

IN THE HIGH COURT OF JUSTICE
ONDO STATE OF NIGERIA
IN THE AKURE CRIMINAL DIVISION
HOLDEN AT AKURE

BEFORE HIS LORDSHIP HON. JUSTICE W.R. OLAMIDE – JUDGE

THIS FRIDAY, THE 1ST DAY OF FEBRUARY, 2019

CHARGE NO: AK/4C/2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

..... COMPLAINANT

AND

1. PROF. ADEBIYI G. DARAMOLA

.....DEFENDANTS

2. EMMANUEL AYODEJI A. ORESEGUN

JUDGMENT

By a 2nd amended Information dated 17th May, 2017, the Defendants were charged with the commission of the following offences:

COUNT ONE

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola between 1st June, 2012 and 31st December, 2012 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud and while living in Government quarters, obtained the sum of One Million, Nine Hundred and Fifty Two Thousand, Eight Hundred and Sixty Five Naira (#1, 952, 865. 00) only from the Federal University of Technology, Akure when you falsely represented that the said sum of money was for your half year accommodation allowance for the period of June to December 2012, which representation you knew to be false.

COUNT TWO

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola between 1st January, 2013 and 31st December, 2013 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud and while living in Government quarters, obtained the sum of Three Million, Eight Hundred and Fifty One Thousand, Seven Hundred and Thirty Naira (#3, 851, 730. 00) only from the Federal University of Technology, Akure when you falsely represented that the said sum of money was for your year 2013 accommodation allowance, which representation you knew to be false.

COUNT THREE

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola between 1st January, 2014 and 31st December, 2014 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud and while living in Government quarters, obtained the sum of Three Million, Eight Hundred and Fifty One Thousand, Seven Hundred and Thirty Naira (#3, 851, 730. 00) only from the Federal University of Technology, Akure when you falsely represented that the said sum of money was for your year 2014 accommodation allowance, which representation you knew to be false.

COUNT FOUR

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, professor Adebisi G. Daramola between 1st January, 2015 and 31st December, 2015 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud and while living in Government quarters, obtained the sum of Three Million, Eight Hundred and Fifty One Thousand, Seven Hundred and Thirty Naira (#3, 851, 730. 00) only from the Federal University of Technology,

Akure when you falsely represented that the said sum of money was for your year 2015 accommodation allowance, which representation you knew to be false.

COUNT FIVE

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola between 1st January, 2016 and 31st December, 2016 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud and while living in Government quarters, obtained the sum of Three Million, Eight Hundred and Fifty One Thousand, Seven Hundred and Thirty Naira (#3, 851, 730. 00) only from the Federal University of Technology, Akure when you falsely represented that the said sum of money was for your year 2016 accommodation allowance, which representation you knew to be false.

COUNT SIX

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola on or about 30th October, 2014 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud, obtained the sum of Fifteen Million, Four Hundred and One Thousand,

One Hundred and Eight- Six Naira and Thirty- Three Kobo (#15, 401, 186. 33) only from the Federal University of Technology, Akure when you falsely represented that the said sum of money was for your Biennial family vacation Overseas for the years 2013 and 2014, which representation you knew to be false.

COUNT SEVEN

STATEMENT OF OFFENCE

Obtaining money under false pretence contrary to section 1(2) of the Advance Fee Fraud and Other Fraud Related Offence Act, 2006 and punishable under section 1(3) of the same Act.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola on or about 2nd of September, 2016 at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud, obtained the sum of Twenty Four Million, Two Hundred and Twenty Three Thousand, Four Hundred and Eight- Four Naira (#24, 223, 484. 00) only from the Federal University of Technology, Akure when you falsely represented that the said sum of money was for your Biennial Family Vacation Overseas for the year 2015 and 2016, which representation you knew to be false.

COUNT EIGHT

STATEMENT OF OFFENCE

Conspiracy to steal money contrary to section 516 of the Criminal Code, Cap 37, Vol. 1, Laws of Ondo State of Nigeria, 2006.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola and Emmanuel A. Ayodeji Oresegun on or about the 21st of January, 2015, at Akure within the Akure Judicial Division of

this Honourable Court with intent to defraud, conspired to commit a felony, to wit: illegally place on fix deposit the money of the Federal University of Technology, Akure in a Wema Bank account No: 1300002035.

COUNT NINE

STATEMENT OF OFFENCE

Abuse of office, contrary to Section 104 of the Criminal Code, Cap 37, Vol. 1, Laws of Ondo State of Nigeria, 2006.

PARTICULARS OF OFFENCE

That you, Professor Adebisi G. Daramola and Emmanuel A. Ayodeji Oresegun on or about the 21st of January, 2015, at Akure within the Akure Judicial Division of this Honourable Court with intent to defraud, conspired to place on fix deposit the sum of One Hundred Million Naira (100,000,000.00) only, the property of Federal University of Technology, Akure in a WEMA Bank account No: 1300002035 without due process.

COUNT TEN

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself and other members of the Governing Council, Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and Other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, a public office, sometime in November, 2015 used your offices to confer a

corrupt and unfair advantage on yourself and other members of the Governing Council of The Federal University of Technology, Akure to the tune of # 5,125,000.00 (Five Million, One Hundred and Twenty Five Thousand Naira) Only which sum you caused to be distributed as end of Year gift to the said Council Members.

COUNT ELEVEN

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself as the Vice Chancellor of the Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, being public officers, between October, 2015 and May 2016 at Akure within the jurisdiction of this Honourable court, used your offices to confer a corrupt and unfair advantage on Professor Adebisi G. Daramola to the tune of # 2,000,000.00 (Two Million Naira) Only which sum was paid to Professor Adebisi G. Daramola as Imprest for Vice Chancellor's lodge.

COUNT TWELVE

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself as the Vice Chancellor of the Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, being public officers, between December, 2015 and July 2016 at Akure within the jurisdiction of this Honourable Court used your offices to confer a corrupt and unfair advantage on Professor Adebisi G. Daramola to the tune of # 1,750,000.00 (One Million, Seven Hundred and Fifty Thousand Naira) only which sum was paid to Professor Adebisi G. Daramola as security Imprest for Vice - Chancellor's lodge.

COUNT THIRTEEN

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself as the Vice Chancellor of the Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, being public officers on the 25th day of March 2015 at Akure within the jurisdiction of this Honourable Court used your offices to confer a corrupt and unfair advantage on one Dr. Mohammed Shata, Pro -Chancellor of the Federal University of Technology Akure to the tune of #1,000,000.00 (One Million Naira) only which sum was paid to him as Ex-Gratia towards the wedding of his son.

COUNT FOURTEEN

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself as the Vice Chancellor of the Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, being public officers on the 13th day of May 2016 at Akure within the jurisdiction of this Honourable Court used your offices to confer a corrupt and unfair advantage on Professor Adebisi G. Daramola, Vice-Chancellor of the Federal University of Technology Akure to the tune of #1,000,000.00 (One Million Naira) only which sum was paid to him as Ex-Gratia towards the wedding of his daughter.

COUNT FIFTEEN

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself as the Vice Chancellor of the Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, being public officers on the 11th day of March 2016 at Akure within the jurisdiction of this Honourable Court used your offices to confer a corrupt and

unfair advantage on one Zailani Mohammed, a member of the Governing council, Federal University of Technology Akure to the tune of #500,000.00 (Five Hundred Thousand Naira) only which sum was paid to him as Ex-Gratia towards the wedding of his son.

COUNT SIXTEEN

STATEMENT OF OFFENCE

Using your office to confer a corrupt advantage upon yourself as the Vice Chancellor of the Federal University of Technology, Akure contrary to section 19 of the Independent Corrupt Practices and other Related Offences Act, 2000.

PARTICULARS OF OFFENCE

Professor Adebiyi G. Daramola and Emmanuel Ayodeji A. Oresegun whilst the Vice Chancellor and Bursar respectively of Federal University of Technology, Akure, being public officers on the 12th day of May 2015 at Akure within the jurisdiction of this Honourable Court used your offices to confer a corrupt and unfair advantage on `3 Friends and Supporters of the University` to the tune of #430,000.00 (Four Hundred and Thirty Thousand Naira) only which sum was used to purchase 3 cows for them.

The Defendants pleaded not guilty to all the charges. The prosecution fielded 9 witnesses while the Defendants thereafter initially entered a No Case Submission after the close of the Prosecution`s case, which was eventually overruled by this Honourable court in a well considered ruling. The Defendants were ordered to open their defence.

The 1st Defendant thereafter called 3 witnesses while the 2nd Defendant rested his case on the evidence before the court.

PW1, Comrade Adebayo Aladerotoku, a Chief Clerical Officer of the Bursary Department who doubled as the Chairman of the Non- Academic Staff of the Federal University Technology, Akure stated that the Union instructed their Lawyer, Dr. Olugbenga Oke Samuel to write a petition to the Economic and Financial Crimes Commission (EFCC) on the several complaints/ Reports from its members on the financial affairs of the University. The petition was admitted without objection and marked Exhibit P1.

Under cross examination by the 1st Defendant's Counsel, witness stated that he is aware that The Federal University Technology Akure is guided by a Statute and that he has seen it before. Documents titled "Federal University of Technology Act, Laws of the Federation of Nigeria, 2004, Federal Republic of Nigeria, Official Gazette and The Universities (Miscellaneous provision) Amendment Act, 2011)" were admitted and marked Exhibits P2 & P3 respectively.

PW1 confirmed that he is aware that The Federal University Technology, Akure has a Governing Council but that he does not know if Universities enjoy autonomy. He further said that he is aware that the Governing Council superintends over the property, finance and policy of the University.

PW1 claimed that Exhibit P1 was also based on the letter from the Office of the Auditor -General of the Federation dated 1st July, 2016 and that he does not know if the same was a final report.

Witness further testified that he is aware that some Staff who live on the University campus, pay Rent through deductions from their salaries and that they equally pay housing allowance.

The Witness further stated that he knew that the 1st Defendant was appointed by the Governing Council in 2012 and that he was provided with Memorandum of Appointment.

Letters dated 10th May, 2012 and 16th May, 2012 titled "Appointment as Vice-Chancellor of The Federal University Technology, Akure", "Memorandum of Appointment as Vice-Chancellor of The Federal University of Technology, Akure" and The Minutes of the 85th Statutory Meeting of Council held on Thursday, 28th June, 2007 in the Council Chambers were admitted in evidence and marked Exhibits P4, P5 & P6 respectively.

He confirmed that the University is to provide the 1st Defendant with free accommodation and that the 1st Defendant is entitled to Overseas and Biennial Leave Allowance.

PW1 said that he does not know if the #100,000,000.00 fixed deposit was in the University's Name or Account. He also said that the University's Union had been having issues with the Vice-Chancellor and The University's Governing Council on their welfare package before Exhibit P1 was written.

A letter addressed to the Vice-Chancellor, The Federal University Technology Akure titled "Request for payment of one Year Productivity Allowance staff package dated 15th of September, 2016 and receipt of the certification of the document were admitted on the principle of relevancy and marked Exhibits P7 & P7A respectively.

Witness confirmed Professor Adebisi Balogun as the 1st Defendant's Predecessor and stated that he does not know if the salary of the 1st Defendant was different from that of his Predecessors or whether the #100,000,000.00 (One Hundred

Million) plus interest were transferred to the Treasury Single Account (TSA) as directed by the Federal Government.

While being cross examined by the 2nd Defendant's counsel, PW1 stated that he was once a Financial officer in the school of Technology and also at a time, a Representative of the Bursar in charge of The Federal University Technology, Akure Primary School. He said that he is presently representing the Department in the Computer Resource Centre of the University and that he knows the workings of the Bursary department but that he does not know much about the running of the University.

He finally stated that he has never been a Bursar before but that the Bursar is responsible to him as the Chairman of NASU and that he does not know how the Bursar relates with the Vice-Chancellor and other organs of the universities.

PW1 stated under re-examination that deductions on House Rents and payment of Housing Allowance reflect both on the payment of those occupying official quarters in their monthly pay slip.

PW2, Adetunji Opadiran, a Stanbic Bank Compliance Officer whose duty is to monitor suspicious transactions testified that the Bank supplied the Account Statements and Account Opening Package of the two Defendants to the Economic and Financial Crimes Commission on their request.

The content and letter addressed to the Zonal Head, Economic And Financial Crimes Commission, Ibadan by stanbic IBTC, titled, Re: Investigation Activities: Adebisi Gregory Daramola/ Emmanuel Ademola Oresegun dated 27th October, 2016 containing the accounts of the two Officers were admitted and marked Exhibit P8.

Witness stated that the transaction on the 30th of October, 2014 of the sum of #15,401,186.33k (Fifteen Million, Four Hundred And One Thousand, One Hundred and Eighty- Six Naira, Thirty-Three Kobo) was a narration in September, 2014 by The Federal University of Technology, Akure Salary Suspense which is a credit entry into the Account. He also said that there was another credit to the Account on the 2nd of September, 2016 of #24,223,484.00 (Twenty- Four Milion, Two Hundred and Twenty- Three Thousand, Four Hundred and Eighty- Four Naira) with the narration of payment of Vice-Chancellor SENR/BS underscore9PG78617LEZ, BNTR82729.390 underscore 91246393820 MENTFOR meant for Biennial oversea trip.

Under cross examination by the 1st Defendant Counsel, Witness stated that he is not aware of any suspicious lodgment on the part of both Defendants.

PW3, Inspector Sunday Yakubu of the Counter- Terrorism and General Investigation/ Pension, EFCC Zonal Office, Ibadan testified that he knew the Defendants in the course of his investigation into a petition written by the Non-Academic Staff Union and Senior Staff Association of Nigerian Universities, The Federal University of Technology, Akure Branch. He stated that the Chairman of the Association endorsed the petition on behalf of other members after which the Defendants were invited to their office and that they subsequently made Statements after cautioning them. He claimed that letters which were all replied were written to several parastatals/ Organizations in the course of their investigations.

The Statements of the 1st Defendant made at The Economic And Financial Crimes Commission, Ibadan office on 21st November, 2016, 6th October, 2016, 5th October, 2016, 2nd November, 2016 and the Statements of the 2nd Defendant made on the 5th of October, 2016, 28th of November, 2016 and 27th of December, 2016

were all admitted into evidence and marked Exhibits P9A, P9B, P9C, P9D, P10, P10A and P10B respectively.

Letters addressed to The Economic and Financial Crimes Commission by the National Salaries, Incomes and wages Commission dated 5th of October, 2016 were marked Exhibits p11 & P11A.

Witness stated that their investigations revealed that the 1st Defendant received monthly housing allowances from The Federal University of Technology, Akure at the rate of #220,000.00 (Two Hundred and Twenty Thousand Naira) from January 2012 to December 2016, without paying economic rent to Government purse.

Witness further testified that investigation revealed that the 1st Defendant collected #15,000,000.00 (Fifteen Million Naira) as Biennial Leave Allowance which he did not embark on but rather invested the sum and that the 1st Defendant's son who was to travel with him, did not have a Brazilian visa.

Witness said that it was discovered that both Defendants fraudulently fixed #100,000,000.00 (One Hundred million Naira) belonging to The Federal University Technology, Akure and that the assertion by the 2nd Defendant that the sum and interest had been rolled over to TSA (Treasury Single Account) was not satisfactory.

Under Cross Examination by the 1st Defendant's Counsel, PW3 said that the 1st Defendant's predecessors in office was not investigated and that their investigations did not extend to the fact whether or not previous Vice Chancellors were collecting housing allowance, as he only obtained the pay slip of the 1st Defendant.

The pay slip of the Vice Chancellor for the month of January, 2012 was tendered and marked as Exhibit P12.

He confirmed that Exhibits P4&p5 were issued by The Registrar of The Federal University of Technology, Akure and that Exhibit P4 was signed by the Chairman of the Governing Council/ Pro-Chancellor of the Governing Council.

Certified True Copies of 30 days Leave and its Attachments dated 31st of July, 2014 and another request for 30 days Biennial Leave with Attachments dated 12th August, 2016 were admitted and marked Exhibits P13&P14 respectively.

Witness confirmed that Wema Bank did not respond to their enquiries as to whether or not any sum was fixed in the bank on behalf of The Federal University Technology, Akure.

He contended that there was no approval from the Accountant- General of the Federation before the sum was fixed and further said that he does not know if the approval of the Accountant - General is needed, since the University is an autonomous Institution.

PW3 confirmed that the Defendants submitted some documents to them during investigation. The letter titled, "Remittance of FUTA Funds to the TSA Account at CBN addressed to Bursar, FUTA, dated 25/11/15 was admitted into evidence and marked Exhibit P15.

He further testified that the 1st Defendant transferred #24,000,000.00 (Twenty Four Million) to one Tony Adekun which was traced to the purchase of a house in Alagbaka, Akure.

Witness stated under Cross Examination by the 2nd Defendant's Counsel that he is a public servant who does not investigate spiritual matters.

He further said that he established during investigation that the 2nd Defendant did not do anything without the approval of the 1st Defendant. He finally said that he did not rush to court without proper investigation.

When Cross Examined by the 2nd Defendant's Counsel, Witness stated that his investigation did not reveal that the 2nd Defendant cannot be questioned by any authority in the University.

PW4, Mrs. Victoria A. Adamolekun, a Chief Confidential Secretary in the Vice-Chancellor's office testified that she attends to Imprest matters and that she also supervises Junior Staff.

She stated that Security Imprest is used for students when issues arise with security agents and that the security Imprest is usually disbursed to some bodies on campus such as Christians and Muslims organizations.

She further said that she explained some transactions on the 1st Defendant's Account at the Economic and Financial Crimes Commission, Ibadan Office when given a copy of the Bank's Statement and that she thereafter made Statements.

Statement of PW4 at The Economic and Financial Crimes Commission office, Ibadan dated 7/12/16 was admitted and marked Exhibit P16.

She stated that the template with which she makes request on the purchase Advance form is with every Staff which she fills and send to her immediate Head of Department after which, the Vice -Chancellor gives his final approval and same is then sent to the Bursary Department where it is worked on before payment is effected.

Witness stated that previous sum collected must be retired before another sum can be released, which will be declined if not satisfactorily utilized.

She claimed that a sum of #250,000. 00 (Two Hundred and Fifty Thousand Naira) each is collected by her for both Security and Vice Chancellor's lodge Imprest every month.

Documents titled "Federal University of Technology, Akure Payment Voucher dated 4/12/15 and Federal University of Technology, Akure Payment Advance Form" were admitted and marked Exhibits P17&P18 respectively.

Payment Voucher titled "Federal University Technology, Akure for 4/11 to 1/7/16" was admitted and marked Exhibit P19-P19E. VC Lodge Imprest for October, November & December 2015 and from January- May 2016 were admitted and marked Exhibits P20- P27 respectively.

Under Cross Examination by the 1st Defendant's Counsel, Witness stated that she had an Educational Training on Imprest Account Management at The Federal Polytechnic, Ado Ekiti and reiterated the fact that she was the Chief Confidential Secretary to both the former and current Vice Chancellor.

She claimed that the Vice-Chancellor's Lodge Imprest is for the feeding of the Vice-Chancellor and Staff in his Lodge and the other two lodges (the Pro-Chancellor and Chancellor's Lodge). The document titled "Retirement of Advance form dated 22/9/15 and March, 2016" were admitted and marked Exhibits P28& P29.

PW4 said that she occasionally takes the Imprest paid into her account to the Vice-Chancellor's wife, who is in charge of the stewards and that she (PW4) sometimes paid it into the Vice-Chancellor's account if she does not want to keep it when the Vice-Chancellor's Wife is not around.

Witness further testified that the Stewards in the three Lodges spend the money under the supervision of the Vice-Chancellor's wife after which the receipts evidencing how the money was spent is brought and same is collated for retirement by her to the Bursary Department.

She stated that she sometimes returned personal money spent by the Vice-Chancellor when such funds are collected by her and that Vice-Chancellor's Lodge Imprest has been in operation before she got into office and that same is still on going after the 1st Defendant vacated office as the Vice-Chancellor, which she said is as captured in the University Budget.

PW4 further said that she submits a certificate of honour with the advance form after she collects security Imprest every month which is used for security issues within the University. Document titled "Retirement of Advance Form being VC's Security Imprest for June, 2016" was tendered and marked Exhibit P30. Witness finally said that the 1st Defendant whom she worked with for 4 ½ years is a very honest man who detest committing crime or any falsification.

When being cross examined by the 2nd Defendant's Counsel, Witness reiterated the fact that the procedure for collecting Imprest has been in operation before 1995 when she joined the service of The Federal University of Technology, Akure. She stated that she is 21 years on the job and that she is serving the second Vice – Chancellor as well.

Under Re- examination, Witness stated that she appreciates the 1st Defendant as somebody worth working for and that she can do everything to protect him but not to cover fraud.

She finally stated that they have security personnel in all the lodges and that it is the #250,000.00 (Two Hundred and Fifty Thousand Naira) only that takes care of all the Lodges.

PW5, Ambrose Nwogu, a Police Officer attached to the Department of the Counter-Terrorism, General Investigation/ Pension, Economic and Financial Crimes Commission, Ibadan, testified that his team investigated Exhibit P1 after

which the petition was adopted by the chairman of NASU, The Federal University Technology, Akure and that the Defendants were invited to their office, where they subsequently made statements after they were cautioned.

Witness stated that their investigation revealed that the 1st Defendant conspired with the Governing Council to approve and collect money for himself, council members and others as captured in Counts 10-16.

He further said that it was discovered that the 1st Defendant collected money from the University for his Biennial Leave, which he never embarked on but rather used it to purchase a house in Alagbaka, Akure.

The Statement written by the 1st Defendant dated 24th, February, 2017, document titled "payment mandate dated 25/3/15 and payment voucher dated 11/5/2015 were admitted and marked Exhibits P31, P32A-P32H, P33-P33B respectively.

He further said that investigation revealed that the Defendants conspired to fix #100,000,000.00 (One Hundred Million Naira) University Fund in Wema Bank which was claimed to have been mopped up in TSA (Treasury Single Account) but that they are yet to get a reply from the Bank on it.

Letter titled "Placement of One Hundred Million (100,000,000) only in fixed deposit dated 21st of January, 2015" and addressed to The Branch Manager, Wema Bank Plc, Akure was admitted and marked Exhibits P34-P34D. Payment voucher dated 2/9/2016 was marked P35-P35D.

Witness stated that the 1st Defendant could not produce his visa or that of his family to Brazil and that the 3rd Visa produced by the 1st Defendant revealed that he did not travel to Brazil and hence, the 2 passports were registered as Exhibits.

The Green Passport belonging to the 1st Defendant and two Official Passport, bearing the name of the 1st Defendant were admitted and marked Exhibits P36, P37 & P37A respectively.

PW5 claimed that the council members of Federal University Technology, Akure were invited to their office where the allegation of receiving #5,125,000.00 (Five Million, One Hundred and Twenty- Five Thousand) as End of the Year gift as well as the reply of the National Salaries, Incomes & Wages Commission on same were read over to them.

Documents titled "Proposal for the Payment of End of the Year gift to Council Members "dated 13th November, 2015, "Letter from the Office of the Accountant-General titled, RE: Investigation Activities, The Federal University of Technology, Akure dated 5th June, 2017 and a letter written by the National Salaries, Incomes and Wages Commission dated 22nd of May, 2017 were all admitted and marked Exhibits P38-P38B, P39 & P40 respectively.

Witness finally said that most of the allegations especially against the 1st Defendant were verified.

Under Cross Examination by the 1st Defendant's Counsel, witness claimed that it was the Commission's Headquarters who directed that the case be prosecuted after the Report of investigation was sent. He however said that he does not have a copy of the report with him. He confirmed that the Defendants were arraigned in 2016 and that exhibits P31 was made on the 24th of February, 2017 while P40 was dated May, 2017.

Witness stated that his team did not request for the Law establishing the University and that he did not also find out whether or not it was the Council of the University that fixed the 1st Defendant's emolument and salary. He further

explained that he did not as well find out if the Budget of the University is usually approved by the University Council and that nobody told him of that fact.

PW5 stated that he did not go through the University Budget but that he found out that the purchase of cows as well as gifts made were not captured in the Budget.

Document titled "The Federal University of Technology 2015 & 2016 Budget" were admitted in evidence after the Prosecution's objection was dismissed and marked Exhibits P41 & P42 respectively.

PW5 said that he could not remember if the 1st Defendant told him that the #100,000,000 fixed was the University Endorsement Fund and that he is not aware that Universities all over the world have Endowment fund and that the Team tried to find out if the Defendants benefitted from the sum fixed but that the Bank is yet to reply them.

He then said that he does not have a copy of the letter to Wema Bank and that Exhibit P15 was not endorsed to the Ibadan office. He further stated that he is not aware that the University Law gives power to the Council to approve gifts to University benefactors and also that he did not find out if the 1st Defendant had travelled to Brazil before.

The 1st Defendant's Passport No A00620131 was admitted into evidence and marked Exhibit P43, after which, witness confirmed a page of Exhibit P43 as Visa to Brazil.

Witness explained that the 1st Defendant did not inform him of the 2015/2016 Biennial Leave Deferment. He however confirmed that he was aware of the labour crisis in the University prior to the 1st Defendant's invitation, which witness said was the reason the 1st Defendant told him, prevented him from travelling but that

the 1st Defendant did not apply to the Pro-Chancellor for the deferment of the leave.

A letter titled "Deferment of 2015 Annual Leave dated December 10, 2015" was admitted and marked Exhibit P45. Witness stated that 2016 was not the first time the Defendant would apply for deferment of his leave.

When cross examined by the 2nd Defendant's Counsel, witness confirmed that he was there throughout the investigation but that the defendant's statements were taken by different members of the team and that he could not remember which of the statements he took.

He agreed that the 2nd Defendant told him that both the Principal and Interest of the sum fixed were rolled over to TSA (Treasury Single Account) and that they did not find any money in the personal account of the 2nd Defendant belonging to The Federal University of Technology, Akure. He however said that the laws cited by the 2nd Defendant in both Exhibits P10A & B were not investigated.

Witness claimed that he did a thorough investigation as all investigations were done by him in this case.

He reiterated under re-examination that the 1st Defendant did not travel.

PW6, Mrs. Adebola Ojuolape, the Chief Internal Auditor of the Federal University of Technology, Akure testified that her duties include the passing of Payment Vouchers from #1,000.00 to #1,000,000.00 which sum, she said can be exceeded when her Director is unavoidably absent or on leave.

She stated that the two processes for funds disbursement in the University are (a) Payment to workers (b) Payment to creditors i: e. Suppliers.

She explained that five columns for signature must be completed before a request in form purchase Advance or touring allowance (which are payments to workers) are made after compliance is confirmed at the Bursary Department. She further stated that all Advances taken by Staff are to be retired within three months, failure of which will result in the deductions of the affected person (s) salaries in three installments.

Witness identified Exhibit P38 as a fixed deposit instrument which excludes Vouchers and stated that she does not know the standard procedure for verifying Exhibit P38.

When cross examined by the 1st Defendant's Counsel, witness stated that all expenditure must be tied to a vote Head (i.e. Budgetary provision) which is prepared by the Chief Accountant of the University. She said that she does not work in the Bursary Department and that she knows that the affairs of the University are regulated by Law established for the Federal University of Technology, Akure.

She stated that Financial Regulation has abolished the Retirement of Touring allowance and that touring allowance are not the same with Biennial Allowance. She finally stated that she does not know the role of the Finance and General Purpose Committee of the University.

Under cross examination by the 2nd Defendant's Counsel, witness said that Mr. Peter Olusola Akindele, who is the Ag-Director of Internal Audit understands the full operations of the Audit Department but that she does not know his whereabouts as the University was on strike and finally said that Exhibits P34-34D did not pass through her table. She confirmed that there is the University Autonomy Act, 2011 and that she had never been to the Governing Council for any deliberation.

PW6 said under re-examination that she does not know the year the Financial Regulation 2009 was abolished.

PW7, Ayorinde Sunday Timothy, a Chief System Programmer of the Salary Unit, Bursary Department, The Federal University of Technology, Akure testified that circulars must come from the National Salaries, Income and Wages Commission for the payment of salaries, which same is sent to the Vice-Chancellor and his boss before it is implemented.

He further testified that he sets the computer system according to the Circular based on individual grade and level which is thereafter sent to audit for necessary correction.

Witness said that the National Salaries, Income and Wages Commission regulates the wages of public servants and same procedure is adopted for salary review.

He further said that he is aware of the University Autonomy Act and that there has been no review of salary during his tenure.

Witness stated under cross examination by the 1st Defendant's counsel that he is not familiar with Exhibit P32E and that it is the Chief Accountant, Mr, Alake who is his direct boss that prepares the Budget based on the template given by National University Council and Accountant –General of the Federation.

He confirmed that the Governing Council of The Federal University of Technology, Akure gives letter of employment to any Vice-Chancellor but that he is not aware that the Council prescribes some allowances for the Vice-Chancellor as well. He finally said that no salary of any Staff, irrespective of his status can be paid if not Budgeted for; which Budget he said leaves his office to NUC and later to the Chief Accountant as same does not get to The Financial & General Purpose Committee or the Governing Council.

PW7 admitted when cross examined by the 2nd Defendant's Counsel that he is proficient in Computer but not advanced computer. He said that he worked with the 2nd Defendant as a subordinate and that directives must come from him.

PW8, Chiadi Adighiogu, an Assistant Director at the National Salaries, Incomes and Wages Commission mentioned career staff, chief executive of parastatal and Board members of various parastatal as the three categories of workers and stated that Federal Government parastatal/ Universities are regulated by Circulars, Wages commission and the Secretary to the Government of the Federation.

He said that the Vice-Chancellor as the Chief Executive by 2008 (Act) is to receive accommodation allowance and pay economic rent to the University on the university quarters as earlier agreed in a negotiation between the Federal Government and workers union in the university. He stated that the National Salaries, Income and Wages Commission must be applied to for any review of wages which decision to either review or not is to be communicated.

Under cross examination by the 1st Defendant's Counsel, he stated that he is familiar with the University System and that the Governing Council is the overall boss of the University in terms of governance and that each University is governed by an Act of the National Assembly especially Federal Universities.

Witness confirmed the existence of an Autonomy Act and that he knows that before any Vice-Chancellor is appointed, such a candidate is interviewed, after which the Letter and Memorandum of Appointment are issued by the Governing Council.

He agreed that a Vice-Chancellor who complies strictly with the terms of his employment did nothing wrong. Witness finally stated that he is aware that the

National University Council supervises the University with the Federal Ministry of Education as the supervisory Ministry and that he is not representing any of them.

Under cross examination by the 2nd Defendant's Counsel, he confirmed that he has participated in the review of income and wages relating to last collective Banking Agreement between the Federal Government and workers in the Universities in 2009 and finally said that the consent of his office is required when it comes to the wages and salaries in the public service including Universities.

PW9, Agboola John Babalola, a Senior Accountant at the Bursary department, The Federal University of Technology, Akure testified that he assists the Desk Officer in preparing payments that will be uploaded into TSA (Treasury Single Account) Remittal among other functions. He mentioned grants from Federal Government for the payment of salaries, Capital grants for capital projects from the Federal Government, overhead grant for recurrent expenditure of the university from the Federal Government and Needs Assessment as other sources of income in the University.

Witness explained the steps required for generating a payment voucher which includes initiation of document by beneficiary, approval by the Vice-Chancellor, Bursary to Budget & Expenditure Control Unit where it is checked whether or not there is money in the Vote-head to accommodate the payment, Creditors Unit where payments are raised together with payment document, dispatch to the Audit Department which is sent back to the creditors unit before it is forwarded to the cash office where payment is made. He emphasized that payments will not be paid if the above procedures are not complied with.

Under cross examination by the 1st Defendant's Counsel, witness confirmed that the University's income include donation by friends of the University which also constitute part of IGR (Internally Generated Revenue). He stated that he is not the

one making payment but that he assists in preparing the schedule and that no one has ever lured him into preparing the schedule.

When cross examined by the 2nd defendant's Counsel, witness confirmed that he has not worked in the Credit Control Unit of Bursary Department and whatever he does goes to his Head of Department, the Chief Accountant for approval. He finally said that there are different Chief Accountants in the Bursary Department and that his own duties can be performed by someone else and that not all information that get to the Chief Accountant eventually gets to him.

The prosecution closed its case on the 15th of March, 2018 after which the Defendants' Counsel filed a NO Case Submission on behalf of both Defendants, which was duly responded to by the Prosecution. The addresses on the No Case Submission were adopted on 6/6/2018 which was dismissed by this Honourable court on 9/7/2018 after a well considered Ruling. The defence opened their case on 10/10/2018.

DW1, Mofolorunsho Olutayo David, a Bursar at the Redeemers University who was a former Chief Accountant in the Students Account Unit of the Bursary Department at The Federal University of Technology, Akure between 2012-2015 and also a Deputy Bursar/ Chief Accountant at The Federal University of Technology, Akure between 2015 to 2017 testified that she is aware that the Vice-Chancellor's office attracts Biennial leave allowance and that some allowance does not attract retirement. She further stated that Biennial Leave Allowance can also be referred to as a Leave Bonus which members of the staff are equally entitled to before salaries were consolidated. She stated that it is ones earned allowance, i.e. your entitlement and whether one uses the leave or not, one is entitled to annual leave bonus. Witness testified that the Vice-Chancellor is entitled to Biennial Leave Allowance and that he can do whatever he likes with it, just like a leave

bonus and finally said that cash advances are advances taken by a staff to make a purchase or procurement on behalf of the University which must be retired and used for its purpose.

Under cross examination by the 2nd Defendant's Counsel, witness confirmed that she served with the Bursar while in FUTA and that it is not possible for any Bursar to utilize his office corruptly to his advantage.

When cross examined by the Prosecution Counsel, DW1 restated that she worked with the 1st Defendant when he was the Vice-Chancellor as a subordinate and that he does not hate the 1st Defendant and will do anything in her power to sustain the University system, irrespective of who is involved.

She further said that she could not remember when the salaries were consolidated but that she received a consolidated salary. She stated that the salaries of Vice-Chancellors, being a political appointment, are different from the Consolidated scale structure, they have a special scale.

Witness confirmed that salaries come from Federal Government but that she does not know if it is the same that governs the salary of Vice-Chancellors and other public officers including the President. She said that she has not heard about certain Political and Judicial Amendment Salary 2013 and that the Federal University of Technology, Akure operate under the Financial Regulations of Federal Universities of Nigeria and internal mechanism.

She confirmed that she knows the Federal Act called Financial Regulations and that The Federal University of Technology, Akure also follow its procedure but can not state the section which provides that the Vice-Chancellor is not required to retire Biennial leave allowance. She finally said that the procurement department

of the University is saddled with the responsibility of procurement in the University.

DW2, Gorge Adebayo Oyedusan who works at the International Strategy Office, FUTA, testified that he facilitates the issuance of Visas for Vice- Chancellors, Deputy Vice- Chancellors, management team of the Academic Staff, Non- Academic Staff of FUTA, as well as visitors to the Institution, which role he said he performed when the 1st defendant was the Vice-Chancellor of the University and that he processed Visas for the 1st Defendant mainly to USA, Canada, UK, Germany, Mexico, Tanzania and some other countries.

He stated that the 1st Defendant had contacted him to process a Visa for him and family to Brazil which he was later instructed to hold on the process due to the crisis in the University when the Non- Academic Staff were on strike.

He said that he had earlier processed successfully a Brazilian Visa for the 1st Defendant and thereafter mentioned the two ways a Visa can be processed as (1) Putting all documents on the checklist together and taking it to the Embassy after all necessary payments are made (2) sending all necessary documents to the Embassy after payments are made through Courier. The latter process witness said takes fifteen working days in which the returned mail is also paid for.

Witness stated that the processes are the same for new and old applicants in respect of Brazilian Visa unlike the USA. The Visa, witness said was for biennial leave in 2014. Under cross examination by the prosecution, witness confirmed that the instruction to stop the Visa processing by the 1st Defendant was in 2016 because the working environment was unfavourable. He said that he worked with the 1st Defendant during his tenure and that he is a strict man. Witness stated that nobody paid him to be in court and that he has sworn to say the truth. He finally said that he has been in contact with the 1st Defendant's passport prior to 2016 and that the

1st Defendants has 2 passports, to wit: Green and Official Passports which the 1st Defendant and Deputy Vice Chancellors are entitled to.

DW3, Adebisi Gregory Daramola (1st Defendant) testified that he was the immediate past Vice- Chancellor of The Federal University Technology, Akure and that his employer was the Governing Council of The Federal University of Technology, on behalf of the Federal Government. He stated that he lived at the University Vice-Chancellor's lodge as required by his Letter and Memorandum of Appointment. He stated that the statute had charged the Governing Council of The Federal University Technology, Akure with the responsibility of property, Finance and policies of the University. According to him, the Governing Council compelled him to live in the VC lodge rent free and also that he has his own private residence outside the campus where members of his family live.

He said that it is not true that he did not go for his Biennial Annual Leave as he enjoyed the benefit first in 2014 and that in 2016, he applied for another Biennial leave for which he was paid but could not proceed on it due to the crisis on Campus which necessitated his deferment in line with Exhibit P5.

DW3 claimed that the Leave is an earned one, having served for two years and not an official assignment as it is a family benefit which is not subject to retirement.

He stated that the money which now belongs to him was invested as he could not use it immediately and that stocks and cash are other sources to make up the money so as not to lose the value, if not invested.

Witness claimed that the University fund fixed was Endowment money and that the approval of the Accountant –General was not necessary before fixing same since it was a third party fund

He further said that an account was opened in the name of The Federal University of Technology, Akure, first, in Stanbic / IBC at 4% which was later moved to Wema Bank at 11% and that both capital and interest were rolled over to TSA (Treasury Single Account) on the instruction of the Federal Government in 2015.

DW3 claimed that he travelled with his wife and children in 2015 and also that the University statute allows donations and gifts and that it was on that basis, that some gifts were made to some of the University's benefactors in appreciation.

He explained that the gift to him during his daughter's wedding came as a surprise as he was not aware and that it was approved to him by the Governing Council through its chairman. He further stated the following categories of persons that the University give gifts to as (a) The University Benefactor when celebrating Christmas, Wedding and Burial (b) Prospective Benefactors (C) Friends of the University from the Community such as Governors, Obas, Religious Leaders, the less privileged People which he all referred to as Social Corporate Responsibility.

The first defendant confirmed that he received Audit Query from the Auditor-General of the Federation but that he was not around when the team visited the University, otherwise, he would have shown them the University Law, that the Governing Council superintends over the University's affairs. He further said that he met the Director and gave them a copy of four Laws in addition to his response to the query.

DW3 stated that an agreement was reached in a meeting where he represented Federal Universities in Nigeria with the Accountant –General, Auditor –General and National University Council on the need to train Auditors in the University Department of their offices on the peculiarity of the University system/structure and especially the Autonomy Act.

He finally said that the Auditor- General did not take any further step until he left office.

Under cross examination by the 2nd Defendant's Counsel, DW3 emphasized that he was the Chief Executive and overall Academic Head of the University and he was appointed in 2012 while the 2nd Defendant with others were appointed in 2014 under his leadership which position, he claimed were duly advertised in national dailies in the North and South as well as the University's website.

The 1st Defendant stated that the 2nd Defendant is a principal officer by their law who was employed under due process of the University and whose duty is advisory while the decision lies with him. The 1st Defendant confirmed that the #100,000,000.00 fixed deposit was authorized by him in accordance with their statute and that the 2nd Defendant is not a council member who will only be at the council meeting when called upon and that he has no voice as to who receives gifts or benefits from the University. He further said that the 2nd defendant is a professional who is to answer the questions put to him.

When cross examined by the prosecution Counsel, witness confirmed that the Federal Government is the owner of The Federal University Technology, Akure and that the Governing Council members are appointed by the Government. He further stated that his salary excluding other benefits are regulated by the Federal Government and that his salary is regulated by special political appointee salary Scale.

The University, the 1st Defendant said is a Public Service guided by its own Laws and that the Governing Council, by virtue of the Autonomy Act grants welfare in three ways to every category of Staff, the Vice-Chancellor inclusive.

Witness confirmed that he deferred his biennial leave in 2014 and that he went for it in 2015.

He further stated that by the University Law, the University Statute takes precedent over a Federal Government Regulations when there is a conflict

He restated that Endowment Funds does not belong to the Government in that they are third party fund with the University such as Research Grant which could be from other Universities and emphasized that the money was moved to TSA Account with Central Bank.

Witness said that the University had borrowed money from the Endowment fund for accreditation exercise which was later returned when the IGR became buoyant which is not virement, not being a government allocation that was used for that purpose. He restated that the response to the Auditor-General's query was both oral and in writing and that this was mentioned to the Investigators but that he could not present them with a copy because they were hostile to him.

DW3 finally said that it is his duty and portfolio to collect and keep in safe custody the University's money as an arm of government and to be prudent with it, which he claimed he did to the best of his abilities and said that the Visit of the Auditor-General was not the first to the University which will not also be the last and that the Auditors were ignorant of the University Statute.

The 2nd Defendant at this stage elected to rest his case on the evidence had so far before the court. Defence then closed its case on 10/10/2018 and parties were ordered to file their written addresses.

In his address, The Learned Counsel to the 1st Defendant, Mr. Adebayo Adenipekun, SAN, citing the cases of **NNAJIOFOR V. PEOPLE OF LAGOS STATE (2015) LPELR 24666 (CA)** and **USUFU V. STATE (2008) ALL FWLR**

(PT.405) 1731 AT 1746, PARAS F-H (CA) commended to the court the burden of proof on the Prosecution, to wit; prove beyond reasonable doubt in which case, the Defendant is not obligated to prove anything as the presumption of innocence inures in his favour.

The Learned Senior Counsel submitted that the Prosecution has failed to meet the high standard of proof placed on it by law which created many doubts to be resolved in favour of the 1st Defendant.

Counsel contented that there were crucial bits of the prosecution's own case that favoured the 1st Defendant and negates the imputation of criminal conduct against him.

One issue was thus formulated, to wit: whether having regard to the many lapses in the prosecution's case and the failure of the prosecution to establish all the ingredients of the crimes alleged against the 1st defendant, this court ought not to discharge and acquit the 1st defendant.

On the offence of obtaining money by false pretence in counts 1-7, Learned Counsel referred to the cases of **OSHIN V. IGP (1961) 1 SCNLR 40 AND CONFIDO CONSULT SERVICES LTD V. FRN (2018) LPELR-43676 (CA)** in setting out the ingredients of the offence.

He opined that the 1st Defendant did not obtain Rent Allowances under false pretence as a community reading of Exhibits P4, P5, P10 and P12 show that Rent Allowance has been in operation before the 1st Defendant became the Vice-Chancellor which is as contained in his Letter and Memorandum of Appointment and which fact were confirmed by PW1 & PW2.

He argued further that the admission by PW8 that Universities in Nigeria enjoy the provision of the Autonomy Act and that it is the Governing Council of a University

that appoints and fixes the terms of employment of the Vice-Chancellor, as well as PW7's testimony that Rent and Leave allowances were contained in Exhibit P5, which is what he used for the 1st Defendant's successors, provided it is contained in the University Budget, all show that the 1st Defendant did not fraudulently obtain the Rent and Leave Allowances.

The Learned Senior Counsel further argued that it was the justification of the 1st Defendant that he maintains his own house outside the University where his family live, which he needs to still maintain but that he was compelled by the Governing Council of the University, who superintends the finance and property of the University to live within the University premises rent-free without paying economic rent, a decision he argued was taken at a time the 1st defendant was not a member of the Governing Council, hence, his entitlement to housing allowance and justification for not paying economic rent.

Counsel submitted that having regard to the Governing Council's role in waving payment of economic rent, there is no evidence that the 1st Defendant ought to have known that he should pay economic rent to the University and as such, there was no intention to defraud, since the 1st Defendant did not play any role in fixing, disbursing and paying the rent allowance and as such, the owner could not have been induced by him.

He further referred to PW4 evidence which he said clearly summarized the 1st Defendant as someone who detest corruption and illegality and submitted that fraudulent intent had not been proved by the prosecution against the 1st Defendant.

Senior Counsel argued that by the provision of Section 1 (2) of the Advance Fee Fraud and Other Related Offences Act, 2006, the Prosecution is required in counts 1-5 of this case to prove that the 1st Defendant had deceived the Governing Council of Federal University of Technology, Akure, by telling them that he had already

paid rent or that he had promised them that he would pay economic rent, which he submitted was not so proved by the Prosecution.

The Learned Senior Counsel further referred to Section 20 of the Advance Fee Fraud and Other Related Offences Act, 2006 as well as Exhibits P5, P13 & P14 in submitting that the 1st Defendant did not obtain Leave Allowances under false pretence.

He canvassed that the 1st Defendant had applied for the biennial leave with the clear intention to act on it in the future and as such, was incapable of making a false representation about a trip he had not yet embarked upon which could have made him liable. Reference was made to the case of **LAWAL V. THE QUEEN (1963) ALL N.L.R. 174.**

Counsel contended that Exhibit P45 stated the reason for the deferment of the 2016 Biennial leave, which reason was also confirmed by the Prosecution's witnesses and that the prosecution's contention that the 1st Defendant had no Brazilian Visa for 2016 was irrelevant, as the claim of the 1st Defendant was not that he had gotten a Brazilian Visa but that the crisis in the University prevented him from procuring one.

He also referred to Exhibit P43 in submitting that the 1st Defendant had travelled to Brazil before, in opposition to the Prosecution's case that he did not embark on the 2014 Biennial Leave.

Senior Counsel elucidated that the fact that Exhibit P1 was written on 12th of September, 2016 while Exhibit P14 was to take effect from 18th September- 17th October, 2016, in which time, crisis engulfed the University and the making of Exhibit P7 in September, 2016, the 1st Defendant could not have proceeded on the 2016 biennial leave. He further submitted that the 1st defendant having been invited

to EFCC, Ibadan on 5th of October, 2016 before he was given administrative bail and arraigned on the 14th of February, 2017 could not be alleged of not embarking on the 2016 Biennial leave within this time, which would have amounted to jumping bail; moreover, when the 1st Defendant's passports were seized by The Economic and Financial Crimes Commission on the 21st & 28th of November, 2016, which application for release was vehemently opposed by the prosecution. He referred to the case of **HEMBE V. Federal Republic of Nigeria (2014) LPELR-22705(CA)** in submitting that the 1st Defendant rescheduled his trip due to the unforeseen occurrences that sprung up in the University and he could not be held guilty of the offence of fraudulently obtaining the money for the leave.

Referring to DW1's evidence counsel contended that the leave allowance is not subject to retirement and having become that of the 1st Defendant who was at liberty to use it the way he likes, the 1st Defendant could not be convicted for defrauding himself of his own money. The ingredients for the offences of Obtaining by false pretence, Counsel argued are conjunctive and failure of the prosecution to prove one amount to failure to prove all, he then urged the court to resolve the doubts in favour of the 1st defendant.

The Learned Senior Counsel postulated further that the provisions of section 1(2) of the Advance Fee fraud and other related offences Act, 2006 seeks to protect the owner of a property from being deceived into parting with it but that in this instance case, there has been no complaint from the owner of the property.

Senior Counsel contended that the #100,000,000 fixed deposit in which the 1st Defendant was alleged to have conspired to steal in counts 8 & 9 were fixed in the name and account of the Federal University of Technology, Akure and that the said illegality in fixing the sum was not an enactment of the Federal Republic of Nigeria but a circular from the office of the Auditor-General which Circular,

Counsel argued could not impose a criminal liability as provided by section 36 (12) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); More so when the sum fixed and the interest that accrued had been rolled over to the Treasury Single Account on the implementation of the policy by the Federal Government. He submitted that except in so far that the Prosecution is making the Federal Government, who is in the custody of the sum a party to the said conspiracy.

He however argued that the decision of the prosecution to try the Defendants for the sum fixed was not a product of investigative findings especially when both PW3&PW5 claimed that there is yet no response from Wema Bank to ascertain whether or not, any sum was fixed on behalf of The Federal University of Technology, Akure.

The Learned Silk however contended that going by Exhibit P15 and the evidence before the court, the prosecution was aware of the fixed deposit as well as the roll over to TSA but decided to conceal such facts, not being favourable to its case. The case of **R V. STINCHCOMBE (1992) LRC (CRIM) 68 AT 73 PARAS B-D** was referred to.

He further submitted that by the evidence before the court, the #100,000,000.00 fixed deposit was an Endowment Fund which does not belong to the Federal Government strictly and as such, the approval of the Accountant -General of the Federation was not needed before such is fixed, which ownership, he submitted was mistaken by the Auditor -General as well as the Prosecution.

Counsel submitted that the Defendants only acted in line with section 3(1) (m) of Exhibit P2 in fixing the sum, who had rolled over the principal and interest 10 months before Exhibit P1 and as such, there was no evidence to steal or conspiracy to steal as there was no deprivation from the owner or an agreement to so defraud

the owner. Reference was made to **OYEBANJI V. STATE (2015) LPELR-24751 (SC)**.

He further opined that the prosecution hurriedly charged the 1st Defendant on a supposed Audit Report which was not a final Report and that the possibility that there could be a final Report stating otherwise has created doubt and urged the court to resolve same in favour of the 1st Defendant and that even if there is a final report, it is premised on a circular which the Universities by virtue of the Autonomy Act as acknowledged by the prosecution witnesses are allowed to differ from, being inconsistent with The Federal University Technology, Akure Statute.

Learned Senior Counsel argued further that the supposed Financial Regulations was not placed before the court and since the court is not to take judicial notice of such, the existence of the said Financial Regulation is in doubt. On reference to the Audit Report, Counsel argued it was only made in Exhibit P1, whose author was neither called as a witness nor crossed examined. The case of **BELGORE V. AHMED (2013) 8 NWLR (PT.1355) 60 AT 100** was cited. He urged the court not to attach probative value to the said Financial Regulation.

Counsel further submitted that the prosecution failed to prove the ingredients of the offence of abuse of office against the 1st Defendant, save that he was a public officer.

On counts 10-16 on the offence of use of office to confer corrupt advantage, Counsel referred to the evidence of PW4, PW6, PW9, Exhibits P20-P27 in submitting that the collection of Vice-Chancellor's lodge and security Imprest has long been in operation before the 1st Defendant was employed which sum, are not paid until the system checks are complied with before and after the sum are paid by PW9, who testified that no one has ever pressurized nor influenced him to so do.

He argued that the prosecution did not prove that any of the laid down processes were not followed by the 1st Defendant in his collection of Imprest. He further elucidated that the Lodges Imprest which was used for the three lodges does not belong to the Vice-Chancellor or any of his associates, as it belongs to The Federal University Technology, Akure and hence, the charge of undue advantage cannot be sustained.

Senior Counsel asserted that it is the evidence before the court by Exhibits P38, P32H, P32E, P33, P42, and the testimony of PW9 that the Federal University of Technology, Akure is allowed by its Statute to make gifts, which were duly evidenced by Payment Vouchers and which in some instances were approved by the Pro- Chancellor/ Chairman of the Governing Council and hence, the 1st Defendant could not be said to have conferred undue advantage on himself or associate and that the gift given to the 1st Defendant during his daughter's wedding was raised by the University Registrar and the decision of the Governing Council came to him as a surprise. He therefore urged the court to acquit and discharge the 1st Defendant of all the charges levelled against him.

On his own part, Learned Counsel to the 2nd defendant, Ibukun Fasanmi Esq. submitted that the prosecution failed to prove the essential ingredients of the offence of abuse of office and use of office to confer corrupt advantage against the 1st defendant, which could warrant the 2nd defendant's defence or that could have shifted the onus of rebuttal or proof on the 2nd defendant.

He contended that the charges against the 2nd defendant are to be proved beyond reasonable doubt and any doubt must be resolved in the favour of the 2nd defendant, coupled with the constitutionally guaranteed presumption of innocence. Reference was made to the case of **BABARINDE V. STATE (2014) ALL FWLR PT 717, 606 at 635.**

Counsel further argued that the Prosecution did not have credible evidence on Count 8 against the 2nd defendant as there was no proof that the alleged money was stolen by the 2nd defendant and hence, conspiracy to steal the fixed Sum could not be established. He submitted that the 1st Defendant under cross examination admitted that he was in charge of the administration of The Federal University of Technology, Akure while in office as the Vice-Chancellor and that the directions and matters from the office of the 2nd Defendant were mere advisory and subject to his final decisions; hence, the 2nd Defendant only discharged his official duties as confirmed by 1st Defendant.

He then submitted that the complaints were borne out of PW1's huge gap in the knowledge of the University administrative management since PW1 admitted that he did not investigate the contents of Exhibits P2&P3 brought to him by his members and that, he was bereft of the working knowledge of the Inter-Department relationship of the Bursary department with other departments of the University, particularly, the Vice Chancellor and The Governing Council.

He canvassed that the 2nd Defendant had nothing to hide when he complied with the Federal Government policy on TSA which informed Exhibit P15; especially when the prosecution witnesses admitted and or conceded to the transparent and meticulous process for official procedures and particularly the Bursary Department, superintends by the 2nd defendant.

He further elucidated that the Prosecution did not prove that the 2nd Defendant used his office for an arbitrary act, which is prejudicial, as the evidence before the court is to the effect that the fixed sum was done in the overall interest of The Federal University of Technology, Akure, with higher yielding interest rate of 12.5%, more so, when the fixed sum was neither in the name of the 2nd Defendant, nor found in his account as confirmed by the prosecution's witnesses who claimed they still

await the response of Wema Bank on the confirmation of whether or not the alleged sum was fixed on behalf of The Federal University of Technology, Akure and if the alleged interest was rolled over to TSA.

Learned Counsel urged the court to review the evidence of PW3 under cross examination as it lacks consistency and coherency. Counsel cited the case of **AYANWALE V. ATANDA (1988)1 NWLR (PT 68) 22 AT 35.**

Counsel argued that the totality of evidence on the charges against the 2nd defendant on using his office to confer corrupt advantage on self can not rebut the presumption of regularity that inures in his favour, who, he submitted was never a beneficiary of any of the fund approved by the Vice- Chancellor or the Governing Council, nor was he alleged to have falsified payment Vouchers.

Learned Counsel argued further that the evidence of the 1st Defendant admitting that the 2nd defendant carried out his duties with utmost professionalism were not rebutted by the Prosecution and that the arraignment of the 2nd defendant could only to his mind, be described as a mis-joinder of party.

Counsel finally submitted that the charges against the 2nd Defendant was misconceived, having regard to the powers and duties donated to the office of the Bursar by the University Enabling law and urged the court to hold that the Prosecution failed to prove all the allegations against the 2nd Defendant beyond reasonable doubt and should acquit and discharge the innocent 2nd Defendant.

Addressing the court on the charges against the 1st defendant, the Learned Prosecution Counsel, Dr. Ben Ubi, Esq formulated a sole issue, to wit: whether the prosecution had proved its case beyond reasonable doubt against the 1st defendant.

Counsel referred to the case of **ALAKE V. THE STATE (1991) 7 NWLR (PT.205) PAGE 567 @592, PARAS G-H**, in stating the ingredients of the offence

of obtaining money by false pretence and opined that the offence can be committed in writing, orally or by the conduct of the defendant. He further stated that the intent to defraud does not need to be on anyone in particular as it suffices if anyone is prejudiced by the fraud. He cited the case of **UWAKWE V. STATE (2015) ALL FWLR PT.802.P.1618 AT PP.1635-1636**

He submitted that the evidence of the prosecution clearly show that the 1st defendant was receiving rent allowance, Imprest for VC lodge and Security as well as Biennial leave allowances upon the representation that he was entitled to same and was to use it for the purpose they were met for but which representation turned out to be false. Counsel further submitted that the 1st defendant had by Exhibits P9 & P9B admitted the collection of the lodge & security allowances and that the justification that such preceded his office can not avail him as repetition of wrong doing does not make an unlawful act lawful. Relying on section 28 of Evidence Act, 2011 as amended and the case of **BASIL AKPA V. STATE (2008) LPELR-368 (SC) 26, PARA, A**, Counsel urged the court to hold that the admissions of the 1st Defendant is enough for his convictions without more.

He further elucidated that the 1st Defendant was not entitled to the allowance on his lodge and Security Imprest, but that the University is to provide him with Security. He argued that the 1st Defendant induced the University in receiving rent allowances through the 2nd Defendant without paying economic rent. He urged the court to look into Exhibits P39 & P40 in holding that the 1st Defendant was not entitled to the allowance, since such can not be varied by the oral evidence.

Learned counsel further submitted that the biennial allowances were diverted by the 1st Defendant by investing same in real estate, which he contended, contravenes the extant financial regulations regulating the use of public funds in the public service: further contentions were made by the Counsel that by the evidence of

PW6, it is untrue that the biennial leave allowance was not subject to retirement since public officers are not free to use money given to them for other purposes than it was meant for. Exhibits P14 & P35 (A-D) were then relied on.

He explained that the testimony of DW2 was an after-thought as he failed to show any evidence of payment for the Brazilian Visa after one week that he alleged to have been instructed and contended that the 1st defendant and family by Exhibits P36, P37 & P38 had no valid Visa at the time he obtained the money for the 2015/2016 biennial vacation, which money, counsel contended was paid from an internal account of the Bank not linked to Biometric Verification Number and not easily accessible to investigators.

Counsel contended that collections of Rent Allowance by the 1st Defendant while occupying a Government furnished apartment is contrary to the Federal Government Circular No. SGF.OP/I1 S.31x. 787 dated 9th Oct, 2015, Federal Government Circular No. SGF.OP/I1 S.31x. 804 dated 23rd Oct, 2015 and National Salaries, Income, Wages Commission Ref. No SWC/S/04 I dated 18th January 2007 titled "Consolidated Tertiary Institution Salary structures" (CONTISS).

Counsel further argued that the claimed Autonomy Act only relate to the University running and Academic program and that same does not extend to the ways funds are handled in the University since its major source of revenue is the Federal Government by the evidence of PW9 and more so that most of the expenses require the concurrence of the Minister for it to be effected as the University enabling Act provides.

Counsel referred to the cases of **OKOSUNU V. AG. BENDEL STATE (1985) 3 NWLR (PT.12)283 @ 297, PARAS G-H AND EBENEZER AJE V. STATE (2006) 8 NWLR (PT 982) 345 @361, PARAS G-L** in defining what is Conspiracy and under what circumstance conspiracy can be said to exist. He

argued that the defendants, alongside the Governing Council of The Federal University Technology, Akure entered into an agreement to commit a felony by paying to themselves allowances not contemplated in the Circulars issued by the National Salaries, Income, Wages Commission and Head of Service of the Federation and contended that the Defendants had a common agreement to carry out unlawful act of mismanaging the University Fund while occupying lawful offices in the guise of performing lawful duties. He made reference to the cases of **ATTORNEY-GENERAL OF ADAMAWA STATE V. WARE (2006) ALL FWLR (PT.306)860 SC, IME DAVID IDIOK V. STATE (2006)12 NWLR (PT.993) CA.1**

While placing reliance on section 167 (d) of the Evidence Act, 2011, Counsel submitted that the 1st defendant not having supplied the Investigators the response to the Auditor –General’s query nor having not tendered same in court show that the document neither existed or that same was unfavourable to their case.

Counsel further submitted that the evidence of the 1st Defendant in Exhibit P9 as well as his testimony in court on the source of the money fixed are contradictory. Counsel then contended that by the evidence of PW1, PW5, PW6, Exhibits, P9 P34 and P40, it was clear that the Defendants fixed the University money without necessary approval as enshrined in the Financial Regulations, and the Public Procurement Act, 2007 (the due process handbook) which was an arbitrary exercise of authority and an act prejudicial to the University.

Relying on PW1, PW3, PW5 and PW8 evidence, Counsel argued that the giving of welfare package to the Governing Council members was contrary to the extant Circulars, Regulations and Laws guiding the disbursement of public funds to public officers. He further argued that by the evidence before the court, it is only the National Salaries and Income Commission that is empowered to regulate

Salaries, Wages in the Public Service of the Federal Government and its Agencies, Department, which payments he said were contrary to Section 6(7) of FUTA Act, Cap F23, LFN. Vol 6. 2004. He urged the court by the provision of Section 29 (1)-(3) of the Evidence Act, 2011 to rely on the admission of the 1st defendant in Exhibit P9A that the gifts were given to the council members.

Learned Counsel referred to the evidence of PW1, PW3, PW5, Exhibits P16-27 in submitting that the 1st Defendant who lives in government house within the University, having both civilian security Guard and Armed Police men guarding the campus/ residence lodge conferred undue advantage to himself by using Mrs. Victoria A. Adamolekun, his confidential Secretary to collect the sum of #250,000.00 each for Security and Lodge's Imprest monthly which sum was received twice in November, 2015 without any justifiable reason.

He further submitted that the engagement of the 1st Defendant's wife in the procurement of the lodge's Imprest, who is not a University Contractor or employee is an abuse.

Learned Counsel further canvassed that Exhibits P41 & P42 fall short of legal requirement, contending that, it is the Budget that emanates from the Budget office of the Federation that can authenticate and give evidential value to the documents purported to be FUTA 2015 & 2016 Budget, being the Public Officer who has the custody of the original Budget document assented to by the President and not the Registrar of the Federal University of Technology, Akure. He urged the court to expunge it from its record having been wrongly admitted in evidence. Section 104 of the Evidence Act was referred to and submitted that the certification in the said exhibits has failed to meet the requirements of the law both in form and substance.

He finally submitted that the charges against the 1st defendant had been proved beyond reasonable doubt and urged the court to find the 1st defendant guilty,

convict and sentence him accordingly on all the said counts of the amended information.

The Learned prosecution Counsel contended that the evidence of the prosecution established conspiracy on the part of the 2nd defendant and that it was immaterial whether the 2nd defendant benefitted financially from the outcome of the conspiracy or not. He referred the court to the case of **FEDERAL REPUBLIC OF NIGERIA V. CYRIL (2014) LPELR 23364 (CA) @ P34, PARAS A-E**, that the 2nd defendant can only act on lawful orders of his superior and thus become liable of an offence if by his act or omission carried out an unlawful instruction.

Counsel argued that it is the law that where the Prosecution is able to prove that the defendants are acting jointly with others like in this instant case, the evidence admitted against either the 1st or 2nd defendant or himself is admissible against all. He cited the case of **AGWUNA V. AG, FEDERATION (1995) 5 NWLR (PT. 396) 418 @438, PARAS F-G**.

Counsel referred to the evidence of PW2, PW5, PW6 Exhibits P9 P34 (a-d), P31, P32 (a-h), P33&P40 in submitting that the 2nd defendant as the Bursar of FUTA admitted making the payments alleged on the Vice-Chancellor's lodge, Security Imprest, Biennial Leave and Gifts to members of the Governing Council on the instruction of his superior which Counsel further submitted, were not authorized sums. He urged the court to convict the 2nd defendant of all the charges against him.

On point of law, the 1st Defendant Counsel argued that the case of **UWAKWE V. STATE & ALAKE V. STATE (supra)** cited by the prosecution on the meaning of intent to defraud are inappropriate as there are no record or evidence of pretence on the part of the 1st defendant.

He further submitted that the Prosecution cannot rely on the extra-Judicial statements of the 1st defendant in determining the guilt of the offence for which he was charged as same was not tendered by the maker but by PW3, moreso when the 1st defendant was not confronted with same under cross examination. Relying on the cases of **OPOLO V. THE STATE (1977) 11-12 SC (REPRINT)** and **UTTEH V. THE STATE (1992) 2 NWLR (PT.223) 257 AT 269, PARAS B&C**, Counsel submitted that an extra-judicial statement in a criminal trial may be hearsay if a statement is tendered by someone other than its maker for the purpose of establishing its content as true but will not amount to hearsay if it is just for the purpose of establishing that it was made.

He then urged the court not to attach any probative value to the extra-judicial statement in the event that the prosecution can rely on same.

He further submitted that the Prosecution lost sight of the charges against the 1st defendant in its address, more particularly on Counts 1,6,7,11& 12 and went ahead to give explanations not proffered by any of the prosecution's witnesses. He then commended to the court the case of **AB/EFCC/03/2016. FRN V. SENATOR ADESEYE OGUNLEWE & 2 ORS** in submitting that a person cannot be convicted for receiving an allowance which he did not fix or approved for himself but which was so approved by the Governing Council, having been so fixed before such appointment.

He argued that the Prosecution extended the charges to persons and issues not before the court by adding double collection of Imprest, review of wages and payment of the biennial leave allowance from the suspense account of the University, domiciled in IBTC, not linked to BVN, conspiracy on allowances paid, in its address.

Senior Counsel referred to the case of **STATE V. ENABOSI (1966) ALLL NLR 116** in arguing that there is no confessional statement in the instance case as a narration of incidents that occurred cannot amount to an unequivocal admission of guilt.

He submitted that the evidence of PW1 on mismanagement is hearsay evidence as the members who he claimed to have informed him of the various acts of illegality allegedly perpetrated by the 1st defendant were unnamed and unidentified and as such, inadmissible. He cited the case of **NIGERIA PORTS AUTHORITY V. AMINU IBRAHIM & COMPANY (2010) 3 NWLR (PT.1182) 487 AT 500.**

He further submitted that there can be no imputation into a Statute what is not mentioned and the submission of the Prosecution that the Autonomy Act does not extend to Finance can not be read into the provisions of the Act. He finally concluded that the prosecution failed to discharge the burden placed on it beyond reasonable doubt.

Addressing the court on point of law, the 2nd Defendant Counsel submitted that the prosecution failed to state the laws contravened by the 2nd defendant in the exercise of his statutory official assignment in the proof of the charges against him and argued that the cases of **OKOSUN V. AG BENDEL, AGWUNA V. AG. FEDERATION, NWAKO V. STATE** were misconceived by the Prosecution who misapplied the ratio of the judicial decision and contended on the strength of the case of **OKAFOR V. NNAIFE (1987) 4 NWLR (PT. 67) 129** that judicial decisions can only be an authority of another decision where the facts and circumstances are the same.

Relying on the case of **OKONGWU V. NNPC (1989) 3 NSCC 118 AT 123**, Counsel argued that where an adversary failed to proffer an argument in direct

response to a submission, it is deemed an admission and urged the court to so hold on points that were not addressed by the Prosecution in its address.

He further agreed that the Prosecution was uncertain on the position of the law on the propriety or otherwise of the consent of the Accountant- General or the Auditor – General as well as the National Income Salaries and Wages Commission and further contended that the Court cannot pick from these contradictory and incredible evidence. **BOYMUKA & ORS V. THE STATE (1976) 9-10 SC** was cited.

He urged the court to pay particular attention to the conclusion of the Prosecution's address and consequently acquit and discharge the 2nd Defendant of all allegations and charges against him.

Above represents the conspectus of evidence led in this case and submission of Counsel in their respective written addresses.

I have given an intimate reading to the charges preferred against the 1st and 2nd Defendants. I have also evaluated the evidence and exhibits tendered as well as considered the addresses of Counsel.

I believe the main issue for determination is whether the Prosecution has proven the charges against the Defendants beyond reasonable doubt.

By way of prelude, it was observed that after the close of the 1st defendant's case, the 2nd defendant rested its case on the evidence before the Court.

I agree that one of the options opened to a Defendant in a criminal proceeding when called upon to open his defence is by resting his case on that of the prosecution.

The 2nd defendant in this case has therefore acted within his right by resting his case on the evidence before the court and all exhibits tendered.

I am at one with the decision of the court in the case of **BLAISE VS. FRN (2017)6NWL RPT1560@128** wherein it was decided that by resting his case on the prosecution's case, the accused adopts the evidence led by the prosecution in its entirety and declines to give evidence or call witness in his defence which must succeed or fail upon such evidence adduced by the prosecution.

The court further held that where this procedure is adopted, the accused or his counsel is to address the court on all relevant matters raised; the effect of which is that the accused cannot subsequently have an opportunity of calling witnesses in the course of the proceedings and the court is to deliver a final judgment.

It is therefore my opinion that the 2nd defendant in this case having cross examined the prosecution and 1st defendant's witnesses and also filed a written address by his counsel has acted within his right, it is therefore for the court to decide whether the 2nd defendant can succeed or fail upon the evidence adduced before this court.

I will now proceed to address the issues before the court.

The prosecution had contended that the 1st defendant obtained money under false pretence as Rent and Biennial Leave allowances in Counts 1-7 of the 2nd amended Information.

The Court gave a judicial interpretation to the offence of False Pretence in the case of **IFEANYI V. FRN (2018) 12 NWLR (PT.1632) 164 @ 184, PARAS A-B** when it held that false pretence means a representation, whether deliberate or reckless, made by word, in writing or by conduct of a matter of fact or law, either past or present, which representation is false in fact or law and which the person making it knows to be false or does not believe it to be true.

Furthermore, the court in the case of **DURU V. FRN (2018) 12 NWLR (PT1632)20 @43, PARA D** stated that the offence of obtaining by false pretence denotes the crime of knowingly obtaining title to another person's property by misrepresenting a fact with intent to defraud that person.

The court thereafter at pages 43-44 set out the essential ingredients of the offence of obtaining by false pretence, which the prosecution must prove as follows:

- a) That there was a pretence
- b) That the pretence emanated from the accused person
- c) That it was false
- d) That the accused person knew of its falsity or did not believe in its truth
- e) That there was an intention to defraud
- f) That the thing is capable of being stolen; and
- g) That the accused person induced the owner to transfer his whole interest in the property.

It is apposite to state that the 1st Defendant was employed by the Governing Council of The Federal University of Technology, Akure on the terms and conditions as contained in Exhibits P4 & P5.

Items 3, 4, 5, 8 and 9 of Exhibit P5 relates to the benefits on Accommodation, Travelling and Biennial Leave. Item 12 of the said Exhibit, specially provides and I quote:

“The Vice- Chancellor shall be entitled to the benefits of any Scheme of allowance allowed to Senior Academic Staff in Accordance with the regulations

prescribed from time to time By the Council with regard to such benefits''

The 1st Defendant had testified that he was entitled to live in the Vice- Chancellor's Lodge Rent-Free without paying economic rent as approved by the Governing Council before he was appointed the Vice- Chancellor. The prosecution did not contest the terms of the said Letter and Memorandum of Appointment as contain in Exhibits P4 &P5.

PW3 & PW5, The Investigative Officers in this case stated that the Vice-Chancellor is to receive accommodation allowance and pay Economic Rent on the University apartment occupied, which PW8 said was as earlier agreed in a negotiation between The Federal Government and Workers Union in the University; this, the prosecution did not substantiate by evidence to vary the contents of Exhibit P5.

PW1, the Chairman of the Non- Academic Staff of The Federal University of Technology, Akure who testified that exhibit P1 was written by their Lawyer, confirmed that the Governing Council of The Federal University of Technology, Akure superintends over the property, finance and policy of the University.

The prosecution did not challenge the authority of the Governing Council of The Federal University of Technology, Akure before this court in relation to the terms and conditions contain in the Letter and Memorandum of Appointment of the 1stDefendant.

Section 6(5) of the Federal Universities of Technology Act, Laws of the Federation of Nigeria, 2004 (Exhibit P2) provides:

Subject to this Act and Statutes, the Council and the Finance And General Purposes Committee may each

make rules for the Purpose of exercising any of their respective functions or of regulating their own procedure.

Exhibit P40, which is a letter from the National Salaries, Incomes and wages Commission in response to The Economic and Financial Crimes Commission investigation on the receipt of rent which stated that the 1st defendant should pay economic rent to the University on the lodge occupied cannot vary the content of Exhibits P4, P5 and P6; the exhibits, having stated the terms and conditions upon which the 1st defendant was employed, without adding that economic rent is to be paid.

PW1's assertion that some staff who live on the University Campus pay Rent and Housing allowance through deductions from their Salaries, was not supported by evidence before this court, particularly when PW3 testified that the 1st Defendant's predecessors in office was not investigated in ascertaining whether or not the 1st Defendant was to pay economic rent as alleged.

Before this court is also Exhibit P3 (Federal Republic of Nigeria, Official Gazette, The Universities (Miscellaneous provisions) Amendment Act, 2011) which provides in sections 2AA and 2AAA as follows:

2AA "The powers of the Council shall be exercised as in the law and Statutes of each University and to that extent establishment Circulars that are inconsistent with the Laws and Statutes of the University shall not apply to the Universities"

2AAA "The Governing Council of a University shall be free in the discharge of its functions and exercise of its responsibilities for the good management, growth and development of the University"

It is also on record that PW5, one of the Investigating Officers admitted that his Team did not request for the Laws establishing the University and that he did not also find out whether or not, it was the University Council that fixed the 1st Defendant's emolument.

The submission of the Prosecution Counsel that the collections of rent allowance by the 1st Defendant while occupying a Government furnished apartment is contrary to the Federal Government Circular No. SGF.OP /I/ S.3/x/ 787 dated 9th Oct, 2015, Federal Government Circular No. SGF.OP/I/ S.3/x/ 804 dated 23rd Oct, 2015 and National Salaries, Income, Wages Commission Ref. No SWC/S/04/S.301/I dated 18th January 2007 titled Consolidated Tertiary Institution Salary structures (CONTISS) does not hold water in the light of the provisions of Section 2AA and 2AAA of Exhibit P3 (Federal Republic Of Nigeria, Official Gazette, The Universities (Miscellaneous provisions) Amendment Act, 2011), more particularly when Circular 787 referred to relate to allowances payable to non-executive or part time Chairmen and members of Governing Boards of Federal Government Parastatal, Agencies and Commissions, Circular 804 is a replacement of re-imburement of expenses incurred on hotel accommodation with the Duty Tour Allowance extended to non- Executive and Part –Time Chairmen, Members and Directors of Governing Boards of Agencies in taking care of their boarding and lodging while National Salaries, Income, Wages Commission Ref. No SWC/S/04 I dated 18th January 2007 titled Consolidated Tertiary Institution Salary structures (CONTISS) is a Structure which applies to the non-academic staff of Universities.

Assuming but without conceding that the above circulars relate to the collection of rent allowance by the 1st Defendant in his official capacity as the Vice- Chancellor of The Federal University of Technology (Which in any event, is not), the said

circulars cannot negate the terms and conditions fixed for the office of the Vice-Chancellor of the University as it relates in this instant case, to the 1st Defendant in Exhibits P4, P5 & P6 vis a vis the powers of the Governing Council in Sections 2AA and 2AAA of Exhibits P3. See the case of **MAIDERIBE V. FRN (2014) 5 NWLR (PT1399)68@92, PARAS G-A** where the Court held that “.....an order contained in a legal notice qualifies as an existing law but that the Circular (Exhibit p3), not being contained in a legal notice, did not qualify as an Order, Act, Law, Statute or legal Instrument issued by the Federal Ministry of finance.....”

For the above reasons, I am more inclined in believing the narration of the 1st Defendant that he was not to pay economic rent to the University vis a vis the above mentioned Exhibits and more particularly the failure of the Prosecution to prove otherwise.

Furthermore, the Prosecution had alleged that the 1st defendant with intent to defraud obtained certain sums of money (as contained in the Counts) by falsely representing it to be for his Biennial Family vacation, which representation, the 1st defendant knew to be false.

It is before this court that the 1st Defendant by virtue of Exhibits P4, P5 and P6 is entitled to a biennial oversea leave at the expense of The Federal University of Technology, Akure.

Exhibit P13 and its attachments evidenced the request, approval and subsequent deferment of the 2014 biennial leave while exhibits P35 and P45 show the request and deferment of the 2016 Biennial Leave.

The court takes cognizance of the contents of exhibit P13 attachments which was a request for the deferment of the 2014 biennial leave due to a cluster of activities on

the part of the 1st Defendant as the Vice- Chancellor. The concluding part of that exhibit reads

.....on the basis of the foregoing, I write to defer the utilization of the 30 days leave till a more convenient time for the University, BUT TO ENJOY THE FINANCIAL BENEFITS NOW.....(EMPHASIS MINE)

It is worthy of note that the said Exhibit P13 addressed to the Pro- Chancellor and Chairman of the Governing Council has as an attachment, the financial benefit for the biennial leave calculated by the Bursar of The Federal University of Technology, Akure for the year 2014 as contained in Exhibit P5.

DW1's evidence that he later embarked on the 2014 Biennial leave in 2015, was corroborated by the evidence of DW2 who testified that he had earlier processed a Visa for the 1st Defendant's biennial leave in 2014. More particularly, Exhibit P43 show that the 1st defendant had a Brazilian Visa. The contention by the prosecution that the 1st Defendant did not embark on the 2014 biennial leave was therefore not substantiated by evidence.

The court also take note of the fact that Exhibit P1 which led to this trial was written on the 12th of September, 2016 while Exhibit P7 (Request for payment of One Year Productivity Allowance Staff Package addressed to the 1st Defendant) was put forward on the 15th of September, 2016, Exhibit P9 (The Statement of the 1st defendant at The Economic and Financial Crimes Commission, Ibadan) was on the 5th of October, 2016. All these happened within the time stipulated for the 1st Defendant's 2016 biennial leave between 18th September 2016 and 17th October, 2016; I am more inclined in believing the 1st Defendant's narration that these unforeseen circumstances prevented him from embarking on the 2016 Biennial leave, which necessitated Exhibit P45 (the leave deferment).

DW1's evidence that the biennial leave was an earned allowance which sum is not subject to retirement, was corroborated by the evidence of DW3, the then Chief Accountant and Deputy Bursar between 2012-2017 at The Federal University of Technology, Akure, who testified that the biennial leave allowance can be referred to as a leave bonus, which one is entitled to whether it is used or not and which allowance can be used any way the owner likes. This, was not rebutted by the Prosecution who has a duty to prove its case beyond reasonable doubt, either by presenting Council member (s) or other evidence (s) to prove otherwise.

The prosecution did not prove that the collection of the rent and leave allowances by the 1st defendant was falsified or that it did not go through the laid down procedure of the University. PW9, a Senior Accountant at the Bursary Department had testified that various checks and procedures must be complied with before any payment is made, particularly to ascertain whether or not there is money in the Vote-head to accommodate such payments. I beg to say that this is a clear confirmation by the prosecution's witness indicating that the 1st Defendant was paid for the rent and biennial allowances because it was so provided for by the University Budget. Exhibits P35, P35A and P35B are in consonance with P35D which show that the sum approved was so collected by the 1st Defendant, without more.

PW2, a Stanbic Bank Compliance Officer who monitors suspicious transactions had explained the lodgements in the Bank Statement of the 1st Defendant in relation to biennial leave and he categorically stated under cross examination that he is not aware of any suspicious lodgement on the part of the Defendants.

There is no evidence before this Court that the 1st Defendant obtained title to the property of The Federal University of Technology, Akure by misrepresenting the

fact that he was entitled to Rent without paying economic rent as well as the collection of Biennial Leave allowance with intent to defraud the University.

The prosecution did not prove the elements of pretence or the intention to defraud The Federal University of Technology, Akure or the Governing Council on the part of the 1st Defendant.

I agree in entirety with the decision of the court, in the case of **MOHAMMED V. STATE (2014) 2 NWLR (PT.1390) 44@76, PARAS A-B**, wherein it was held that once the prosecution fails to establish the ingredients of the offence charged and where there are doubts in the mind of the court as to whether or not it was the accused who committed the offence, such doubts should be resolved in favour of the accused. See the case of **DURU V. FRN (SUPRA)**.

I therefore hold that the Prosecution has failed to prove Counts 1,2,3,4,5,6 and 7 of the 2nd amended information against the 1st defendant.

Moving on, the prosecution charged the 1st and 2nd Defendants with the offence of conspiracy to steal in Count 8 and alleged that the Defendants with intent to defraud conspired to commit a felony, to wit: illegally place on fix deposit the money of The Federal University of Technology, Akure in a Wema Bank account No: 11300002035. The prosecution placed reliance on Exhibit P39, which is a letter from the office of the Accountant- General of the Federation.

In giving meaning to the offence of stealing provided for in Section 383(1) of the Criminal Code, Laws of Oyo State of Nigeria, which is in pari material with section 516 of the Criminal Code, Ondo State, 2006, the Court in the case of **FRN V. AMAH (2017) 3 NWLR (PT.1551) 139@167, PARA C**, held that 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.

Furthermore, the court held that to sustain a charge of stealing against an accused person, the prosecution must prove:

- (a) That the thing stolen is capable of being stolen
- (b) That the accused had intention of permanently depriving the owner of the things stolen
- (c) That he was dishonest
- (d) That he had unlawfully appropriated the thing stolen to his own use.

I have perused exhibit P39, which is a response from the office of The Accountant-General to the Chairman of The Economic and Financial Crimes Commission in the course of this case, stating that the Vice-Chancellor has no authority to fix the University's fund realised from school fees and to expend interest from deposit without the prior approval of the Accountant-General which action contravenes FR3206 and FR3207.

It is on record that the 1st defendant testified that the #100,000,000 fixed deposit was an Endowment fund gotten from third party, which does not belong to the Federal Government, *stricto sensu* and as such, not within the confine of the fund, which needs the consent of the Accountant-General before it is fixed.

The 1st defendant further stated that the University had borrowed money from the Endowment fund for accreditation exercise which was later returned when the IGR became buoyant.

PW5, who is one of the Investigating Officers in this case had stated in evidence that he could not remember if the 1st defendant told him that the #100,000,000 fixed deposit was University Endowment fund and that he is not aware that Universities all over the world have Endowment fund. Witness also confirmed that

his Team does not have a response from Wema Bank in their enquiry as to whether the defendants benefitted from the fixed money or not.

From the foregoing, I am more inclined in believing the testimony of the 1st defendant which was corroborated by Exhibit P9 that the fund fixed was an Endowment fund, more particularly when the Prosecution witness admitted that he was ignorant of University Endowment fund all over the world.

This has created a doubt in the case of the Prosecution and same is accordingly resolved in favour of the defendants. See the case of **ADELEYE V. STATE (2015) 3 NWLR (PT1446) 229@251, PARA E.**

I therefore hold that the fixing of the #100,000,000 fund by the 2nd defendant on the instruction of the 1st defendant was a lawful exercise in line with the powers of each University and their exercise. Section 3 (1) (m) of exhibit P2, provides:

SUBJECT TO ANY LIMITATIONS OR CONDITIONS IMPOSED BY STATUTE, to invest any moneys appertaining to the University by way of endowment, not being immediately required for current expenditure, in any investments or securities or in the purchase or improvement of land, With power from time to time, to vary any such investments and to deposit any moneys for the time being invested, with any bank on deposit or current account (Emphasis Mine)

It is crystal clear that the powers of the University in fixing the #100,000,000 Endowment fund could only be limited by a statute. Even though, the alleged Financial Regulations 3206 and 3207 were not placed before this court, such

Circulars (not being a statute) cannot vary the provisions of Section 3(1) (m) of Exhibit P2.

See the case of **GEORGE V. FRN (2014) 5 NWLR (PT1399) 1 SC@28, PARA C-F** wherein the court held inter alia

.....the Circular (Exhibit p3), though made by a competent authority, is not an Act of the National Assembly, a law of a State or a Subsidiary Legislation or instrument under the provision of a law`

Furthermore, the court in the case of **MAIDERIBE V. FRN (SUPRA) AT 92, PARAS A-F** held that.....*Departmental Circulars are a common form of administrative documents by which instructions are disseminated. Many such circulars are identified by serial numbers and published, and many of them contain of general statements of policy. They are therefore of great importance to the public giving much guidelines about governmental organization and the exercise of discretionary powers. In themselves they have no legal effect whatsoever, having no statutory authority. In this case, the Circular, exhibit P3 was no more than a mere administrative document which the Federal Ministry of Finance conveyed financial instructions on the Federal Government's new policy guidelines for procurement and award of contracts in the federal government ministries and parastatals....*

PW5 agreed under cross examination that the 2nd defendant told him during investigation that the #100,000,000 Million fixed deposit and interest were rolled over to the Treasury Single Account and that the Team did not find any money in the personal Account of the 2nd Defendant belonging to The Federal University of Technology, Akure.

Exhibits P34, P34A, P34B and P34C however evidenced the placement of the #100,000,000 and the roll over with interest into the Treasury Single Account.

The prosecution in the instant case did not provide the court with any Statute restricting the Defendants from fixing the sum and the contention of the Prosecution that the Autonomy granted to the University does not extend to the University Finance lacks merit by the provisions of The Federal Republic of Nigeria, Official Gazette, The Universities (Miscellaneous provisions) Amendment Act, 2011 (Exhibit 3) which provides in sections 2AA that

The powers of the Council shall be exercised as in the law and Statutes of each University and to that extent establishment Circulars that are inconsistent with the Laws and Statutes of the University shall not apply to the Universities

The explanatory note to Exhibit P3 reads *This Act provides for the amendment of the Universities (Miscellaneous Provisions) Act No.11 of 1993 and makes new provisions, among other things, for the autonomy, management and re-organization of the Universities in Nigeria.*

The long title of the Act further provides *“An act to amend the Universities (Miscellaneous Provisions) Act No.11 of 1993 and provide for the Autonomy of Universities and other related matters”*

According to the Black’s Law Dictionary, 9th Edition “autonomy is defined as the right of self governance, self government nation; an individual’s capacity for self determination”

Above definition presupposes that the Federal Government has donated its power to the Governing Council of The Federal University Technology, Akure.

I can not agree less with the decision of the court in the case of **EVEMILI V. STATE (2014) 17 NWLR (PT.1437) 421 CA@436, PARAS C-D** that words can not be read into an Act of parliament unless clear reasons for it is to be found within the four corners of the Act itself.

There is nothing in Exhibit P3 that limits the autonomy of The Federal University Technology, Akure and such cannot be imputed into it by the prosecution through its address. See the case of **UNITY BANK PLC V.RAYBAM ENG.LTD 92018) 12 NWLR (PT 1633) 214@230-231, PARA H-A** wherein the court held that the submissions of Counsel, no matter how brilliant, cannot form or be valued as evidence, neither can it take the place of evidence.....

There is no piece of evidence detailing the fact that the defendants fraudulently converts to their own use or to the use of any other person the fixed deposit of #100,000,000, which would have amounted to stealing.

It is a common knowledge that when the present Administration came on Board in 2015, all Ministries, Departments and Agencies were directed to transfer their funds into Treasury Single Account in an effort to curb or stop corruption throughout the Country.

On conspiracy, it was held in the case of **ERIN VS THE STATE (1994) 5 N.W.L.R. (364) 525 @ 534** that conspiracy is generally a matter of inference from the collateral circumstances of the case. Sometimes, there may be no direct evidence of an agreement between the accused persons, in such circumstances, the inference of conspiracy can only be made from the facts and circumstance of the commission of the substantive offence.

I totally agree with the decision of the court in the case of **FRN VS. MAGAJI IBRAHIM AND IBRAHIM GANGYIBENSO (2015) 4 NWLR PT 1450@436**

wherein it was held that inference can be made for the offence of conspiracy. However, inference cannot be made in vacuum, but by considering the evidence before the court.

In this instant case, there was no circumstantial evidence, viva voce or documentary which allows the drawing of inference of conspiracy against the defendants. See the case of **FRN VS SANI (2014) 16 NWLR PT 1433@331**.

Furthermore, to prove conspiracy which is a criminal offence, the proof must be beyond reasonable doubt. There must be a chain of causation which must not be broken. See the case of **HAMZA AL-MUSTAPHA VS. STATE (2013) 17 NWLR (PT 1383) 281**

The Court has also held in the case of **OKE V. FRN (2017) 4 NWLR (PT.1556) 473@497-498, PARAS F-A** that the mere fact of agreement between two or more persons to do a certain act does not mean that the crime of conspiracy has been committed. A mere agreement between persons is not sufficient to attract sanction or punishment for conspiracy. To amount to conspiracy, the agreement must be to do an unlawful or to do a lawful act by unlawful means. The acts of the parties to the agreement must be such that is capable of being sanctioned or punished by the penal law of the land.

From the foregoing therefore, the prosecution failed to prove that the Defendants conspired to steal the #100,000,000 fixed deposit and I hold that count 8 of the 2nd amended Information was not successfully proved by the prosecution.

Not only this, on count nine, which is in relation to the sum fixed, the Defendants were charged with the offence of abuse of office contrary to section 104 of the Criminal Code. It is expedient to reproduce the said section at this junction. It provides:

Any person who, being employed in the public service does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of misdemeanor and is liable to imprisonment for two years. If the act is done or directed to be done for the purpose of gain, he is guilty of a felony, and is liable to imprisonment for three years.....

Without more ado, I adopt the court's decision in count eight above. In particular, Section 3(1)(m) of Exhibit P2. Exhibit P34 is to the effect that the alleged #100,000,000 was fixed on the 21st of January, 2015 for 90 days at the rate of 12.5% at the Oyemekun Branch of Wema Bank Plc while Exhibit P15, a letter from Wema Bank dated the 25/11/2015 (10 months after) reads:

.....this is to bring to your notice that the Oyemekun Branch of Wema Bank plc carried out the transaction on REMITTA on 19/10/2015 for the sum of 108,057,513.38. The funds were remitted to CBN at the instance of The Federal University of Technology, Akure (FUTA).

Exhibit P15 corroborates the evidence of both Defendants that the fixed deposit and the subsequent roll over to TSA was done in the name and on behalf of The Federal University of Technology, Akure.

I am more inclined in believing these narrations of the Defendants against the claims of the Prosecution especially when the prosecution's witnesses admitted that they can not ascertain the Defendants' claim on the above for lack of response from Wema Bank.

There is no evidence before this court establishing that the act of fixing the sum of #100,000,000 by the Defendants was an abuse of the authority of their offices or that such act was arbitrary or prejudicial to The Federal University of Technology, Akure or that the act was done for the purpose of personal gain.

In the circumstances, the prosecution also failed to prove count nine of the 2nd amended Information against the defendants.

The next point of call is count ten, wherein the Prosecution alleged that the Defendants used their offices to confer a corrupt and unfair advantage on themselves and members of the Governing Council of The Federal University of Technology, Akure, having distributed a sum of #5,125,000.00 as End of Year gifts to the said council members.

Section 2(2) of Exhibit P2 provides

The Council of a University in the discharge of its functions shall ensure that disbursement of funds of the University complies with the approved budgetary ratio.....

Section 2AA and 2AAA, which empowers the Governing Council in the discharge of their duties, are also instructive in this regard.

Even though the Prosecution referred to Exhibit P11, which is a response from the National Salaries, Incomes and Wages Commission during the investigation of this case, the autonomous status of the University was not considered by the prosecution vis a vis Exhibit P3 and other Laws earlier referred to in this judgment, which empowers the Governing Council to make gifts.

The Defendants could then not be made liable for the acts of the Governing Council (who duly approved the welfare expenses), moreso when the powers of the Council was not challenged by the Prosecution in this case.

The 1st Defendant in Exhibit P9 had also stated that the gifts at festive periods to Governing Council and members of the University is a practice he inherited as Vice- Chancellor, being considered to be part of the welfare package for the stakeholders

I cannot agree less based on the multiple Acts/ Statutes of the University which enables the Governing Council to so act. All that the prosecution did was to present circulars and correspondences stating otherwise, which in any way (not being a law or subsidiary legislature) do not and cannot override the provisions of the Statutes before this Court.

It is also on record that the 2nd Defendant is not a member of the Governing Council; in any case, Exhibit P38 did not indicate his participation as a member or disbursement of end of the year gifts to him.

Section 3(1)(o) of exhibit P2 provides: *For the carrying out of its objects as specified in section 1 of this Act, each university shall have power to make gifts for any charitable purpose;*

The Prosecution however, did not prove that such gifts were not within the powers of the University, vis a vis, the University Autonomy Act.

PW6 & PW7 had testified before this court that all expenditures must be tied to a vote head and that all checks must be complied with before any payment is paid. The prosecution did not show that the Defendants breached the laid down procedures in the gifts made to the council members.

In actual fact, Exhibits P38 and P38 B evidenced the proposals for the payment of the sum of #5,125,000.00 for the Council End of the Year gift and payment of the actual sums requested by Exhibit P38B

It has long been established that the prosecution is duty bound to prove its case beyond reasonable doubt as there is never a duty on the accused to prove his innocence under any circumstances.

Indeed, section 135 of the Evidence Act provides:

- 1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.
- 2) The burden of proving that anybody has been guilty of a crime or wrongful act is, subject to section. 139 of this Act, on the person who asserts it whether the commission of such act is or not directly in issue in the action.
- 3) If the prosecution proves a crime beyond reasonable doubt the burden of proving reasonable doubt is shifted on the Defendant.

See the case of **GANA VS. FRN (2018) 12 NWLR PT 1633@302.**

The court held in the case of **OKE VS. FRN (2017) 4 NWLR PT 1556@501** that two major ingredients must be proved in establishing the offence in section 19 of The Corrupt Practices And Other Related Offences Act, 2000; to wit:

- (a) That the accused is a public officer
- (b) That the accused person used his office or position to confer corrupt advantage upon himself or any relation or associate of the public officer or any other public officer.

In the instant case, although it was established that the defendants are public Officers within the context of Section 2 of The Corrupt Practices And Other Related Offences Act, 2000, it was not however proved that the Defendants conferred corrupt advantage upon themselves or any relation or associate of the public officers or any other public officers. This finding square up with the evidence led in respect of this charge.

It is therefore my view that the second essential ingredient of the offences under section 19 of The Corrupt Practices And Other Related Offences Act, 2000 has not

been proved as require by section 135&139 of the Evidence Act, 2011 and I so hold.

On Counts Eleven and Twelve, the prosecution alleged that defendants used their offices to confer a corrupt advantage and unfair advantage on the 1st Defendant by paying him a sum of #2,000,000.00 and #1,750,000.00 respectively between October 2015- July 2016 as Imprest for the Vice- Chancellor lodge and Security respectively.

The evidence of PW4 and Exhibit P16 are apt in this regard.

PW4, who was the Confidential Secretary of the 1st Defendant, testified that she has been on the job for 21 years having obtained an Educational training on Imprest Account Management at the Federal Polytechnic, Ado Ekiti.

She had stated before this court that the lodge imprest were used for the feeding of three lodges, to wit; the Vice- Chancellor, Pro- Chancellor and the Chancellor lodges, and that the Security Imprest were used for security matters within the University, which sum she stated would only be released after explaining by evidence, how the previous imprest was spent. This was corroborated by the evidence of PW6 and PW9 on how payments were made in respect of any expense. PW9 stated in Exhibit P9 that the imprest *.....provided for the entertainment of University's Visitors to the Vice- Chancellor lodge for food and drinks. It is also utilised for providing food for security men at the lodge as well as VC's domestic staff like cooks, stewards, cleaner and laundry staff...*

Exhibits P20-P27, P19-P19E and P28-P30 respectively evidenced the advance form for the Imprests, its payment vouchers and retirement of Advance form.

It is expedient to state that the 4th prosecution's witness, testified that the collection of Imprest had been in place before she joined the service of FUTA in 1995 and

that she still collects VC's lodge Imprest for the incumbent Vice- Chancellor in her capacity as a Confidential Secretary, even after the 1st defendant vacated office as the Vice- Chancellor. The prosecution failed to show this court, how the Defendants conferred corrupt or unfair advantages on themselves or any other relative or associate, when these sums were not paid to the 1st Defendant in his personal capacity but rather in his official capacity as the Vice- Chancellor of The federal University of Technology, Akure, by the 2nd Defendant after all checks were said to have been complied with before and after the said payment.

The Prosecution Counsel failed to substantiate his submission that the engagement of the 1st defendant's wife in the procurement of the lodge's Imprest is an abuse.

PW4 evidence is apposite in this regard; the witness had only stated that the stewards in the three lodges (Pro-Chancellor, Chancellor and vice-Chancellor) spend the money allocated for feeding under the supervision of the 1st defendant's wife.

It is also on record that PW4 stated that the receipts evidencing how the money was spent are collated by her for retirement at the Bursary Department. Exhibits P28&P29 in actual fact corroborate this.

Furthermore, the witness had testified that previous sums collected must be retired before another sum can be released, which will be declined if not satisfactorily utilized. The prosecution did not produce any evidence in proving that the lodge's Imprest were not so used by the Stewards for its purposes or that the 1st defendant's wife otherwise used the money vis a vis exhibits P17- P29 and the evidence of PW4. No abuse has thus been established in this instance.

The contention of the Prosecution that the justification of the 1st Defendant that these acts have been in practice before his appointment does not make the act

- lawful, lacks merit as there was no proof before this court that these acts were or are unlawful in the first place, more particularly when it was so contained in exhibits P41 and P42, The Federal University of Technology, Akure, 2015 and 2016 Budget.

The Learned Prosecution Counsel had also urged the Court to expunge exhibits P41 and P42, having wrongfully admitted same as it is only the Budget that emanates from the Budget office of the Federation that can give evidential value to the purported document and not as certified by the Registrar of The Federal University of Technology, Akure.

I am of the firm opinion by the provisions of section 104 of the Evidence Act, 2011, that this position is incorrect. The Registrar of The Federal University of Technology, Akure, having certified same in the ordinary course of official duty, is deemed to have the custody of such documents and as such, the documents met the requirements of the law both in form and substance as envisaged by the provisions of the Evidence Act.

The sections are herein reproduced:

Every Public Officer having the custody of a Public Document which any person has a right to inspect shall give that person on demand, a copy of it on payment of the legal fees thereof, together with a certificate written at the foot of such copy that it is a true copy of such document OR PART THEREOF, as the case may be and such certificate shall be dated and SUBSCRIBED BY SUCH OFFICER WITH HIS NAME AND HIS OFFICIAL TITLE, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

2) *Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section {EMPHASIS MINE}*

Exhibits P41 and P42 were subscribed with the name and official title of the public officer (The Registrar of the Federal University of Technology, Akure), who is deemed to be in custody of the document who also produced a part of the document in his custody on demand. The prosecution could not have therefore argued that Exhibits P41 and P42, being a two page document, was wrongly admitted.

The court in the case of **FRN V. BANKOLE (2014) 11 NWLR (PT.1418) 337 @ P.379, PARAS E-F**, held *that a certified copy is also termed attested copy, exemplified copy; verified copy. The court went further to state that, by the provisions of Section 146 (1) & (2) of the Evidence Act, 2011. the court shall presume every document purportedly to be a certified true copy which is by law, declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, PROVIDED THAT SUCH DOCUMENT IS SUBSTANTIALLY IN THE FORM AND PURPORTS TO BE EXECUTED IN THE MANNER DIRECTED BY LAW IN THAT BEHALF. The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such document. (Emphasis mine)*

On the basis of the foregoing, I therefore hold, that both Exhibits P41 and P42 were rightly admitted and the prayer of the prosecution to expunge same lacks merit and is accordingly dismissed.

Not only that, PW4 has this to say

The 1st defendant whom I worked with for 41/2 years, is a very honest man. The former VC, the 1st defendant detests committing crime or any falsification.

Under re-examination, the Witness further stated, I appreciate the 1st defendant as someone worth working for. I can do everything to protect him, but not to cover fraud.

What is more? The Prosecution's own witness had confirmed by the above statements that going by the antecedent of the 1st defendant, he could not have committed the offence with which he was charged. The prosecution did not declare this witness as an hostile witness or attacked the honest character of the 1st defendant as proffered by its own witness.

In the instant case, although it was established that the Defendants are public officers within the context of Section 2 of The Corrupt Practices And Other Related Offences Act, 2000, it was not however proved that the Defendants conferred corrupt advantage upon themselves or any relation or associate of the public officers or any other public officers. See the case of **Oke v. FRN (SUPRA)**

It is therefore my view that the second essential ingredient of the offences under section 19 of The Corrupt Practices And Other Related Offences Act, 2000 has not been proved as required by section 135&139 of the Evidence Act, 2011 and I hold that the Prosecution did not successfully prove counts Eleven and Twelve of the 2nd amended Information.

Counts Thirteen to Sixteen of the 2nd amended information will be addressed together in this Judgment, wherein the Defendants were charged with the offence of using their offices to confer corrupt advantages on themselves and some people when certain money (as contain in the charge) were paid to them as Ex-Gratia

towards the wedding of their Children and for the purchase of cows for 3 Friends and Supporters of the University.

I adopt the Court's decisions in the earlier counts of this case.

In addition, Section 3(1)(o) of Exhibits P41 and P42, which are the Budgets for the Federal University of Technology, Akure provides for the giving of gifts.

The 1st defendant had also testified, which was as well stated in his extra-judicial statement (Exhibit P9) that the gift of #1,000,000.00 given to him during his daughter's wedding was without his knowledge and that same was raised/proposed by the Registrar of the University and approved by the pro-chancellor. This evidence was never controverted by the prosecution.

Exhibits P33B, P32, P32B, P32C, P32D, P32E, P32F, P32G evidenced the requests made by both Mohammed Shata and Zailani Mohammed (council members) soliciting for the University's Financial supports towards the wedding of their Sons as well as the Registrar's letter, proposing the presentation of gifts to support the 1st defendant for the wedding of his daughter and the payment Vouchers in respect of all the above as well as the purchase of cow for the 3 Friends and supporters of the University.

The 1st defendant testified before this court that the University gives gift to the University benefactors during festive periods, prospective benefactors and friends of the University from the Community, which he described as part of their Corporate Social Responsibility. He went on to state that some of the University Benefactors had given FUTA Ambulances, 10million Endowment fund and that the gifts given to them was a way of thanking them, with a view to soliciting for more support.

PW5 admitted before this court that he did not go through Exhibits P41 and P42 but that he found that the purchase of cows as well as gifts made to people were not captured in the University Budget. The witness however, failed to disclose to this court the source of his investigation.

All that can be evaluated and gleaned from the evidence before this court show that the 2nd defendant acted in his official capacity as the Bursar of the Federal University of Technology, Akure, who only made payments after all the procedures are complied with. The 1st defendant had also testified that the 2nd defendant discharged his duties with utmost professionalism and that the 2nd defendant, who was not a member of the Council, only acted in an advisory position whenever he was called upon.

The 2nd defendant had this to say in his extra-judicial statement in Exhibit P10

the housing allowance paid to the VC has been before I joined the University and is what has been the practice with his predecessors and vice-chancellors in other universities.....all cash advances mentioned were duly approved by the Chief Accounting Officer and they are to meet the exigency of time and purpose.... All payments passed through the process....all payments to both the pro-chancellor and the VC were duly authorized.

The evidence before this court vis a vis the giving of gift, no doubt is not only in line with the Statute of the University but also supported by the prosecution's own evidence, the National Salaries, Income and wages Commission, having stated that welfare packages can be given provided such is allowed by the University. Without belabouring the issues in this case, all the acts complained of by the Prosecution are lawful within the various enabling provisions of Law/ Statute as earlier decipher.

In anyway, I hold by the provisions of Exhibits P41 and P42, that these gifts were within the powers of the Governing Council and in the absence of any evidence disproving same by the prosecution, it is my firm belief that the Prosecution failed to show how the Defendants conferred corrupt advantages on themselves or any other public Officer as envisaged under Section 19 of The Independent Corrupt Practices and other Related Offences Act, 2000. The prosecution also failed to prove Counts Thirteen to sixteen of the 2nd amended Information against the Defendants.

Before I round up this judgment, I will now pay a visit to the following salient points observed in the course of this case.

PW1 having testified that Exhibit P1 was written based on the several complaints/Reports from his members on the financial affairs of the University and the letter from the office of the Auditor-General of the Federation.

The witness did not either name the members alleged to have made such complains or called any of them as a witness. In this instance, I refer to the latest Supreme Court decision in the case of **SARAKI V. FRN (2018) 16 NWLR (PT1646) 405@459-460, PARASH-C** wherein the court held that the evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by evidence, not the truth of the statement, but the fact that it was made.

Moreover, PW1 had confirmed that he could not say if the Audit Report was subject to a final report.

Going however through the Audit Report dated the 1st of July, 2016, the concluding part thereof states:*it would be appreciated if management comments on the points raised above could be communicated to this office within 14 days from the date of this report, as the report will be finalized after this period.*

The court is therefore more inclined in believing the narration of the 1st defendant, that the report was duly responded to and that there was no further action from the Auditor –General’s office in that regard before he left office.

Again in this judicial discourse, the law is trite that suspicion, no matter how strong, cannot take the place of legal proof. Items of evidence raising suspicion when put together do not have the quality of being corroborated evidence to ground any conviction for a criminal offence. See the case of **UDOR VS. STATE (2014) 2 NWLR PT1422.**

Furthermore, the Prosecution counsel had however submitted that the Defendants’ extra-judicial statement amounted to the commission of the offences charged and therefore urged the court to convict the Defendants in line with section 28 of the Evidence Act, 2011.

The court in the case of **ADEBAYO V. STATE (2014) 12 NWLR (PT.1422) SC.613@642, PARAS A-D** had this to say *a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime and this includes both extra-judicial and judicial confession. It also includes an inculpatory admission made that is not direct or positive and short of a full disclosure. In other words, a confession is an acknowledgment in express words by the accused in a criminal case of the truth of the main fact charged or of some essential part of it.*

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I have perused both Exhibits P9 and P10 and its series, it is therefore the firm opinion of this court that there are no elements of confession in the statements, which would allow the court to rely on it for the conviction of the Defendants as prayed by the Prosecution and I so hold.

In conclusion, it is pertinent to point out that the facts and circumstances of this case also have shown beyond conjecture that the Defendants herein have not been sufficiently linked to the Criminal intent associated with the information before the court.

Although it is not essential to prove the case with absolute certainty, the ingredients of the offence charged must, however, be proved as required by law and to the satisfaction of the court. See **OBIAKOR VS. STATE (2002) 10 NWLR (PT 776) 612, 627; NWOKEDI VS. COP (1977) 3 SC, 35, 40; AMEH VS. THE STATE (1973) 7 SC, 27 AND KALU VS. THE STATE (1988) 4 NWLR (PT 90) 503.**

These authorities, find expression in the latin maxim '**iu dicis officium est de iudicis est iudicare se undum allegata et probata**' which simply means that it is the duty of a judge to decide according to facts alleged and proved.

I also observed that Exhibit P1 was not made out of patriotism but borne out of the decision of PW1 to get an improved welfare package from the university management led by the 1st defendant to his members. Perhaps a better understanding of the issue involved by both parties would have saved the day.

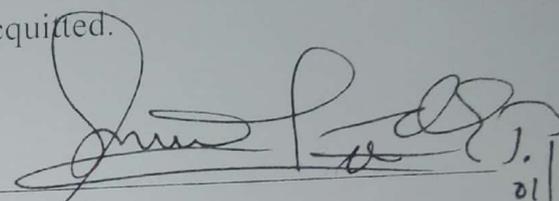
From the examination of the prosecution's allegation as evidenced in the charge against the Defendants before this court and my meticulous consideration of the totality of the evidence in proof thereof as per the testimonies of all witnesses and Exhibits, I harbour grave and genuine doubt about the story of the prosecution as it

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failed to lead compelling evidence in proof of the ingredients of the offences which the defendants were alleged to have committed.

The only verdict, in the circumstance, is that of the discharge and acquittal. See **POSUY V. THE STATE (2011) LPELR 196P (SC) 17-18 (2011, 3 NWLR (PT 1234); ALONGE V. IGP (1959) SCNLR.**

In the light of the foregoing legal expositions, done with the law as beacons, I hold that the charges against the Defendants have not been proved beyond reasonable doubt; the Defendants herein, Prof. Adebisi G. Daramola and Emmanuel Ayodeji A. Oresegun are hereby discharged and acquitted.


HON. JUSTICE W.R. OLAMIDE

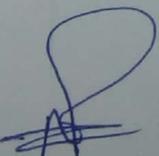
JUDGE

01/02/19

APPEARANCES

PROSECUTION

- (1) DR. BEN. UBI ESQ
- (2) FESTUS O. OJO ESQ
- (3) S.M.H. IBEKWUTE ESQ
- (4) S.M. GALADANDI ESQESQ
- (5) M.S MABUR ESQ


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1ST DEFENDANT

- (1) ADEBAYO ADENIPEKUN SAN, FCIARB
- (2) OLUWASINA OGUNGBADE ESQ
- (3) CHUKWUDI MADUKA ESQ
- (4) TOYESE OWOADE ESQ
- (5) MISS TEMILORUN ADENIPEKUN ESQ

2ND DEFENDANT

- (1) IBUKUN FASANMI ESQ
- (2) MARY ADEYEMI ESQ




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