state pension payroll in March, 2007 even though I am not a bonafide pensioner of kaduna state"

It is my considered view here that the various statements made by the accused person in the course of investigation dated 11/7/13 admitted as Exhibit 7, 12/7/13 admitted as Exhibit 8 and 23/7/13 admitted as Exhibit 9 and as reproduced above leaves no doubt in my mind that the accused person who was employed as a consultant by the kaduna state government to convert the analogue payroll of the kaduna state pension bureau to digital, and who stated clearly therein that he is an indigene of katsina state and has never worked for the kaduna state civil service in his life to be entitled to draw from the kaduna state pension fund as a pensioner, knew obviously that having not worked in the kaduna state civil/public service is not in any way entitle to be paid pension from the kaduna state pension fund.

The prosecution in this case has presented Exhibit 1, which is the payroll of the kaduna state pension bureau showing that the accused name is conspicuously there and the huge amounts of money that accrued to the accused person as pension payments.

Furthermore, in First City Monument Bank (FCMB) as shown in Exhibit 3C i.e. the statement of account of the accused and the statement of the accused dated 12/7/13 and admitted as Exhibit '8' there was a total payment of over N37 million into the accused account, while in Keystone Bank as shown in Exhibit 5C i.e. statement of account of the accused as well as Exhibit '8' his confessional statement dated 12/7/13 there was a total payment of over N28 million as pension payment to which the accused knew he is not entitled to.

It is submitted by the prosecution's counsel and quite rightly too in my humble but firm view that all these payments to himself by the accused were done dishonestly as a consultant by enlisting his names without consent of the kaduna state pension bureau, who is the owner of the money.

It is imperative to state here, that the prosecution witnesses PW1- PW5 all spoke to these documents and nothing whatsoever was done by the defence to controvert the allegations. On the contrary, even the statements made by the accused person himself confirmed these allegations as shown above.

Furthermore, the defendant admitted under cross-examination and stated as follows:

*"That over ₦65 million pension fund was paid into his FCBM and Keystone Bank accounts in Exhibit '8'.
That he recalled making a refund of ₦10 million in the course of the investigation by the EFCC.*

The defendant stated further that:

"From his work with the pension bureau as a consultant he became aware of the conditions that must be satisfied for a pensioner to become entitled to pension payment, they include;

- *You must have worked for a Ministry, Department or Agency or Scheduled Service of State Government for a minimum of ten years, subject to a maximum of 35 years, or when you reach the retirement age of 60 years, and you will not be entitled to start drawing pension until you reach the age of 40 years.*
- *That your ministry, department or agency must forward your file to the pension bureau for them to compute your entitlement and sent same to the Auditor General of the State for verification".*

The defendant further admitted in clear terms that he does not fit into any of these conditions to entitle him to payment of pension from the

pension fund of kaduna state. He added that from his work with the kaduna state pension bureau as a consultant, a pensioner is not supposed to maintain more than one pension bank account for the purpose of payment of pension.

It is in the light of the above, that I agree with the submissions of the learned counsel for the prosecution here, that the prosecution has established a case of theft or stealing as alleged in counts 2—13 of the charge sheet beyond reasonable doubt as required by law. Furthermore the confessional statements of the accused person in this case as referred to above are very relevant, moreso that the accused person has even made a refund of the sum of ₦10 million as stated in his statement dated 3/9/13 and 7/10/13 all of which are exhibits before the court.

It is also imperative to state here that in the offence of theft or stealing the mensrea is the intention to deprive the owner of the goods the ownership thereof while the movement of the goods clearly constitutes the actus reus. It is also essential for the prosecution here to prove that the property stolen belongs to someone (i.e. ownership). In the instant case the prosecution has laid uncontroverted evidence through PW1, PW2 and PW5 that the money stolen belong to the kaduna state pension bureau.

It is my considered view here, that in the light of these uncontroverted evidence of the prosecution both oral and documentary to find and hold that the prosecution has established the offence of theft or stealing in counts 2—13 against the defendant beyond reasonable doubt as required by law.

As stated earlier, the defendant in defence to the charges on count 2—13 of the charge sheet has submitted in paragraphs 6.00-6.09 of their written address wherein they alleged involuntariness of the statements made by the accused person during investigation and admitted as Exhibit 7—12 by the court particularly Exhibit 8 presented as confessional statement by the prosecution and argued that same does not satisfy the requirements of a confessional statement as laid down by the courts. The counsel argued that it is on record that the defendant admitted making the statement in Exhibit '8' but that from the defendant's testimony before the court as DW3 the defendant is

contending, that the statements were induced and obtained by promises made by PW1 and the officers of the EFCC. That all the statements were products of well prepared facts as instructed by PW1.

It is rightly submitted by the prosecution's counsel and as revealed also by the records of this court as observed in the early part of this judgement, that the above issue of the voluntariness or otherwise of the statements made by the accused in the course of investigation has clearly been put to rest following the trial within trial (TWT) conducted by the court to determine the voluntariness or otherwise of the said statements. This court on the 20th day of July, 2017 delivered a considered Ruling admitting the statements of the accused as having been made voluntary and they were accordingly admitted as Exhibits 7-13 respectively. There is no appeal against the said Ruling of the Court which still subsist. It is therefore unprofessional for the defence counsel to attack or impeach or question the validity of the documents admitted in evidence by the court against which there is no pending appeal. The law is trite, that once the court is satisfied that a confessional statement was free, voluntary and true, it is safe to convict on it. See **HASSAN VS STATE (2017) 5 NWLR (Pt. 1557) 1** at 36 paragraph D—E per Rhodes Vivuor JSC.

It should be further stated here, that while the accused person has alleged that his statements made in the course of the investigation were involuntarily made owing to the fact that they were induced and obtained by promises made by PW1 and the officers of the EFCC, and that all the statements made by him and admitted as Exhibits 7—13 in a Ruling of the court after a trial within trial was conducted were products of well prepared facts as instructed by PW1.

It is however interesting to note here that virtually all the facts stated in the statements of the accused admitted as Exhibits 7—17 were also clearly admitted by the accused under cross-examination as shown above. The question therefore is "who also influenced the accused person to make all the admissions under cross-examination?"

It is my view therefore that the admissions as made by the accused under cross examination which is in line with his statements made in the course of investigation and admitted as Exhibits 7 -12 were indeed

voluntarily made, and were not influenced by PW1 or the EFCC officials or anybody as alleged by the defendant.

The law is trite that a confessional statement to the police does not become inadmissible because the accused that made it denies ever making it or retracts the confession on oath. The confessional statement cannot also be regarded as unreliable by the mere denial or retraction. However, the denial or retraction is a matter to be taken into consideration to decide what weight could be attached to it. See **DIBIE VS STATE (2007) 9 NWLR (Pt. 1038) 30 SC.**

In the instant case I hold that this court was satisfied that Exhibits 7– 12 were voluntarily made by the accused person before the court after the trial within trial was conducted, exhibit 8 inclusive being a confessional statement. There is no appeal against the ruling of the court in the trial within trial. Hence the ruling of the court remains inviolate until set aside.

Accordingly, the court having been satisfied that Exhibit '8' the confessional statement of the accused was free, voluntary and true, the attempt by the defendant to retract same on oath, does not make it inadmissible and the said confessional statement cannot be regarded as unreliable by the mere denial or retraction of same.

It is still safe to convict on it. This is because there cannot be better evidence than that which is within the knowledge of the person who testified thereto to the commission of the offence. It is given within the frame of mind of the accused person and could not have been formulated. It is especially so, were the confessional statement made tallies with and is consistent with the acts or evidence leading to the commission of the offence complained of. See the case of **HASSAN VS STATE (Supra).**

I therefore agree with the submissions of the prosecution's counsel in this regard and hereby discountenanced the arguments canvassed by the defence counsel in paragraphs 6.00—6.09 of their written address.

The defendant's learned counsel has further contended in their written address particularly paragraphs 5.05—5.08 that the bank documents

tendered through PW3 and PW4 i.e. statements of account of the accused person being computer generated evidence did not meet the requirements of Section 84(4) of the Evidence Act, 2011. Which is to the effect that where such evidence is not produced by the maker, or the author, before it becomes admissible in law, it must be accompanied by a certificate pursuant to section 84(4) of the Evidence Act. He argued that in addition to PW3 and PW4 testifying that the exhibits are generated from their systems, there must be compliance with the above provisions of Section 84(4) of the Evidence Act.

It is submitted by the counsel for the prosecution in this regard and quite rightly too in my view, that from the above arguments canvassed by the defence counsel, it appears the defence counsel have not been part of the trial. Either the defence counsel did not appreciate the prosecution's evidence or did not avert his mind to the documents tendered by the prosecution's witnesses particularly PW3 and PW4. It is clear from the records of this court that Exhibit 3D is the certificate of compliance pursuant to Section 84(4) of the Evidence Act in respect of documents that emanated from FCMB, while Exhibit 5D is also the certificate of compliance in respect of the computer generated documents concerning documents that emanated from Keystone Bank.

Accordingly, the above arguments of the defence counsel in this regard lacks merit and is hereby discounted.

It is the further contention of the defence counsel in paragraphs 5.0—5.06 of their written address, that the prosecution failed to call one Ja'afaru Ibrahim a staff of the Kaduna State Pension Bureau as a witness to tender Exhibit 1 through him.

It is submitted by the prosecution's counsel and as reflected by the records of this court that both PW1 and PW2 are all officials of the Kaduna State Pension Bureau. The complainant the counsel argued need not invite all the staff of the bureau to give evidence as if it was a personal and not official act.

The law is trite, that companies, government ministries, departments and agencies act through their officials and servants, hence any servant or agent thereof can therefore give evidence to establish any transaction

made by such government agency. Such evidence is relevant and admissible. See **KATE ENT. LTD VS DAEWOO NIG LTD (1985) 2 NELT (Pt. 5) 16 SC.**

The learned counsel for the prosecution has further argued that the defence cannot dictate to the prosecution a particular witness to call and referred the court to **ADEYEMO VS STATE (2015)16 NWLR (Pt. 1485)**

Furthermore in **OKANLAWON VS STATE (2015)17 NWLR (Pt. 1459) 445 at 481 paragraphs D—E** , the Supreme Court per Ariwoola JSC on the prerogative of the prosecution to decide on the number of witnesses in proof of its case held thus;

“It is interesting to note the misconception by the learned appellant’s counsel when he contended that the prosecution ought to have called as a witness, the owner of the two guns recovered from the appellant and co-accused. This court has stated in a plethora of cases over and over again that how many witnesses the prosecution needs to prove its case against any accused person is entirely its responsibility but not that of the defence.”

In the instant case therefore and on the authority of the Supreme Court case of **OKANLAWON VS STATE (Supra)** I find and hold and in agreement with the submissions of the prosecution’s counsel in this regard that the defence cannot dictate to the prosecution a particular witness to call, because that is the sole prerogative of the prosecution. The defence counsel submission in this regard is therefore hereby discountenanced.

The defendant has also argued at paragraphs 5.15—5.23 of their written address that the prosecution failed to prove the counts of allegations dealing with theft or stealing as contained in counts 2-13 of the charge. It was argued that there are discrepancies and contradictions between what is alleged in the charge sheet, the pension payroll (Exhibit 1) and Exhibits 3C and 5C (FCMB and Keystone bank statements of account of the accused person respectively). It was further argued that the figures on those documents do not tally.

It is instructive to note here, that from the records of this court, none of the prosecution's witnesses was confronted on any alleged discrepancies/contradictions in the charge sheet, pension payroll (Exhibit 1) and Exhibits 3C and 5C (FCMB and Keystone bank statements of account of the accused) in their evidence before the court by way of cross-examination.

It is therefore submitted by the learned counsel for the prosecution and quite rightly too in my view, that the defence woefully failed to cross-examine the prosecution witnesses who gave credible and uncontroverted evidence on the allegations contained in counts 2- 13 of the charge sheet. The said evidence rendered by the prosecution witnesses being unchallenged, the court has a duty to act on it.

In the case of **AMADI VS NWOSU (1992) LPELR 442 SC** the Supreme Court per Nnamaka Agu JSC on effect of failure to cross-examine a witness on material point held thus;

“it is settled principle of law that where an adversary or a witness called by him testifies on a material fact in controversy in a case, the other party should, if he does not accept the witness testimony as true, cross-examine him on that fact or at least show that he does not accept the evidence as true, whereas in this case, he fails to do either, a court can take his silence as an acceptance that the party does not dispute the facts. After all, one of the main purposes of cross-examination is to test the veracity of a witness. See AJAO VS ALAO (1986) 5 NW LR (Pt. 45) 802)”

In the instant case, since the defence could not confront the prosecution witnesses on any alleged discrepancies/contradictions in their evidence before the court by way of cross examination, it is a mirage how learned counsel for the defence could sit in the confine of his office and dispute figures of the monies subject of the allegations of theft in counts 2—13 of the charge sheet in the defence final written address. The above in my view clearly amount to giving evidence by the defence counsel in a final written address, which is certainly not allowed.

In the case of **ADEGITE & ANOR VS AMOSU (2016) LPELR –40655 (SC)** the Supreme Court therein per Muhammad JSC on whether address of counsel can take the place of evidence held thus;

“my lords, address of counsel however brilliant can never take the place of evidence”. See also OGUGU VS STATE (1994) 9 NWLR (Pt. 366) 1 at 38 paragraph C—D.

On treatment of unchallenged evidence or evidence of a witness untested by cross-examination, the Supreme Court in **ESENE VS STATE (2017) 8 NWLR (Pt. 1568) 337 at 425** held thus;

“that evidence which is neither challenged or debunked remains good, credible and should be relied upon by a trial court which will in turn ascribe probative value thereon”

Furthermore, in **UDOM VS UMANA (No.1) (2016) 12 NWLR (Pt. 1526) 179 at 243—244 paragraphs G—B** the Supreme Court therein on treatment of evidence of a witness untested by cross examination held thus;

“cross-examination plays vital role in the truth searching process of evidence procured by examination-in-chief. It relates to authenticity or veracity of the witness. A court of law is entitled to place probative value on evidence which does not pass the test of cross examination”.

In the instant case therefore I find and hold that since the evidence of the prosecution witnesses in this regard is neither challenged nor debunked by cross-examination, the said evidence remains good, credible and should be relied upon by this court which will inturn ascribe probative value thereon having regards to the circumstances of this case. Accordingly, the submissions of the defence counsel and all his arguments in this regard concerning the alleged discrepancies in Exhibit 1 and Exhibits 3C and 5C are but a figment of the imagination of the defence counsel and are hereby discountenanced. On the contrary I find and hold that the prosecution has proved its case beyond reasonable

doubt to warrant this court to find the accused person guilty on all the counts in 2—33 of the charge sheet.

It is imperative to point out here that proof beyond reasonable doubt in criminal trial does not mean proof beyond iota of shadow of doubt. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed in a sentence, then the case is beyond reasonable doubt.

In the case of **MILLER VS MINISTER OF PENSION (1974) 1 ALL ER 372 at 373** lord Denning MR explained the meaning of proof beyond reasonable doubt as follows:

“proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law will fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed in this sentence, “of course it is possible”, the case is beyond reasonable doubt but nothing short of it will suffice”

Furthermore, in **ALAKE VS STATE (1991) 1 NWLR (Pt. 205) 567 NIKITOBI JCA** (as he then was) gave a succinct definition of reasonable doubt as follows;

“once the ingredients of a particular offence the accused is charge with are proved, that constitutes proof beyond reasonable doubt”

Still on the meaning of reasonable doubt, the Supreme Court in the case of **STATE VS SALAWU (2011) LPELR 8252 per ADEKEYE JSC** at page 47 paragraph C—F held thus;

“..... Proof of a case beyond reasonable doubt does not mean proof beyond any iota or shadow of doubt. The burden of such proof which lies on the prosecution never shifts. If at the conclusion of trial, on the entire evidence the court is left with no doubt that the offence was committed by the accused, that burden is discharged.

BELLO VS STATE (2007) 10 NWLR (Pt. 1043) 564; AMINA VS STATE (1990) 6 NWLR (Pt. 155) 125; NWACHUKWU VS STATE (1985) 1 NW LR (Pt. 11) 218; ANI VS STATE (2003) 11 NWLR (Pt. 83) 142; UWAGBO VS STATE (2007) 6 NWLR (Pt. 103) 1”

In the instant case the defendant have not controverted the fact that he has never worked for Kaduna State Government as a civil/public servant to be entitled to draw from the pension fund of the pension bureau of kaduna state. The defendant never controverted the fact that he was engaged by the kaduna state government to upgrade the analogue pension payroll of the kaduna state pension bureau to digital pension payroll and that his name was inserted on the pension payroll of Kaduna State (Exhibit 1) either as Muhammad Ibrahim or Muhammad S. The accused himself admitted that Muhammad S. on his FCMB account mandate card means Muhammad Sodangi, and that both Muhammad Ibrahim in his Keystone Bank account mandate card and Muhammad S. in his FCMB mandate card is one and the same person.

Furthermore, the defendant never controverted the fact that monies from the kaduna state pension bureau went into his two accounts with Keystone bank and FCMB respectively on a monthly basis as payments. in fact the accused person as stated earlier in his additional statement dated 23/7/13 admitted as Exhibit 9, clearly admitted in lines 5—8 thereof, that “his name was created in kaduna state pension payroll in March 2007 even though he is not a bonafide pensioner of kaduna state”.

The accused person further admitted in Exhibit 8 i.e. his statement dated 12/7/13 particularly lines 21—24 at page 1 and lines 1—3 at page 2 thereof that he is aware that his name is not supposed to be listed since he is not a pensioner of kaduna state government. That the account numbers into which pension payments were made are Keystone Bank account No. 050709000014 with the name Muhammad Ibrahim wherein a total amount paid in over time as monthly pension is over ₦37 million, while the second account is FCMB account No. 203450224901 and that the lodgements into this account as monthly pension is over ₦28 million.

The defendant has also never controverted the fact that he has so far made a refund of the sum of ₦10 million as stated in his statements dated 3/9/13 and 7/10/13 all of which are exhibits before this court as well as his evidence elicited under cross examination.

It is my considered view therefore that the defence put forth by the defendant in this case is not only feeble but weak and porous and does not in any way impugn on the credible, unchallenged and uncontroverted evidence both oral and documentary as placed before this court by the prosecution in this case.

Thus I have come to the irresistible conclusion that the prosecution here has indeed proved its case against the accused person beyond reasonable doubt as required by law to warrant this court to find the accused person guilty and to convict the accused on all the 13 counts on the charge sheet.

Accordingly the accused person here namely Mohammed Ibrahim Sodangi is hereby accordingly convicted on all the 13 counts in the charge sheet. Count one on charge sheet borders on the offence of personating a public servant by falsely pretending to be a retired officer/civil servant in Kaduna State punishable under Section 132 of the Penal Code, Laws of Kaduna State, while counts 2 -13 borders on theft of various sums of money constituted therein and punishable under Section 287 of the Penal Code Law of Kaduna State of Nigeria.

Signed 21/2/19
Judge

Tahir: We thank my lord for the judgement.

Moyosoro: We are equally grateful for the well considered Judgement and really commend the industry in arriving at the judgement, moreso that the Judgement was written in long hand.

Signed 21/2/19
Judge

SENTENCE

I have considered the conviction of the convict by the court on the 13 count charges as contained in the charge sheet, count one which borders on offence contrary to Section 132 of the Penal Code, Laws of Kaduna State, while counts 2—13 on the charge sheet borders on the offence of theft punishable under Section 287 of the penal code, laws of kaduna state.

I have also taken into account the personal plea for leniency as made by the learned counsel Mr. Moyosore Esq. on behalf of the convict urging the court to take into account the fact that the convict is a first offender, who has shown a lot of remorse from the pre trial stage and has also been diligent in the prosecution of this case as he never absented himself even for once in the course of the trial.

The counsel has further urged the court to note that the convict has not less than 23 dependants, including wives, children both biological and adopted who will miss him tremendously in the after math of a harsh sentence and urged the court to view these mitigating factors above in the interest of justice, order a non-custodial sentence or treatment in lieu of imprisonment.

The counsel has further submitted that the defence is not unmindful of that justice must be done to the society. That it is not unlikely that the court to view these mitigating factors above and in the interest of justice order a non-custodial sentence or treatment in lieu of imprisonment.

The counsel has further submitted that the defence is not unmindful that must be done to the society. That it is not unlikely that the court will still further order a refund of the amount involved which he argued will serve as enough deterrent and punishment on the convict and at the same time assuage the victim of the crime.

I have also taken into account the submission of Mr. Tahir Esq. learned counsel for the prosecution who confirmed to the court that there is no record of previous conviction of the convict. That the conviction of this convict in counts 2—13 of the charge sheet borders on the offence of stealing. That the total loss to the pension bureau of kaduna state by

way of theft is the sum of over ₦65 million, out of which only ₦10 million was refunded to the EFCC in the course of investigation. Meaning that over ₦55 million the proceed of the crime has not been refunded by the convict.

He has urged the court pursuant to Section 332(1)(b) of the ACJ Law of Kaduna State, 2017 to make for restitution by the convict to the victim of the crime, the kaduna state pension bureau by way of a bank draft through the EFCC for onward passage to the pension bureau of kaduna state the victim of the crime.

With respect to the plea for non custodial sentence, the counsel has submitted that while it is the discretion of the court to impose the appropriate sentence, the frequency of this offence in the society shows that there is need for deterrent of persons of like minds, which he argued cannot be served by non custodial sentence. He has urged the court to resist the temptation of non custodial sentence and to use the court discretion judiciously and judicially to discourage this type of crime in the society.

The essence of punishment in criminal justice is to serve as a corrective measure to the offender, and a deterrent factor to people of like minds.

The convict in my view throughout the length and breadth of the trial has shown diligence as the records shows that he never absented himself from the court for once. It is also clear that the convict has shown remorse in all the facts and circumstances that led to the offence alleged against him and his trial and conviction by this court in my view must have learned the required lessons that taking what you are not entitled to take by law as was the facts in this case is a criminal offence for which one could be tried and convicted as is done in this case.

To err they say is human, and to forgive is divine. The court has been urged to temper justice with mercy in the imposition of its sentence on the convict. This will be done bearing in mind, the convict himself, his dependants, the victims of the crime and above all the society so that same can serve as a deterrent to people of like minds bearing in mind the frequency of such offences in the society today.

It is in the light of the foregoing that the convict here, Mohamed Ibrahim Sodangi in respect of Count 1 of the charge sheet i.e. the offence contrary to Section 132 of the Penal Code, is hereby sentenced to pay a fine of ₦100,000 or to remain in prison for three months.

In respect of counts 2- -13 on the charge sheet which borders on the offence of theft contrary to Section 287 of the penal code, the convict is sentence to Mandatory term of four months imprisonment for each of the counts 2—13 on the charged sheet and shall pay a fine of ₦100,000 each for the said counts 2—13 of the charge sheet, failure by the convict to pay the said fine on each of the counts 2—13 he shall further remain in prison custody for a further term of three months for each of the counts 2—13 of the charge.

In all, on counts 2—13, the convict here is sentence to 48 months imprisonment and shall also be liable to pay a fine of ₦1,200,000. Failure to pay the said fine, to further remain in prison for another period of 36 months. All these sentences are to concurrently.

Furthermore, an order of restitution is hereby made on the convict pursuant to Section 332(1)(b) of the Administration of Criminal Justice Law of Kaduna State 2017 to refund to the victim i.e. Kaduna State Pension Bureau the sum of over ₦55 million the proceed of the crime which has not been refunded by the convict (Apart from the ₦10 million earlier refunded to the EFCC during investigation). This refund shall be by way of a Bank Draft through the EFCC for onward passage to the Pension Bureau of Kaduna State, the victim of the crime.

Signed 21/2/19
Judge