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IN THE FEDERAL HIGH COURT
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE
ON TUESDAY THE 9TH DAY OF OCTOBER, 2018
BEFORE HIS LORDSHIP, HON JUSTICE F. A. OLUBANJO
JUDGE

CHARGE NO. FHC/AK/13C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT

AND

- | | |
|--|--------------|
| 1. FAWEHINMI OYEYEMI | } DEFENDANTS |
| 2. GOD'S WILL GREAT COMMODITY
RESOURCES NIG. LTD. | |

J U D G M E N T

The Defendants were arraigned before me on 25/01/16 on an amended charge dated 19/06/14 which states as follows:

COUNT ONE

That you FAWEHINMI OYEYEMI, Gods will Great Commodity Resources Nigeria Ltd and one FEMI FEDEYI(at large) on or about the 10th of January, 2013 at Ondo within the Jurisdiction of

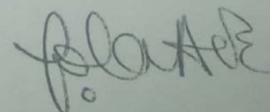
FEDERAL REPUBLIC OF NIGERIA VS FAWEHINMI OYEYEMI AND
ANOR. FHC/AK/13C/14

F. A. OluBanjo

the Federal High Court with intent to defraud conspired to obtain the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** property of Union Bank Plc., which sum was fraudulently credited to the account of Gods Will Great Commodities Resources Ltd, by Hacking into the Union Bank's Database(Flexcube) under the false pretence that the money represents payment for cocoa supply by you contrary to **Section 8(a) and 1(3) of the Advance Fee Fraud and Other fraud Related Offences Act, No. 14 of 2006.**

COUNT TWO

That you **FAWEHINMI OYEYEMI** and Gods Will Great Commodity Resources Nigeria Ltd on or about the 10th of January, 2013 at Ondo within the Jurisdiction of the Federal High Court with intent to defraud obtained the sum of **N86,000,000.00(Eighty-six Million Naira)** property of Union Bank Plc., which sum was fraudulently credited to the account of Gods Will Great Commodities Resources Ltd, by Hacking into the Union Bank's Database(Flexcube) under the false pretence that the money represents payment for cocoa supply by you contrary to **Section 1 (1) (a) and 1(3) of the Advance Fee Fraud and Other fraud Related Offences Act, No. 14 of 2006.**

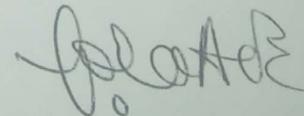


COUNT THREE

That you **FAWEHINMI OYEYEMI** and Gods Will Great Commodity Resources Nigeria Ltd on or about the 10th of January, 2013 at Ondo within the Jurisdiction of the Federal High Court with intent to defraud and knowing that the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** credited to your Union Bank Plc., Account No. 0036202714 was a proceeds of fraud of Hacking into the bank's database(Flexcube) fraudulently withdrew the sum of **N86,000,000.00(Eighty-six Million Naira)** out of the said sum and still retain possession of the sum contrary to Section 17(a) and punishable under **Section 17 (b) of the Money Laundering (Prohibition) (Amended) Act 2012.**

COUNT FOUR

That you **FAWEHINMI OYEYEMI** and Gods Will Great Commodity Resources Nigeria Ltd on or about the 10th of January, 2013 at Akure within the Jurisdiction of the Federal High Court with intent to defraud and with the aim of disguising the illicit origin of the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** property of Union Bank Plc., which sum was fraudulently credited to the account of Gods Will Great Commodities Resources



Ltd, through Hacking into the Union Bank's Database(Flexcube) fraudulently transferred a total sum of **N156,000,000.00 (One Hundred and Fifty-six Million Naira)** of the said sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** within 24 hours of fraudulently receiving the sum in piece meal consisting of the transfer of the sum of **N3,000,000.00(Three Million Naira)** into the Zenith Bank account of one Justin Emeka, **N10,000,000.00(Ten Million Naira)** into the Zenith Bank account of Gods Will Great Commodity Resources Nigeria Ltd., **N3,000,000.00(Three Million Naira)** into the Zenith Bank account of one Ufoma Motors, **N10,000,000.00(Ten Million Naira)** into the Zenith Bank account of God's Will Great Commodity Resources Nigeria Ltd., **N30,000,000.00Thirty Million Naira)** into the Diamond Bank account of Divine Concepts Services Ltd., **N40,000,000.00 (Forty Million Naira)** into the Zenith Bank account of Gods Will Great Commodity Resources Nigeria Ltd., **N30,000,000.00 (Thirty Million Naira)** into the Diamond Bank account of Divine Concepts Services Ltd., **N10,000,000.00 (Ten Million Naira)** into the Diamond Bank account, of Divine Concepts Services Ltd., **N10,000,000.00 (Ten Million Naira)** into the Diamond Bank account of Divine Concepts Services Ltd., and

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another cheque withdrawal of **N10,000,000.00 (Ten Million Naira)** from the said sum in favour of one Ajibola O. J. with the aim of disguising the genuine nature, origin, location of the money knowing that the money was proceeds of fraud contrary to **Section 15 (a) (ii) and punishable under section 15 (b) of the Money Laundering (Prohibition) (Amended) Act 2012.**

1st Defendant, who is the alter ego of 2nd Defendant pleaded **NOT GUILTY** to the charge.

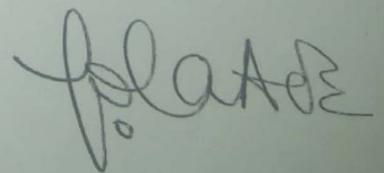
Vincent Udensi Agwu of the Fraud and Investigation Unit Internal Audit Department of Union Bank Nigeria Plc., (“the Bank”) testified as PW1. During examination in chief, he informed the Court that 2nd Defendant operates a corporate account at the Oba Adesida, Akure , Branch of the Bank. The Internal Control Unit of the Bank was placed on alert by the Branch Manager of Union Bank, Agaie Branch, Niger State who noticed discrepancies in an account from which he was about to make a payment of **N5,000.000.00(Five Million Naira)** on **09/01/13**. It was discovered that the said account (of “A and B Console”) had been fraudulently manipulated to show a credit balance even though no credit transaction of that magnitude had been effected in that account. On **11/01/13**, at the Bank’s Head

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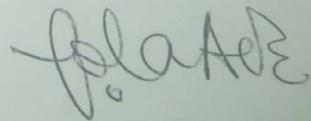
Office Annex Branch, the account holder of Zion Heritage Global Services attempted to make a transfer of **N349,000,000.00(Three Hundred and Forty-Nine Million Naira)** from the said account which drew the attention of the Branch Staff. That account holder had successfully withdrawn **N1, 000,000.00 (One Million Naira)** on **10/01/13**, but on **11/01/13**, it was discovered that the account had a manipulated balance of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** which was not backed up by any credit entry. These account holders were apprehended and handed over to the Police.

The Bank effected a quick review of all its transactions, the result of which was that four other accounts had been manipulated, including the 2nd Defendant's account which also received a manipulated credit balance of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** and slightly over **N136,000,000.00 (One Hundred and Thirty-Six Million Naira)** had been withdrawn from 2nd Defendant's account on **10/01/13**, **N20,000,000.00(Twenty Million Naira)** was withdrawn on **11/01/13** out of which the sum of **N10,000,000.00(Ten Million Naira)** was withdrawn in cash. More



Than **N156,000,000.00 (One Hundred and Fifty-six)** was withdrawn from 2nd Defendant's manipulated account balance of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** within the space of two days, meanwhile, a review of that account revealed that the maximum credit received since the account was opened on **28/10/11** was **N5, 000,000.00(Five Million Naira)**.

The fraud which involved six accounts and the sum of **N2.055,000,000.00 (Two billion, and Fifty-Five Million Naira)** was reported to the Economic and Financial Crimes Commission but efforts to reach the Bank's Customer (i.e. 1st and 2nd Defendant) so as to give an explanation for how the account was manipulated proved abortive. Several months later, 1st Defendant who is the sole Promoter and sole signatory of 2nd Defendant's account was arrested by Economic and Financial Crimes Commission. The Bank provided Economic and Financial Crimes Commission with account opening documents and statement of account of 2nd Defendant and on the instruction of Economic and Financial Crimes Commission, the account was frozen. There is a balance of **N193,000,000.00 (One Hundred and Ninety-Three Million Naira)** remaining in the account from the manipulated credit balance of **N350, 000,000.00(Three Hundred and Fifty Million Naira)**. There are



related criminal cases pending before the Lagos State High Court, and the Federal High Court. Internal Investigation revealed that the Bank's database (FLEXCUBE) where all the Bank's transactions are recorded was manipulated by a Technician, at the Jos Market Branch in collusion with the Branch Head of Operations contrary to the Bank's Policy. That Technician was apprehended and he revealed that other persons worked in tandem with him and the Jos Market Branch Head of Operations in the manipulation of account balances.

PW1 further testified that one Kehinde Adedoyin, who was the Head of Operations of the Oba Adesida Branch and who authorized the withdrawal of more than **N1,6,000,000.00 (One Hundred and Fifty-Six Million Naira)** from 2nd Defendant's account without verifying corresponding credit inflows into that account is being prosecuted in another charge at this Division of this Court (but not before this Judge). The originals of the Bank's Petition to Economic and Financial Crimes Commission, Statement of Account and Account opening packages of 2nd Defendant had been tendered in that other case. Prosecution therefore applied to tender Certified True Copies of those documents. These were admitted in evidence through PW1 as follows:

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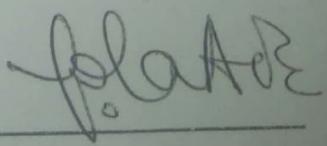


Certified True Copy of Petition dated 15/01/13 addressed to the Head of Operations, Economic and Financial Crimes Commission, Ikoyi Lagos, from the Bank's Head of Fraud and Investigation and Chief Inspector, was admitted in evidence as Exhibit One;

Certified True Copies of Account opening package of 2nd Defendant was admitted in evidence as Exhibit Two.

During Cross- Examination, PW1 testified that there was hacking into the Banks Database before the fraudulent transfers could be effected. Safety procedures have been put in place at the Bank and each Computer can only be accessed through a code or password. The engine room of the Bank's Information Technology ("I. T") Department is located at its Head Office, but at the relevant time, the Bank operated a decentralized system, with individual servers at each Branch linked to the Head Office. The purpose of linking the servers to the Head Office was not to obtain approval for online banking transactions, even though the Bank sets approval limits for debits and the Branch Head of Operations could approve transactions to the highest limit.

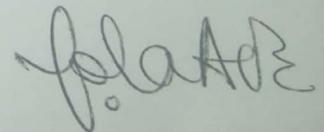
As such all transactions effected on 2nd Defendant's account were within the limit of the Branch Head of Operations but they



were not "Normal" transactions because there were other factors which the Head of Operations failed to consider. Over a two year period the highest credit inflow into 2nd Defendant's account was **N5, 000,000.00(Five Million Naira)**. PW1 was not re-examined.

The second prosecution witness was **ABDULRAZAK ABUBAKAR ALIYU**, an Investigator at the Economic and Financial Crimes Commission, Lagos Zonal Office attached to Bank Fraud Unit, a member of Bank Fraud Team Four. The team leader is **MR. YUSUF AYAWA**, a Deputy Superintendent of Police. The other team members are **MR. JOSEPH OKEZIE**, an Inspector of Police, One **MISS CATHERINE** and **MR. ADAM YUSUF**. The Court was informed by PW2 that the Economic and Financial Crimes Commission received a Petition dated **15/01/13** containing an allegation of fraudulent hacking into Union Bank's database where the sum of about **N2,000,000,000.00 (Two Billion Naira)** was fraudulently transferred into various accounts domiciled at Union Bank, to wit:

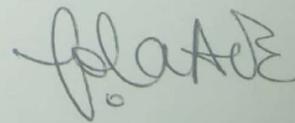
- Gona Bureau de Change,
- Dan Kawu Bureau de Change,
- A and B Console,



- Zion Heritage and
- Gods Will Great Commodity i.e. 2nd Defendant

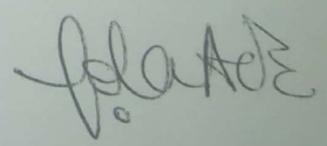
These accounts have been frozen and various Criminal Cases have been filed in Courts in Lagos, Akure and some other parts of the Country regarding the result of investigation conducted into the Bank's Complaint. **N350,000,000.00(Three Hundred and Fifty Million Naira)** was transferred into the 2nd Defendant's account by fraudulent means.

Upon receipt of the Petition from Union Bank PW1 was invited to Economic and Financial Crimes Commission to make a statement, which shed more light upon the complaint contained in the Petition. The transactions in 2nd Defendant's account were analysed. It was discovered that within 24 hours of the lodgment of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** into that account, the sum of about **N160, 000,000.00(One Hundred and Sixty Million Naira)** had been withdrawn before that account was blocked by the Bank. 1st Defendant had moved money from the 2nd Defendant's account in Union Bank to other accounts which he operates in other banks; for instance the accounts of Divine Concept



Ltd (a Company which is also owned by 1st Defendant) and 2nd Defendant's account which are both domiciled at Diamond Bank. He made subsequent withdrawals to other beneficiaries from these other accounts. **N60, 000,000.00(Sixty Million Naira)** was transferred from 2nd Defendant's account at Union Bank to 2nd Defendant's account at Zenith Bank. Upon enquiry made at the Corporate Affairs Commission, it was discovered that the 2nd Defendant Company is owned by 1st Defendant and one **MRS. BUKOLA FAWEHINMI.**

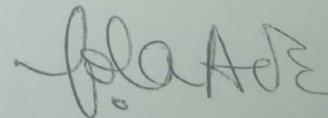
Efforts made to locate the 1st Defendant for the purpose of arresting him at his offices at Ondo, Ondo State, Ikom, Cross River State, his mother's house in Ekiti proved abortive from January to April, 2013. One of his Managers was arrested and he provided vital information to the Economic and Financial Crimes Commission. 1st Defendant eventually turned up at the Economic and Financial Crimes Commission Office and informed the investigators that the sum of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** was deposited into his account by someone who he met while travelling on Ore/Ondo Road, for the purpose of transacting business with foreigners. 1st Defendant volunteered several extra judicial statements.



The investigators travelled to Ikom and Ondo in search of persons believed to be 1st Defendant's Co-conspirators but could not locate these persons. 1st Defendant also supplied phone numbers of these persons but the investigators could not get calls through to those numbers, save for one, in respect of which the woman who answered the call informed them that the owner of the phone number was dead, thus leading them to the conclusion that the 1st Defendant had supplied them with fictitious names and phone numbers.

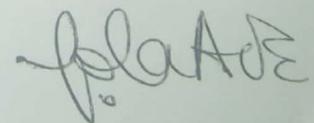
PW2 identified Exhibits 1 and 2; the Statement sheet containing the Statement of Account of 2nd Defendant with Union Bank from **(01/10/11 to 31/01/13)** was admitted in evidence through him as Exhibit Three, while a certificate made pursuant to Section 84 of the Evidence Act 2011 regarding the information contained in Exhibit 3 (Three) was admitted in evidence as Exhibit 4(four).

PW2 analysed the contents of Exhibit 3 to the Court to substantiate his earlier testimony that more than **N160,000,000.00(One Hundred and Sixty Million Naira)** was withdrawn from 2nd Defendant's account within 24 hours before the account was blocked; for instance that **N60,000,000.00(Sixty Million Naira)** was transferred to the 2nd Defendant's account at

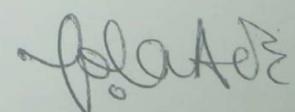


Zenith Bank in tranches of N10,000,000.00 (Ten Million Naira) twice and then N40,000,000.00 (Forty Million Naira) on 10/01/13, and two tranches of N30,000,000.00 (Thirty Million Naira) were transferred into the account of Divine Concepts Ltd in Diamond Bank on 10/01/13. There were other transactions involving the transfer of large sums of money from 2nd Defendant's account on 11/01/13. It was also PW2's testimony that one Christian Oyebode, the 2nd Defendant's Account Officer, told Economic and Financial Crimes Commission in his statement that he had never seen such huge transactions regarding 2nd Defendant's account since the account was opened. The Extrajudicial statements of 1st defendant dated 11/04/13 and 22/04/13 were admitted in evidence through PW2 as Exhibits 5 and 6.

It was also PW2's testimony that the Statement of Account of 2nd Defendant at Zenith Bank which was obtained during investigation revealed that lodgments had been made into that account from the Union Bank account of 2nd Defendant which received the fraudulent/manipulated credit balance. Money was also transferred from the 2nd Defendant's Union Bank account to the Diamond Bank account of Divine Concepts Ltd, which is owned by 1st Defendant.

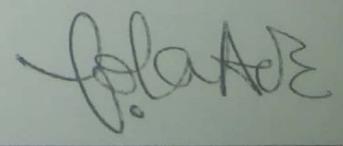


A letter dated **12/09/13** from the Corporate Affairs Commission to the Economic and Financial Crimes Commission forwarding Certified True Copies of 2nd Defendant's Certificate of Incorporation and Incorporation particulars of 2nd Defendant was admitted in evidence through PW2 as Exhibit 7. 1st Defendant and one Fawehinmi Bukola Folasade are listed as Directors of 2nd Defendant Company. Exhibit 8 is a letter from Zenith Bank to the Economic and Financial Crimes Commission dated **21/04/16** whereby copies of account opening package, and statement of account of 2nd Defendant's account No: 1011394440 with that Bank were forwarded. Exhibit 9 is a letter dated **14/04/16** with which copies of the Mandate Cards and statements of account of Divine Concepts Services Ltd (Account No: 0025706166) and Godswill Great Commodity Resources Ltd (Account No: 0028182868) were forwarded to Economic and Financial Crimes Commission. Also admitted in evidence through PW2 is a letter dated 02/03/15 from Union Bank to Economic and Financial Crimes Commission attached to which are Certified True Copies of cheques and transfer instructions made regarding 2nd Defendant's account. This is Exhibit 10. PW2 analysed these Exhibits (7 to 10), revealing that **N20, 000,000.00(Twenty Million Naira)** was transferred from 2nd Defendant's Union Bank Account on 10/01/13 in two tranches of



N10,000,000.00(Ten Million Naira) to 2nd Defendant's Zenith Bank Account (Exhibit 8) and on 11/01/13, **N40, 000,000.00(Forty Million Naira)**, was transferred into the Zenith Bank Account from 2nd Defendant's Union Bank Account, In Exhibit 9, sums of N40,000,000.00 (Forty Million Naira), **N30,000,000.00(Thirty Million Naira)** and **N10, 000,000.00(Ten Million Naira)** were received into the account of Divine Concepts Ltd. The 1st Defendant issued Manager's Cheques of **N23, 000,000.00(Twenty-Three Million Naira)** and **N15, 000,000.00(Fifteen Million Naira)** to refund the balance in the Zenith and Diamond Bank accounts to Union Bank. The account of Divine Concepts Ltd had also not had any huge credit balance until the transfer from 2nd Defendant's Union Bank account. Exhibit 10 consists of cheques issued by 1st Defendant and instructions with which large sums of money were moved to other accounts and Cheques issued to other individuals.

PW2 informed the Court that investigations revealed that 1st Defendant was part of a syndicate and was fully aware of the fraud because he telephoned his accounts officer, one Mr. Oyebade to confirm the credit balance of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** as soon as it was effected and he issued cheques valued at more than **N100, 000,000.00(One Hundred**



Million Naira) between 10th and 11th January, 2013 before the Bank discovered the fraud and the account was blocked. The various sums of money were transferred to several accounts to disguise the source of the money and to enable 1st Defendant have access to these sums of money in the event that Union Bank discovered the fraud.

During cross examination, PW2 testified that he does not know Femi Fadeyi who is stated as being "at large" on the charge sheet. His investigation revealed that the money involved in the fraud was a fraudulent transfer of Union Bank depositors funds into 2nd Defendant's account. The transfer was not from any individual. The entire sum of money involved was more than N2,000,000,000.00(Two billion Naira) out of which N350,000,000.00(Three Hundred and Fifty Million Naira) was transferred into 2nd Defendant's Union Bank account from which other transfers were made into 2nd Defendant's other accounts at Zenith Bank Diamond Bank and Union Bank upon 1st Defendant's instructions. Hacking must have taken place before the funds were transferred; the hacking and transfer of funds is a chain of events which cannot be separated, as the participants worked as a syndicate. PW2 was cross examined regarding the Union Instant Payment Mandate Forms attached to Exhibit 10. He stated that they are just

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mandates and not instructions to move (transfer) money. He does not know the balance remaining in 2nd Defendant's Union Bank account and does not know whether it is only the proceeds of the fraud that is still in the 2nd Defendant's account. He however does not know if any other person apart from Union Bank has laid claim to the money in 2nd Defendant's account, and will not be surprised to learn that someone obtained Judgment in the sum of **N190,000,000.00(One Hundred and Ninety Million Naira)** from Defendant's account. PW2 does not know whether 1st defendant possesses the specialized skill required to hack into a computer system. PW2 was not re-examined. When the prosecution failed to present any more witnesses after two adjourned dates, and learned prosecutor was absent, with no reason given for his absence, this Court closed the case for the prosecution consequent upon the application of Learned Defence Counsel. The 1st Defendant testified in chief on **12/04/17**. The prosecution thereafter applied to re-opened its case and said application was granted by this Honourable Court.

Joseph Okezie, an Inspector of Police, attached to the Economic and Financial Crimes Commission, testified as PW3. He was one of those who investigated the Petition sent to Economic and

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Financial Crimes Commission by Union Bank regarding the hacking of the Bank's FLEXCUBE database and fraudulent transfers of huge sums of money totaling **N2.055,000,000.00 (Two billion and Fifty-Five Million Naira)** into various accounts including that of the 2nd Defendant. The contents of PW3's evidence in chief are similar to PW2's evidence in chief. He also stated that even though 1st Defendant told Economic and Financial Crimes Commission that the sum of **N350, 000,000.00(Three Hundred and Fifty Million Naira)** deposited into 2nd defendant's account was for a business transaction, investigation revealed that there was no deposit into the 2nd Defendant's account. Rather, some accounts including the 2nd Defendant's account were fraudulently credited with large sums of money. The 1st Defendant withdrew large sums of money from this money for his personal use. The sum of money remaining as balance on the account was recovered in the course of investigation and released to Union Bank on Bond. The 1st Defendant could not give a satisfactory account of how he expended the money save that he used it to pay debts incurred in the course of his cocoa business. PW3 identified the Petition Written by Union Bank (Exhibit 1) and the extra judicial statements of the 1st Defendant (Exhibits 5, and 6). He stated that Exhibit 3 is the 2nd Defendant's Union Bank statement showing the credit of **N350, 000,000.00(Three Hundred and Fifty**

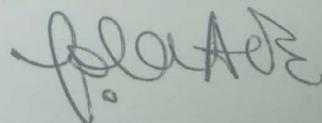
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Million Naira) while Exhibit 10 consists of cheques used to withdraw money from 2nd Defendant's account. Exhibit 7 is the letter from the Corporate Affairs Commission showing that 1st Defendant is the owner of 2nd Defendant Company. The extrajudicial statement of the 2nd Defendant's Accounts Officer, one Oyebade Christian, dated **17/01/13** was admitted in evidence through PW3 as Exhibit 11. All efforts to locate the persons who 1st Defendant claimed to have paid money to from the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** were unsuccessful.

While being cross examined, PW3 testified that Union Bank lost a substantial sum of money because its database was hacked into. Several people were arrested and charged in other Courts while the Defendants were charged before this Court. 1st Defendant is part of the syndicate who hacked into the Bank's database and he could not give satisfactory explanation of how he came about the large sum of money in his account. While PW3 agrees that hacking into the Bank's database requires special Information Technology ("I. T") skills, he does not know whether the 1st Defendant possesses the skills to hack into a database.

1st Defendant told PW3 that he is a cocoa Merchant, and PW3 saw his offices at Ikom and Ondo but he did not visit any warehouse. He



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does not know the amount of money required to run a cocoa business. When he was asked to analyse the 2nd Defendant's statement of account at Diamond Bank(i.e. Exhibit 9) he testified that the total credit in that account as at January 2012 was **N142,000,000.00 (One Hundred and Forty-Two Million Naira)**. Appendix 2 of Exhibit 8 is the 2nd Defendant's statement of Account at Zenith Bank from January 2012 to December 2013. Exhibit 10 shows the instruments used to transfer money out of 2nd defendant's account at Union Bank. A comprehensive report was compiled after conclusion of investigation and was forwarded to the Economic and Financial Crimes Commission Legal Department. PW3 was not re-examined. Learned Prosecutor closed the prosecution's case after PW3's testimony.

The testimony of the 1st Defendant is that he is a produce merchant who purchases commodities such as Cocoa, Cashew, Coffee, and Shea nuts for the purpose of exportation. He is the Managing Director in the 2nd Defendant Company and transacts his business through that Company. He does not know anything about the transfer of **N350,000,000.00(Three Hundred and Fifty Million Naira)** into the 2nd Defendant's account which occurred in January 2013.

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Sometime early in the year 2012, while 1st Defendant was driving along the expressway, he met one Femi Fadeyi who pleaded for a lift at Ore Junction. During their discussion, 1st Defendant told Fadeyi that he is a produce merchant and they exchanged contact details. Fadeyi telephoned 1st Defendant about three or four months thereafter and informed him that he knew someone who required a large quantity of Cocoa. That contact was in Russia and Fadeyi informed 1st Defendant that the unnamed contact wanted the Cocoa to be delivered at a certain port. 1st Defendant assured Fadeyi of his ability to complete the transaction upon receipt of the required funds and gave Fadeyi his account details. These details were sent through DW1's Telephone No.- 08035069268, but he did not remember Femi Fadeyi's telephone number. About six months later, after enquiring from Fadeyi whether the transaction had been cancelled, DW1 received a credit alert of **N350,000,000.00(Three Hundred and Fifty Million Naira)** and assumed it was from Femi Fadeyi. His effort to reach Fadeyi proved abortive but he proceeded to prepare for the purchase and export of the Cocoa.

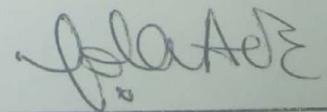
The Union Bank Branch Manager telephoned DW1 a few days later to inform him that the **N350,000,000.00(Three Hundred and Fifty Million Naira)** credit did not have a narration. 1st Defendant gave him, Femi Fadeyi's phone number but they both could not

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reach Fadeyi. The Court was informed that DW1's customers usually transfer money into his account and he would turn transfer same to his local buying agents who are more than 500 in number. Thereafter, he sends collection vans to collect the Cocoa which is then delivered at the agreed destination. He was not shocked to receive a credit alert of **N350,000,000.00(Three Hundred and Fifty Million Naira)** because his agreement with Femi Fadeyi was for **N500,000,000.00(Five Hundred Million Naira)** transaction. He did not know that the **N350,000,000.00(Three Hundred and Fifty Million Naira)** was a fraudulent transfer because he was used to receiving such alerts. At the peak of the season, his account hosts over **N1,000,000,000.00 (One Billion Naira)**, so seeing an alert of **N350,000,000.00(Three Hundred and Fifty Million Naira)** was not strange.

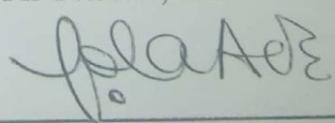
DW1 also testified that he could have exhausted the **N350,000,000.00(Three Hundred and Fifty Million Naira)** within 48 hours but his accounts officer pleaded with him to allow some of the money to remain in the account so that he would earn a bonus. He has other companies, such as divine Concept Resources Services Ltd and operates accounts at Zenith Bank Plc, Stanbic IBTC Plc, Fidelity Bank Plc and UBA Plc. He does not know anything about hacking. The 2nd Defendant's account at Union Bank did not have



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a history of large cash inflows until the transfer of **N350,000,000.00(Three Hundred and Fifty Million Naira)** because he had opened the account for the purpose of a transaction with Alpha systems whose cheques delayed in clearing with Zenith Bank, as such, he was advised to open an account at Union Bank because Alpha systems issued Union Bank cheques, so that the cheques would clear quickly.

It was also DW1's testimony that it was the duty of his accounts officer, Cristian Oyebade, to monitor the account and inform him whether or not the credit amount has a narration. It was Christian Oyebade who informed DW1 that the account had been credited with **N350,000,000.00(Three Hundred and Fifty Million Naira)**. He took the investigators to his warehouse. The peak period of the Cocoa season is between September and January or February. The Record of the proceedings of this Court of **12/04/17** when DW1 testified in the absence of prosecuting counsel was admitted in evidence through him during cross examination as Exhibit 12. He admitted signing the Union Bank cheque dated 13/01/13 for the sum of **N10,000,000.00 (Ten Million Naira)** which is one of the attachments in Exhibit 10. All the cheques attached to Exhibit 10 were signed by him (DW1). He did not receive an alert for **N350,000,000.00(Three Hundred and Fifty Million Naira)** but



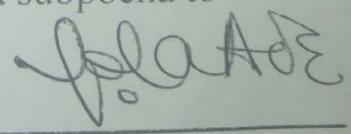
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was informed about the credit to his account by his accounts officer whom he had informed that he was expecting an inflow of (N500,000,000.00)Five Hundred Million Naira). The accounts officer did not inform DW1 of the source of the money.

When referred to the portion of his extrajudicial statement (Exhibit 5) where he stated that he “ran underground” after receiving a call from Union Bank about the fraudulent transfer, DW1 admitted that he ran underground because he was informed that it may have been a fraudulent transfer. Then, he denied that he had “run underground”. He did not know that the credited sum was fraudulent from inception. He transferred N152,000,000.00 (One Hundred and Fifty-Two Million Naira) from the sum of N350,000,000.00(Three Hundred and Fifty Million Naira) and had N198,000,000.00 (One Hundred and Ninety-Eight Million Naira) left in the account.

When asked to explain discrepancies between his oral testimony and extrajudicial statement, DW1 attributed it to the tense atmosphere at the Economic and Financial Crimes Commission office. 1st Defendant (DW1) was not re-examined.

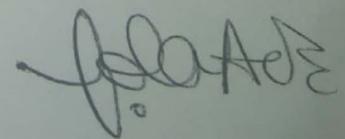
Imisi Ilesanmi John, a Banker working with Zenith Bank PLc, attended Court pursuant to the service upon him of a subpoena to



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tender the Statement of Account of Divine Concept Resources Ltd from 17/11/2011 to 31/07/2017. The prosecution objected to the admissibility of that Statement of Account. The Court, after a considered Ruling, rejected that particular statement of account because the accompanying certificate of identification bore a different account number. The 2nd Defendant's Statement of Account with Zenith Bank Plc and its accompanying certificate of identification were admitted in evidence as Exhibits 13A and 13B. DW2 analysed this statement of account which showed a turnover of almost N3,000,000,000.00 (Three Billion Naira) between 19/03/2009 and 13/03/13; total credit turnover between 10/01/13 and 11/11/13 (24 hours period) was more than N65,000,000.00 (Sixty-Five Million Naira) turnover. I pause to observe that these credits of 10/01/13 to 11/01/13 consisted of transfers from 2nd Defendant's account at Union Bank to the tune of N60,000,000.00 (Sixty Million Naira) (two tranches of N10,000,000.00 (Ten Million Naira) each and one of N40,000,000.00 (Forty Million Naira)).

It was also DW2's testimony that between 23/11/09 and 30/11/09, there was credit turnover in the account of more than N67,000,000.00 (Sixty-Seven Million Naira) while the Total Debit



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for that period of time was more than **N66,000,000.00 (Sixty-Six Million Naira)**. From the dynamics of the account, money was going out of the account as it was flowing into it.

During cross examination DW2 informed the Court that he does not know about the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** which the Economic and Financial Crimes Commission is investigating. Between 10/11/13 to 13/03/13 there was a total credit turnover of **N95,000,000.00 (Ninety-Five Million Naira)** into 2nd Defendant's account. 2nd Defendant is registered with Zenith Bank as a Produce Merchant Dealer. DW2 was not re-examined and the Defence closed its case after his testimony. Learned Counsel thereafter filed Written Addresses.

The Defendants' Final Written Address is dated **20/11/17** and was filed on **21/11/17** by Adetunji Oso Esq., Defendant's Learned Counsel. The following two issues were outlined for determination at paragraph 3.00 thereof:

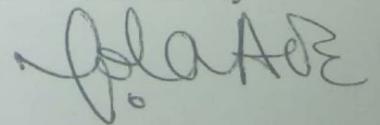
- i. Whether the charge as framed and layed is not fatally incompetent for duplicity, imprecision, confusing and embarrassingly misleading.
- ii. Whether the failure of the prosecution to frontload the report of the investigation or the summary of the

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evidence of PW2 and PW3 in compliance with Section 397 1(iii) of the Administration of Criminal Justice Act 2015 and failure to file Affidavit pursuant to Orders 3 and 4 of the Federal High Court (Criminal Practice Direction) 2013 is not fatal to the proceedings so far.

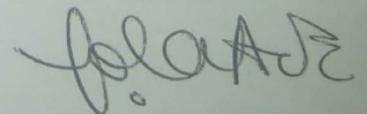
On issue One, learned counsel submitted that it is a fundamental requirement that for a charge to be valid, it must be concise and precise as to the offence charged and the number of Counts the Defendant is to face. He urged the Court to dismiss the charge because there are only four Counts stated thereon while on the face of it, it is a five count charge. He further submitted that the offences contained in the second and third counts spring from the same set of facts and transaction, yet the Defendants are charged under different laws for two separate offences. While it is permissible to charge a person for two offences in a charge based on a set of facts or single transaction, it is prohibited to create two offences from a single transaction or same set of facts and consequently charge a Defendant twice for the same set of facts. Reliance was placed on **Sections 209, 210 and 215 of the Administration of Criminal Justice Act**. He posited that charging the Defendants for fraudulently obtaining the sum of **N86,000,000.00 (Eighty-six Million Naira)** and for fraudulently



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withdrawing the same sum under two different Laws is bad for duplicity. Reliance was placed on **ABACHA VS STATE (2002) 32 WRN PAGES 1 AT 77 TO 79 lines 30 TO 20**. It is his view that the charge is vague, imprecise, confusing and ambiguous and as such no conviction can be validly predicated thereon. **UBA VS FRN (2015) 10 NWLR (PART 1468) PAGES 427 AT 477 Paragraphs A to C** was relied upon. Submitting further based on the first and second counts of the charge, Defendants' learned counsel argued that while Defendants are charged with conspiring to fraudulently obtain the sum of **N350,000,000.00 (Three Hundred and Fifty Million Naira)** in Count One, in the second count which contains the substantive offence, they are charged with fraudulently obtaining the sum of **N86,000,000.00 (Eighty-six Million Naira)**. There is therefore no relationship between the Count for conspiracy and the substantive offence. Furthermore, hacking is not within the contemplation of either the **Advance Fee Fraud and Other Fraud Related Offences Act 2006** or the **Money Laundering Act 2012**. It is also not permissible to charge a Defendant twice for the same offence in the same charge.

On Issue Two, it was submitted that the Defendants were arraigned based on an Information and failure to front load a Summary of the statements of the 2nd and 3rd prosecution witnesses



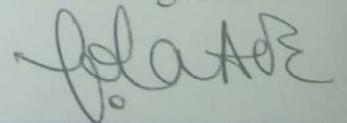
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renders the Information invalid by the provisions of Section 379 of Administration of Criminal Justice Act 2015 and the Court of Appeal decision in **AKINGBOLA VS FRN (2015) 10NWLR (PART 1468) PAGES 579 at 626 Paragraph G TO A**. It is immaterial that those witnesses were investigators; the Defence did not have the opportunity to study the statements or summary of evidence of these witnesses so as to prepare their case and this renders the whole proceedings null and void.

At paragraph 5.00, another issue was placed before the Court for determination, to wit:

Whether on the charge as framed, the Proof of Evidence and Oral and documentary evidence adduced the prosecution has, in law and in fact had proved its case beyond reasonable doubt against the Defendants.

On the Count for conspiracy, it was submitted, placing reliance on **ABIODUN VS FRN (2016) 17 NWLR (PART 1542) PAGES 462 at 510** that to prove conspiracy the prosecution must establish an agreement to do an unlawful thing and that agreement must link at least two people. Counsel argued that the prosecution did not lead evidence regarding who are the members of the syndicate which hacked into the data base of Union Bank, how they met and agreed



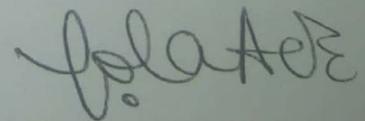
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to do the hacking. There is no evidence of the role played by 1st defendant in the alleged conspiracy.

He submitted that the third prosecution witness testified that they did not find any coconspirators, therefore the 1st Defendant could not have conspired with himself. It was submitted that there is unequivocal evidence that the 1st Defendant could not and did not hack into the Union Bank database. There was no direct or circumstantial evidence that 1st Defendant agreed with another person to hack into the database.

Since the charge as framed made hacking a vital ingredient of all the counts of the charge and the prosecution witnesses agreed that there could not be fraudulent transfer of money without hacking because the hacking and fraudulent transfer of money are an inseparable chain, the prosecution must prove that the 1st Defendant was involved in the hacking; there was however no evidence regarding how the hacking was done and who hacked into the Banks' database.

I pause again to observe that PW1 had testified that the hacking was done by a Technician who, working in cooperation with the Head of Operations of Union Bank, Jos Market Branch and others manipulated the account balances.



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Defence Counsel further submitted that the prosecution failed to prove beyond reasonable doubt that the 1st and 2nd Defendants were linked to the alleged hacking and this being the most vital ingredient of the offence charged, is fatal to all counts of the charge. He also posited that all the testimonies of the prosecution witnesses were derived from examination of documents and only the makers of documents can competently tender same because a non-maker of a document cannot be cross-examined thereon. **NYESOM VS PETERSIDE (2016) 7 NWLR (PART 1512) PAGES 452 AT 522 paragraph G** was relied upon, as well as the decision in **IPEAZU VS OTTI (2016) 8 NWLR (PART 1513) PAGES 38 AT 93 paragraphs A to B**. It was submitted that apart from Exhibits 1 and 1 which were tendered through PW1, an employee of Union Bank, the Court cannot look at or make use of Exhibits 3 to 10. He also urged the Court to discountenance Exhibit 11, the statement of 2nd Defendant's account officer because he is a vital witness who should have been called to testify. Failure to present him as a witness is also fatal to the charge.

Learned Counsel posited that there is no evidence to show that the Defendants were responsible for the credit of **N350,000,000.00 (Three Hundred and Fifty Million Naira)** into the Union Bank account, and as such they cannot be found

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Criminally liable for withdrawing such money because no law criminalises the depositing of money into one's account and the withdrawal of such money from one's account. The Defendants are entitled to make use of the money because they were not linked to the hacking of the database. Mr. Oso Submitted that Exhibit 7 was not properly tendered and as such this Court cannot look into it to examine whether the **N350,000,000.00(Three Hundred and Fifty Million Naira)** credited to 2nd Defendant's account were proceeds of fraud; further, that failure of Union Bank to comply with **Section 10 (1) of the Money Laundering Act 2012** to notify Economic and Financial Crimes Commission of the large credit to 2nd Defendant's account raised a Legal presumption that the sum credited to 2nd Defendants account is not proceeds of fraud. There is also no direct evidence that the Defendants disguised the source of the **N350,000,000.00(Three Hundred and Fifty Million Naira)** in any way. 1st defendant mentioned the name of one Femi Fadeyi and gave the prosecution his phone numbers but the prosecution failed to properly investigate that aspect of the case.

It was further submitted regarding the second count of the charge that there is no evidence that Defendants fraudulently obtained money from Union Bank as it is the hackers who can be said to have fraudulently obtained this money. The Court was urged to hold that

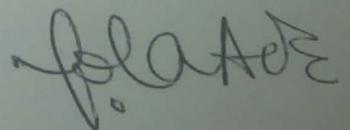
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the prosecution has failed to prove beyond reasonable doubt that the Defendants fraudulently transferred money belonging to Union Bank into 2nd Defendant's accounts and other accounts with the aim of disguising the nature and source of the money. The court was urged to discharge and acquit the Defendants on all Counts of the charge.

In the Prosecution's Final Written Address in response to the Accused Person's Final Written Address dated 27/03/17, Learned Prosecutor distilled the following sole issue for determination: ".....whether from the evidence adduced in this case the prosecution has proved its case against the accused person beyond reasonable doubt".

Relying on the definition of Conspiracy in **OKEKE VS STATE (1999) 2 NWLR (PART 590) PAGES 265 at 266) AND NWOSU VS STATE (2004) 15 NWLR (PART 897) PAGES 466 at 486** as an agreement of two or more persons to do an act which it is an offence to do and which said agreement can be deduced from the various overt acts of the Co-conspirators, Prosecutor is of the view that the prosecution has proved the offence of conspiracy. He is of the view that Exhibit 7, Exhibit 10, testimonies of PW1, PW2 and PW3 reveal the conspiracy because the Defendants benefited from



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the illegal transfer of **N350,000,000.00 (Three Hundred and Fifty Million Naira)** to their account which they started to transfer out of that account the same day. He also argued that Exhibit 5, the defendant's extrajudicial statement is a confession as decided inter alia in the decisions in **NSOFOR VS STATE (2002) 10 NWLR (PART 775) PAGES 274 at 289 paragraphs F to G; SOLOLA VS STATE (2005) 2 NWLR (PART 937) PAGES 460 at 470 and GBADAMOSI VS STATE (1992) 9 NWLR (PART 266) PAGES 465 at 479**. That the 1st Defendant's allegation that the statement was made under tension is an afterthought and cannot hold water because that statement has been admitted in evidence. Reliance was placed inter alia on **ONWUDIWE VS FRN (2006) 10 NWLR (PART 988) PAGES 382 at 427 paragraphs A to C, USUNG VS STATE (2012) 18 NWLR (PART 1332) PAGES 256 at 287 to 288 paragraphs A to A**. The Court was urged to convict the Defendants based on the 1st Defendant's extrajudicial statement.

Regarding whether the failure of prosecution to frontload the statements of PW2 and PW3 is fatal to their case, learned prosecutor submitted that the charge was filed in 2014 before the commencement of the Administration of Criminal Justice Act 2015; as such the provision of **Section 379 of the Administration of**

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Criminal Justice Act does not apply in this case. The Court was urged to convict the Defendants as charged.

In his reply on Points of Law to Prosecutions Final Written Address, Defendants Learned Counsel submitted that the 1st Defendant's extrajudicial statement is not a confessional statement because he did not admit to the specific elements of the offences charged. Reliance was placed inter alia on **GBADAMOSI VS STATE (1992) 9 NWLR (PART 266) PAGES 418 AT 479**. Further that even if the 1st Defendant confessed to committing the offence of conspiracy, he cannot be convicted unless there is independent evidence that at least one person conspired with him. **STATE VS AJAYI (2016) 14NWLR (PART 1532) PAGES 196 at 229** paragraphs A to C was relied upon. Still on Conspiracy, and referring to the evidence of PW1 that a technician at the Jos Market Branch hacked into the Bank's database, Defence Counsel submitted that said person did not mention the 1st Defendant as an accomplice nor did the prosecution arraign the hacker with 1st Defendant.

While adopting his Written Submissions, Mr. Oso made further oral adumbrations which can be found in the Court's records of **17/04/18**. On that date, Learned Prosecutor was absent and his written address was deemed duly adopted. I could not deliver

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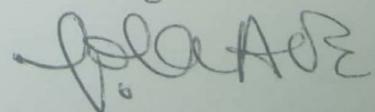
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Judgment on 31/05/18 and subsequently proceeded on Maternity Leave (effective 11/06/18) having received approval to do so on 08/06/18. Unfortunately, the Judgment was not ready on 26/09/18, the date to which this matter was adjourned off record, thus necessitating a further adjournment till today. I am however confident that, being aided by my handwritten records and the records of the Court stenographer, and being certain that I have not lost my impressions of the five witnesses who testified in this case, no miscarriage of justice is being occasioned by the delivery of Judgment today.

RESOLUTION OF ISSUES FOR DETERMINATION:

Even though Mr. Oso argued on 17/04/18 that failure of prosecution to respond to his first two preliminary issues for determination tantamounts to an admission of the gravity of his submissions, it is necessary for me to pause to examine same.

By the provisions of Section 33 (2) of the Federal High Court Act Cap F12 LFN 2004 all criminal causes or matters before this Court shall be tried Summarily. Therefore, even though on 19/03/14, the prosecution filed a charge with a Proof of Evidence in which one of the Columns is headed as "INFORMATION", and subsequently additional proofs of evidence were filed alongside the



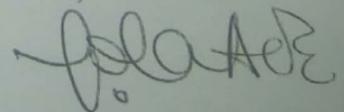
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amended charge dated 19/06/14 as well as later in the proceedings on e.g. 07/11/16, the trial of the Defendants is summary trial, not trial by information. Thus the provisions of part 37 of the **Administration of Criminal Justice Act 2015** (i.e. Trials by Way of Information) are not binding on trials in this Court, which are summary trials.

Furthermore, the Federal High Court Criminal Procedure Practise Directions 2013 were made to ensure speedy trial and eliminate unnecessary delay and expense for parties as well as to ensure that the parties focus on matters which are genuinely in issue. See Rules 1 and 2 thereof. Failure of the prosecution in this instance to frontload the statements or summaries of evidence to be given by the 2nd and 3rd PWs did not in any way prevent Defendants Counsel from defending them competently as is obvious from the records of this Court, neither was it prejudicial to the defendants in any way.

Prosecutions failure to frontload the statements of PW2 and PW3 is therefore not fatal to this charge.

Furthermore I am unable to agree with Learned Defence Counsel that the counts of the charge are bad for duplicity, or are misleading, ambiguous or vague, in the light of the provisions of Section 211 to 215 of the Administration of Criminal Justice Act 2015, and the



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evidence before this Court. The functions of the Economic and Financial Crimes Commission include the investigation of all financial crimes including advance fee fraud, money laundering Etc. and the Economic and Financial Crimes Commission is the coordinating agency for the enforcement of the provisions of the Money laundering Act and the Advance Fee Fraud and Other Fraud Related Offences Act. See Sections 6 and 7 of the Economic and Financial Crimes (Establishment) Act 2004. Therefore, in circumstances such as arise from the facts placed before this Court in this case, where a series of acts, even though committed in the same transaction, appear to constitute more than one offence under different but related laws, such a charge as is before this Court is appropriate. The Charge could have been more elegantly drafted. Nevertheless, it is not incompetent. Issues One and Two of the Defendants are resolved in favour of the Prosecution.

The Defences 3rd issue and prosecution's lone issue for determination are basically the same and shall be considered together. Has the prosecution proved the offences charged beyond reasonable doubt?

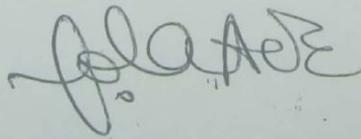
Reading through the second and third Counts of the charge, the meaning which can be derived therefrom is that Union Bank's database was hacked into (not necessarily by the Defendants)

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however the 2nd Defendants account was credited with a large sum of money which the 1st Defendant knew was the proceeds of the hacking and from which the sum of **(N86,000,000.00 (Eighty-Six Million Naira))** was withdrawn under the pretext that it was payment for Cocoa supply.

Exhibit One establishes that the Union Bank database was hacked into. This is corroborated by the testimony of PW1. These pieces of evidence also establish the fact that consequent upon or subsequent to the hacking, the 2nd Defendants Account number 0036202714 at Union Bank was credited with the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)**. Exhibits 3 and 4 even though not tendered through an official of Union Bank were tendered through PW2, one of the investigators, who is competent to tender same as the product of his investigation. The same is true regarding Exhibits 8 and 9, 10, PW2 and PW3 analysed Exhibit 3 in Court and nothing precludes this Court from examining that statement of Account of 2nd Defendant at Union Bank which reveals a credit balance of **N350,000,000.00 (Three Hundred and Fifty Million)**. Interestingly that credit appears on the statement sheet as far back as 01/10/11, while the evidence of the prosecution (including the extrajudicial statement of Defendants account officer



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- Exhibit 11) is that prior to January 2013, that particular account had not witnessed any such large credit transaction.

There is evidence that **N350,000,000.00 (Three Hundred and Fifty Million Naira)** was fraudulently credited to the 2nd Defendant's account without a corresponding narration as to its source. See testimonies of prosecution witnesses and Exhibits 3 and 11. There is evidence that the 1st Defendant withdrew large sums of Money from that account subsequent to the credit. I can however not understand how or where the prosecution came about the sum of **N86,000,000.00 (Eighty-Six Million Naira)** stated in the second and third counts of the charge, because Exhibit 3, which is the Statement of the account from which the sum money was allegedly withdrawn, has debit entries totalling more than **N86,000,000.00 (Eighty-Six Million Naira)** from the date the manipulated credit balance was detected. There is, furthermore, no single debit entry of **N86,000,000.00 (Eighty-Six Million Naira)** from the account (Exhibit 3) from the date the manipulated credit entry was detected. I therefore have to (albeit reluctantly) agree with the Defence that the prosecution has failed to prove beyond reasonable doubt that the 1st and 2nd Defendants fraudulently obtained the sum of **N86,000,000.00 (Eighty-Six Million Naira)** and fraudulently withdrew the sum of **N86,000,000.00 (Eighty-Six Million Naira)** from the sum of **N350,000,000.00 (Three Hundred**

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and Fifty Million Naira) which was fraudulently credited into 2nd Defendants account at Union Bank. The 1st and 2nd Defendants are found not guilty on Counts two and three (2nd and 3rd Counts) of the charge.

I must pause to examine again the evidence regarding the credit of N350,000,000.00(Three Hundred and Fifty Million Naira) to the 1st Defendant's Union Bank Account. The evidence of the prosecution is that the credit balance was a manipulated one consequent upon hacking performed by a Technician, working in tandem with the Union Bank Jos Market Branch Head of Operations. That 1st Defendant ought to know and indeed knew that the credit balance was manipulated because that account had never witnessed such a large volume of credit transaction.

The Defence however insists that 2nd Defendant's accounts in other Banks have witnessed large sums of money being credited thereto, and the credit of the sum of N350,000,000.00(Three Hundred and Fifty Million Naira) to the 2nd Defendant's Union Bank account is not strange. Exhibit 13A, the 2nd Defendant's Statement of Account at Zenith Bank was tendered to substantiate the Defence that 2nd Defendant is used to dealing with large sums of money. The testimony of DW1 is however that he opened the account at Union Bank because of a transaction with Alpha Systems

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so that the cheques given to him by Alpha Systems would be quickly cleared. There is no transaction with Alpha Systems represented in Exhibit 3. That piece of evidence from DW1 could therefore only be a mere afterthought.

Also in his Defence, 1st Defendant informed this Court that he was expecting a credit of **N500,000,000.00(Five Hundred Million Naira)** and had informed his accounts officer. That credit was ostensibly from Femi Fadeyi with whom there was absolutely no paper work or document tendered as proof of the existence of a contract to supply **N500,000,000.00(Five Hundred Million Naira)** worth of Cocoa . It is implausible and unbelievable that anyone would forward such a whooping sum as **N500,000,000.00(Five Hundred Million Naira)** based on a discussion in a vehicle and telephone conversations without exchange of documents. It is not surprising that the prosecution could not locate the said Femi Fadeyi and the Defence could also not produce him in their defence because he appears to be a phantom. I do not believe that the Defendants entered into a contract to supply Cocoa to any Femi Fadeyi. The 1st Defendant was also unable to point out which one of the various debits made from the sum of **N350,000,000.00(Three Hundred and Fifty Million Naira)** was to his purported suppliers. In his extrajudicial statements (Exhibit 5 and 6) he mentioned names and

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amounts paid but none of them corresponds to the debits made on his account in Union Bank (Exhibit 3) nor Zenith Bank(Exhibit 8) nor (Exhibit 9 (Diamond Bank). Surely, he could not have paid the sums mentioned in Exhibits 5 and 6 which range from **N2,000,000.00(Two Million Naira)** to **N13,000,000.00(Thirteen Million Naira)** in cash! The Defence of the Defendants in the face of the manipulated credit balance of **N350,000,000.00(Three Hundred and Fifty Million Naira)** in Exhibit 3 cannot stand.

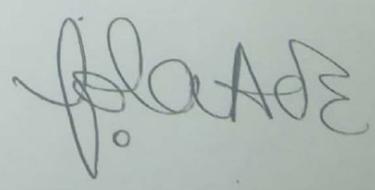
With regard to the fourth count of the charge, there is evidence vide testimonies of PW1, PW2 and PW3 and Exhibits 3, 8, 9, 10 that after a manipulated balance of **N350,000,000.00(Three Hundred and Fifty Million Naira)** was posted into 2nd Defendant's account (which was discovered in January 2013 – on or about 10/01/13) the 1st Defendant transferred different sums of money totaling **N156,000,000.00(One Hundred and Fifty-Six Million Naira)** from Defendants Union Bank account to several other accounts some belonging to the 2nd Defendant at Zenith Bank and Diamond Bank and the account of Divine Concepts Services Ltd at Diamond Bank as well as to other private individuals, with the knowledge that the credit balance was fraudulent. I have already found that Femi Fadeyi and the purported contract to supply Cocoa is unbelievable and implausible. The aim of transferring these sums

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of money can be inferred from the circumstance of this case to be that 1st Defendant needed to move those sums of money out of the Union Bank account and hide them before the discovery of the manipulated credit balance. That is the only inference which can be made from the circumstances and facts placed before this Court. See **SAMPSON EBENEHI AND ANOR VS THE STATE (2009) LPELR – 986 (SC); IJIOFOR VS STATE (2001) 9 NWLR (PART 718) PAGES 371 at 385.** Exhibit 3, 8, and 9 reveal all the sums of money stated in the fourth count of the charge. The prosecution has therefore been able to prove this offence beyond reasonable doubt.

I have found that Femi Fadeyi stated in Count One in all probability does not exist but was merely mentioned as a defence by 1st Defendant. The 1st Defendant as the only human being involved in the transactions of 2nd Defendant could therefore not have conspired with himself to obtain money by false pretences. See **RODA VS FRN (2015) 10 NWLR (PART 1468) PAGE 427 at 487:** The Defendants are found not guilty on Counts 1, 2, 3, of the charge(i.e 1st , 2nd , and 3rd Counts) but are found guilty on Count 4 (Fourth count) of the charge.



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That is the Judgment of this Honourable Court.

F.A. OLUBANJO
JUDGE
09/10/18

ALLOCUTUS

Oso - Justice can be further enhanced and met if the 1st Defendant is looked at with compassion. He is a young man who has turnover of **N2,000,000,000.00(Two Billion Naira)** in his business. We live in an age of technology where anyone can receive credit alert. If he is cautioned and discharged it will do Justice. He is a father, his children are in Primary school. The Stigma of being an exconvict is one which he will live with.

The Bank and community are entitled to Justice. We ask to be given the minimum Sentence, being a caution and discharge.

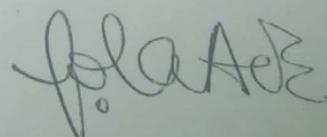
EVIDENCE OF PREVIOUS CONVICTION

Banjo - None

AGGRAVATING OR MITIGATING CIRCUMSTANCES:

FEDERAL REPUBLIC OF NIGERIA VS FAWEHINMI OYEYEMI AND ANOR. FHC/AK/13C/14

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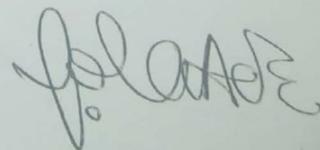
425

Banjo – the remaining part of the Money has been given to Union Bank. We urge the Court to make an order for restitution.

S E N T E N C E

The punishment prescribed by Section 15 of the Money Laundering (Prohibition) (Amendment) Act 2012 under which the Convicts are charged in Count 4 is for the individual , not less than 7 years but not more than 14 years imprisonment. For the corporate organisation, it is a fine of not less than 100% of the funds and properties acquired as a result of the offence committed.

The two convicts (1st and 2nd) are first offenders, as such the Administration of Criminal Justice Act prescribes that this Court should not impose the maximum sentence. Furthermore, I observed the seriousness and diligence displayed by the 1st Defendant during the trial, he attended Court regularly. I have also considered his Counsel's allocutus. 1st Defendant is a young man who until this case, was making an honest living, and it would not be advantageous to him and the Country's economy if he is incarcerated.



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The Administration of Criminal Justice Act also enjoins the Court to explore the sentencing principles of reformation and restitution while sentencing such an individual.

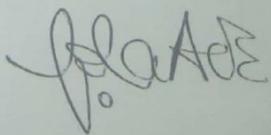
However, the depositors of Union Bank also deserve justice for their funds which were fraudulently manipulated and to a certain degree spent.

It is for the above stated reasons that the Convicts are sentenced as follows:

FAWEHIMI OYEYEMI - Seven years imprisonment or Payment of **N1,000,000.00 (One Million Naira)** fine.

Gods Will Great Resources Ltd shall on or before the 31st of December, 2018, refund to Union Bank Plc the sums of money contained in Count Four of the charge. i.e **N156,000,000.00 (One Hundred and Fifty-Six Million Naira)**. I have decided to give the Company time to retribute because its alter ego firstly has to source for his own option of fine, and he cannot work towards paying back the sum of **N156,000,000.00 (One Hundred and Fifty-Six Million Naira)** while he is in prison custody.

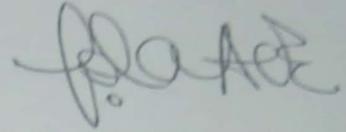
In this regard, Learned Prosecutor, Defence Counsel and Counsel holding watching brief shall meet and agree on how the sum of money shall be paid instalmentally. This agreement shall be reduced into writing and guaranteed by the Defendants Counsel.



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The said written agreement shall be forwarded to this Court before the 1st Defendant is allowed to pay his option of fine.

That is my decision.



F.A. OLUBANJO
JUDGE
09/10/18

PARTIES

1st Defendant represents 2nd Defendant

APPEARANCES

T. J. Banjo Esq. for the Prosecution

Adetunji Oso Esq., for the Defence with Julianah Okeke Esq.

P. C. Odimegwu Esq., holds watching brief for nominal complainant

