

IN THE HIGH COURT OF LAGOS STATE  
HELD IN AT IKELA JUDICIAL DIVISION  
SITTING AT COURT 21, SPECIAL OFFENCES COURT IKELA  
BEFORE HON. JUSTICE O. A. TAIWO (MRS.) JUDGE  
TODAY THURSDAY THE 3<sup>RD</sup> DAY OF OCTOBER, 2019.

SUIT NO: LD/6101/17

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

...COMPLAINANT

AND

CLEMENT ILOH

...DEFENDANT

JUDGMENT

The Defendant by an information dated 4<sup>th</sup> October, 2017 was brought before this court on 3 counts charge of stealing by conversion and conversion of property derived from illegal act.

The Defendant was arraigned in this court on the 3<sup>rd</sup> day of November, 2017, the Prosecution then opened their case on the 3<sup>rd</sup> November, 2017. The Prosecution called Four (4) witnesses to proof the case.

PW1 is Orji Kosisochukwu, an EFCC operative and a member of the team which investigated the case.

PW1 testified that he got to know the Defendant in the course of investigation of the monumental fraud that took place in NIMASA.

He testified that they investigated some committees which were created by the management of NIMASA and were used to commit fraud. He stated further that one of the committees is Maritime Labor Convention in which the sum of N240 Million was approved for by the committee late 2014 and same was disbursed early 2015. He stated further that most of the funds were diverted and charges have been proffered against Calistus Obi, the Executive Director before Federal High Court Lagos.

He stated further that part of the money being N14million plus was transferred to a company account at Zenith Bank of Clement & Bob Associates. He stated that the Commission wrote a letter to Zenith Bank to avail them with the account details. He

testified that the Account officer from Zenith Bank was in the Commission office where he informed them that the Defendant was the Permanent Secretary of Ministry of Labor.

He stated that they also wrote to NIMASA calling for payment voucher which was made available to them.

He testified that the N240 million was traced to the account of the committee at Access Bank and that from the account N14 million was paid into the account of Clement Bob & Associates.

PW1 testified that they wrote to Cooperate Affairs Commission for documentation of Clement Bob & Associates of which they avail them. That they received all the incorporation forms which bears the picture of the Defendant.

PW1 stated that the Defendant was invited but that prior to this Mrs. Gunwa was invited, she was a signatory to the account in Access Bank of NIMASA. He stated that from the interview with Mrs. Gunwa it was revealed that N14million was shared between her and the Defendant in this case. He stated that she returned N7million plus.

PW1 testified that when the N14million entered into Clement-Bob's account, the Defendant transferred about half to WTC Resources in Diamond Bank and that when the operator of WTC Resources account was invited, he informed them that he received the money based on the instructions of Mrs. Gunwa. PW1 stated further that he told them that he further transferred part of the money to an investment company and the balance was withdrawn and given to Mrs. Gunwa.

He stated that when the Defendant was interviewed and was availed with the information received from the others, he accepted receiving the said N14million which he claimed was for a convention to be held in Abuja and Lagos. PW1 stated that when asked if the convention ever held, the Defendant said that N7million retained was given to a Directorate under him called Productivity and Measurement headed by Mrs. Braimoh but when Mrs. Braimoh was invited and when given this information, she informed them that nobody gave her such money and no convention was held. And that from their investigation there was no transfer from Clement Bob Associates' account in Zenith Bank to Mrs. Theresa Braimoh.

PW1 testified that their investigation further revealed that the Defendant used Clement & Bob Associates and other companies owned by him and his family members to divert public funds to his benefits.

He stated that a charge has been proffered against the Defendant at the Federal High Court for failure to declare his assets to EFCC.

PW1 testified that Mrs. Gunwa informed them that Clement Bob Associates did not have any contract with NIMASA.

PW1 stated that the Defendant made series of statements in the presence of his lawyer. That the statement was taken for attestation, same was signed by the Defendant and counter signed by his lawyer.

Prosecution counsel tendered the following statements of Defendant, they were objected to by the Defendant counsel but in a considered ruling the statements were admitted and marked as Exhibits as follows:

Statement dated 19/4/16.....

Statement dated 21/4/16

Statement dated 22/4/16

Statement dated 26/4/16

Statement dated 10/5/16

Statement dated 11/5/16

Statement dated 16/5/16

Statement dated 17/5/16

Statement dated 2/6/16

Statement dated 21/7/16

Statement dated 27/3/17

Statement dated 28/3/17

Statement dated 12/4/17

Statement dated 13/4/17.

Nigeria police admission confessional statement dated 28/3/17

PW1 further identified the letter to Zenith Bank, statement of account and the certificate of identification, they were equally opposed but in a considered ruling by the court, they were admitted and marked as Exhibit B.

PW1 further identified a CTC of letter written to Access Bank and the reply from the bank to which was attached a certificate and account statement. It was tendered admitted and marked as Exhibit C.

PW1 tendered also documents recovered from NIMASA with an internal memo one addressed to Access bank and another from NIMASA. It was admitted and marked as Exhibit D and D1.

PW1 stated that regarding the ownership of the company called Clement and Bob Associates, a letter was written to Corporate Affairs Commission. That CAC responded via several documents.

PW1 identified these documents from CAC, they were tendered, objected to but in a considered ruling by the court admitted and marked as Exhibit E.

PW1 stated in his evidence that from his investigation it was revealed that the Defendant is the sole owner of Bob & Associates and that his passport is attached to confirm his identity. He stated further that WTS Resources Ltd belong to three shareholders namely Oluwale Aje, Busayo Olorunmaliye and Segun Adeniyi.

Transaction ticket dated 18/10/17 was admitted and marked as Exhibit F.  
PW1 was duly cross examined.

PW2 is AJE OLUWOLE, a businessman in the business of supply of different products and items.

PW2 stated that he is the Managing Director of WTS Resources Nig. Ltd and that he knows the company called Clement & Bob Associates. He stated that he received an inflow into WTS Resources Diamond Account. PW2 stated that he had an elderly and younger relationship with Mrs. Gunwa working with NIMASA. That he had asked for help regarding his business and she collected his company's detail with the hope of mobilization for a project and that it was shortly after that the inflow came in from Bob & Associates.

He stated that the inflow was to the tune of N7million. That after the money entered into the account, Mrs. Gunwa asked that some be transferred to her account and the balance handed over to her. He stated further that N4million out of the N7million was transferred to Sterling Access Management and the balance Of N2, 900,000 was withdrawn and handed over to Mrs. Gunwa.

PW2 stated that he do not know the Defendant.

PW2 was duly cross examined and thereafter re-examined before being discharged.

PW3 is JULIANA GUNWA, a retired Director from NIMASA. She stated that she retired in May, 2017. PW3 identified the Defendant.

PW3 also acknowledged knowing the company Clement & Bob Associates and that she had dealings with the company while in service. She stated that the Defendant was the former Permanent Secretary Ministry of Labor and that their job interrelated as he partly supervised her department.

She stated that she came across the company in early 2015 when the Ministry of Labor requested for funding for a stakeholders program from NIMASA. That the requested was approved by the parastatal tender board to the tune of N14.1 million. She stated that she came across the name of the company when her boss gave her the name of the company so that the money can be transferred into in line with a verbal instruction which she complied with by sending the money into the account.

PW3 stated further that she boss requested for a name of a company which was when she gave the name of WTS Resources and consequently the sum of N7Million was transferred to that account.

She stated that the N14million was supposed to be for training for Advisory Councils both in Abuja and Lagos. She stated further that initially she thought the program in Lagos held but when she cross checked, she found out that the Lagos program did not hold and she returned the money and did a report that the one in

Lagos did not hold. She stated that the Abuja program did not hold either. She stated that a memo was done to effect the transfer of the money. She identified Exhibit D as the memo being referred to.

When PW3 was shown with Exhibit D she stated that it is the instruction while Exhibit D was the transaction of 29<sup>th</sup> January, 2015 and the amount, N14. 1million, transferred to Bob & Associate from the committee's account.

PW3 stated that she returned the money with her to the Commission but does not know about the remaining money.

PW3 was duly cross examined and re-examined before being discharged.

PW4 is **MRS. THERESA BRAIMAH**, a retired Director of Federal Ministry of Labor.

PW4 stated that she knows the Defendant as they worked as colleagues in the Federal Ministry of Labor and that she worked under him till he rose to become the Permanent Secretary of Ministry of Labor.

PW4 stated that she worked in the Department of Productivity Measurement and Labor between 2013 and 2016 before she retired. She stated further that the department coordinates labor administration issues with international Labor organization, internal labor organization, African Labor Commission in Adisababa UNAID Industrial and any other matter concerning international labor issues as related to the industry.

She stated further that it the Secretariat of the National Labor Advisory Council with representative from workers, employers and representatives of Federal and State Government. And that they advise the Minister of Labor on Labor issues. She stated further that they advise government on issues about ratification of international labor standard and on issues of wages and salaries increase based on productive performance in the country.

She stated that the relationship between her department and NIMASA is that when NIMASA is rendering report on ratified convention, it relates with the ministry and the ministry advises how best they can render the report.

PW4 stated that during her tenure they had meetings in 2013 and 2014 but she was not aware if any meeting held in 2015.

PW4 was duly cross examined and discharged.

After the Prosecution closed their case, Defendant opted for a no case submission. After hearing the submission of both defence counsel and the reply by prosecuting counsel, the Court adjourned for its Ruling. On the 21<sup>st</sup> June, 2018 the Court in its Ruling found that the Prosecution had made out a *prima facie* case against the

Defendant which requires explanation from the Defendant. The Defendant was called upon for his defence.

The Defense opened its case on 19<sup>th</sup> September, 2018

DWI is one CLEMENT ILLOH of Flat C Block 4 Room 141 Gwarimpa Abuja, a retired civil servant.

DWI testified that he knows the allegation against him, that he stole N14, 170, 000 belonging to NIMASA and also dishonestly converted N7million to the use of one Mrs. Gunwa. He stated that the allegation was not true and he never converted N7 Million to the use of Mrs. Gunwa.

DWI testified that the N14, 170,000 was not a proceed of contract neither was it an advance given to him or Clement and Bob but an advance approval for the Maritime Labor Department in response to a request of Ministry of Labor to run a program for them in furtherance of the corporation between NIMASA and Maritime Labor Department of NIMASA.

DWI stated that the origin of the Maritime Convention 2006 was due to various challenges and problems confronting sea faring, the environment and the ship which necessitated the consolidation of 64 or more convention into an enforceable Convention guiding international trade and to achieve this, there was a high level tripartite working group set up by ILO in Geneva and that Nigeria happened to be a member of which he was the secretary of the high level working group. He stated further that the work of the committee lasted for 5years.

DWI stated that International Labor Advisory Council makes recommendation to the Ministry of labor. He stated further that sponsoring of activities of this Council depends on issues at the council that a memo will be issued at the technical meeting submitted to the secretary of council who will now call the General Council which has up to 150 members. He stated that technical meetings are organized by people that have depth knowledge of the issue that it could be labor, productivity, industrial issues etc.

DWI testified that it is Maritime Labor Department of NIMASA that sponsors the Convention 2006. And that it was NIMASA that brought the N14million to hold the convention.

DWI testified that the N14million was meant to organize a meeting of the Maritime Labor session of the Maritime Labor Convention. That the N14 Million was not enough to organize the meeting of the Labor Advisory Council because of the extensive coverage. That they requested N30million as the meetings are to be organized at two levels. And that the meetings are to be held in Abuja and Lagos.

DWI testified that the money was released into an account for safety and monitoring. Clement and Bob's account had the share of the sum meant for the Abuja meeting while the meeting meant for Lagos was sent into an account of WTS. DWI testified that Clement and Bob Account was used at the discretion of Maritime Labor Department as they requested that they open an account instead of its being paid into the Ministry account and secondly as NIMASA is no project account with the ministry. He testified further that if paid into the Ministry's account, the money will not come out as it is not a revenue to the Ministry as it has no classification code, it was not budgeted for in the annual budget as well and that the best way is to use an account easily accessible. He also stated that the said amount could not have been paid into an officer's account because there will be no explanation for such a large sum of money to enter into an officer's account.

DWI stated that he knows one Mrs. Theresah Braimoh, the Director of Productivity and Measurement department and that the money is not meant for the department. He stated that he does not know any Mrs. Gunwa in NIMASA and his dealing has always been with one Barrister Obi in Mrs. Gunwa's department.

DWI stated that when the money was released, the first thing he did was call for an interactive session to draw a template. That he used N3.5 Million out of the N7 Million for honorarium and documentation. That he was awaiting more money to continue the exercise because it was a budgetary thing. He stated that while waiting the EFCC came and truncated the process. That the money was released in January 2015 and EFCC recovered the money in April 2015. He stated that the N3.5 was an advance and life span of an advance ends with the retirement of the money.

DWI further stated that he withdrew N3.5 Million and gave to his Special Assistant, John Tsokwo who is now late and the said money was expended on logistics, honorarium, stationery, transport and that the Maritime department did the costing. DWI tendered Exhibit DF1, a document containing Maritime Labor Convention signed by President Goodluck Jonathan.

Under cross-examination, DWI stated that he knew John Tsokwo worked along with the EFCC and volunteered statements before he died but he does not know what John Tsokwo volunteered. DWI admitted that the Federal Government recovered about N600,000,000.00 plus from him. He admitted he never stated in his statement to the EFCC that he gave N3.5 Million to John Tsokwo. He admitted that it was the investigation on the misappropriation of Sure-P funds that brought himself and Late John Tsokwo to EFCC. DWI was asked to look at Exhibit B and show any transfer of money made to John Tsokwo and he answered that there was no transfer to John Tsokwo. He also admitted that there is no receipt of any transfer to John Tsokwo and that there is no memo or official communication emanating from the Permanent

Secretary to John informing the Ministry that he handed over N3.5 Million to John Tsokwo.

DW1 admitted that he is the accounting officer of his ministry and responsible for the funds expended under his ministry. He admitted that the money in question belongs to the government but was transferred to his account and he withdrew it in cash. He admitted that the transfer was not in his personal name but through Clement and Bob, a registered company created by him. He agreed that NIMASA transferred the money to him and he transferred it to WTS Resources. He admitted that Exhibit D1 is the memo requesting for the release of N1.4 Million that came to him. That Exhibit D1 stated his account name, number and amount to be officially used. He stated that Exhibit D was an instrument instructing Access bank to debit NIMASA and his account was credited.

DW1 admitted that John Tsokwo received 31 Million from Kaduna Polytechnic and transferred N8 Million to his account. He stated that it does not amount to financial embarrassment to receive money from a junior officer since the money was not for personal use but for a demonstration project in Portharcourt. DW1 admitted that he is aware of the financial regulation of the Federal Government. DFI 1 was tendered through DW1.

DW1 stated that initially he said Mrs. Theresa Braimoh collected the money from him but he could no longer remember who collected the money from him from the Department of Measurement and Productivity.

DW2 is TOMMY ETIM, who works for Federal Ministry of Labor and Employment.

DW1 testified that he knows the Defendant in this case.

DW2 stated that he is aware of the Maritime Labor Convention. He stated that he has been involved in it for a long time. That in 2010 he was part of the people that facilitated the ratification of the convention. DW2 testified that the procedure of holding meeting of National Labor Advisory Council is in stages depending on the subject matter. That it had to with pre-council matter depending on the expatriates. That afterward the Secretariat, Productivity and Measurement Department is informed to invite social partners. That the meeting will then hold where they would look at the working document and once the working document is ratified by the council, same will then be forward to the Federal Executive Council through the Ministry for Labor for approval. DW2 stated that the Maritime Labor meetings are funding by the Nigeria Maritime Administration and Safety Agency because they are the operational agency.

On whether National Labor Advisory Council held in 2015 DW2 answered that National Labor Advisory Council meeting did not hold but what took place was the

pre NLAC meeting which was for the experts to look at the subject matter which has to do with the draft of National template to access awareness creation of the provision of the Maritime Labor Convention 2006.

DW2 stated that he partook of the pre-NLAC meeting and was given N50, 000 as honorarium by the Special Assistant to the Permanent Secretary Mr. TSOKWA. Under cross-examination DW2 was asked if he is aware that the Defendant on whose behalf he was testifying took custody of N14 Million of NIMASA and he answered he was not aware. That he was not aware the Defendant operated account in a company name. He stated further that as a civil servant the only business he is allowed to do is agriculture and that his employer forbids him from incorporating a corporate account.

DW3 is AGADAI NDUKA who worked with Federal Ministry of Labor and Employment, Federal Secretariat Phase 1 Abuja.

DW3 testified that he knows the Defendant as the former Permanent Secretary of the Ministry of Labor. He stated that the NLAC is a brother organization overseeing the affairs of National Labor and Council in Nigeria. He stated that the maritime convention meeting did not hold. He stated that the procedure for holding meeting depends on the issue at sake and it comes in stages. He stated further that there must be a pre-meeting like a task team for the technical stakeholders to meet, after which there will be an invitation by the secretariat to conduct the brother meeting of NLAC.

He stated that on the 12<sup>th</sup> February, 2015 there was a meeting where the task team convened for the technical meeting to come up with a frame work to access the awareness of maritime labor among Nigerians and maritime labor industry in the conference room of the perm secretary. He stated that there were about three in the said meeting, the Permanent Secretary, the General Secretary one UBANI, Captain TAOHORI, Late TSOKWA John and him.

DW3 stated that he was given N50, 000 as honorarium by the Special Assistant to the Permanent Secretary Mr. John Tsokwa.

DW3 was duly cross examined and discharged thereafter.

Defendant filed his final written address dated 8<sup>th</sup> April 2019.

Sole issue for determination is thus:

'Whether the Prosecution has proved the case against the Defendant beyond reasonable doubt.'

Learned Counsel for Defendant stated that it is trite law that in criminal cases, the standard of proof is beyond all reasonable doubts and any doubt that arises in the

trial is resolved in favor of the Defendant. He cited the case of STATE VS. AHE (2000) 11 NWLR (Part 678) 454 SC.

Counsel submitted that the Prosecution has failed to do the above assertion and as such the Defendant is entitled to be discharged and acquitted. Counsel contended that the Prosecution failed totally to establish salient ingredients of stealing against the Defendant.

He stated that the ingredients of the offence of stealing are as follows:

1. The ownership of the thing stolen
2. That the thing stolen is capable of being stolen
3. The fraudulent taking or the fraudulent conversion.

He cited the case of CHIANUGO VS THE STATE (2002) 2 NWLR (PART 750) 225 @ 235-236.

He stated that the Prosecution in trying to prove the offence of stealing called oral evidence and tendered documents but Counsel submitted that there is total absence of actus reus and mens rea on the part of the Defendant in the case presented by the Prosecution .

Counsel stated that with the evidence of PW3, it is impossible for the Prosecution to prove that there was any fraudulent or dishonest intention on the part of the Defendant to transfer the N7million to Mrs. Gunwa through WTS. Rather PW3 and PW4 who are conversant with the Labor Advisory Council meeting never stated in evidence that it is an offence for the meeting to be organized in the way and manner it was being done before EFCC came into the matter in the instant case but what is in evidence is that the procedure is the one that has been adopted over the years which was not challenged by the Prosecution therefore it deemed admitted.

He submitted further that the evidence of Prosecution witnesses contradict each other. That the contradictions are so material and as such it is unsafe for the court to rely on them to convict the Defendant. He cited the case of GABRIEL VS. STATE (1989) SNWLR (Part 122)457 at 468-469.

He submitted that the present case presents a quintessential example of inconsistency of evidence adduced by Prosecution witnesses. That these inconsistencies create doubts and same should be resolved in favor of the Defendant. He stated that the Prosecution failed to prove with certainty the particular amount said to have been stolen or converted by the Defendant. That count 1& 2 states the sum is N21, 176, 000 Million and sometimes in the course of trial it changed to N3.5million.

He stated that given the shifting of position regarding the sum, it is cover that what the Prosecution has proved against the Defendant is the sum of N3.5million out of

the N14,176million in count 1 as count 2 has already been disproved by the Prosecution itself through its witness PW3 Mrs. Gunmen. He cited the case of ECHERMAZU VS. THE QUEEN (1959) SCNLR 132 & 134

He also contended that the documentary evidences tendered by Prosecution are totally inadmissible as evidence of the truth of what they contain. He submitted that these evidences bank statements of accounts, NIMASA transfer instruction CAC document was tendered by PW1 who is not the maker and as such he can only tender them as evidence of what he obtain during investigation and not as to the truth of its contents.

He submitted that these evidences are inadmissible as they constitute documentary hearsay having not been produced and tendered by their true makers who can be cross examined on them.

He submitted that if this hearsay evidence is admitted by the court same should not be relied upon. He cited the case of DR. OLUBUKOLA ABUBAKAR SARAKI VS FRN SC 1111/2017 delivered on 6<sup>th</sup> July 2018.

He submitted that Exhibit DF13, the affidavit of John Kanku Tsokwu in Suit no FHC/L/CS/1228/17 was wrongly admitted and same should be disregarded in considering the verdict of this case. He cited the case LBA PLC VS. AYINKE (2000) 7 NWLR (Part 663) 83 at 100 para B-C.

He stated that the document did not form part of the proof of evidence and that it has no bearing on the instant case. He stated that count 3, laundering the sum of N14,176,000 came out of the blues as the facts, circumstances and the relevant evidence in this case never support it. He submitted further that the Prosecution abandoned this count as there is no nexus between the charge and the facts before the court.

In conclusion he urged the court to dismiss the charges against the Defendant as the Prosecution has not proved its case and to discharge and acquit the Defendant on all counts.

Prosecution filed its final address dated 23<sup>rd</sup> May, 2019.

Sole issue for determination is thus:

'Whether in view of the evidence of PW1-PW4 and the legally admissible Exhibits A-F, it can be said that the Prosecution did not prove this case beyond reasonable doubt.'

Learned Counsel for Prosecution submitted that the Prosecution carries the evidential burden of proving alleged offences against the Defendant beyond reasonable doubt but not beyond all shadow of doubt.

He stated the essential elements which the Prosecution needs to establish in charge of stealing include:

1. The property must be capable of ownership
2. The property must be capable of being stolen and
3. That the taking must be fraudulent.

He cited the cases of FRN VS IKPE (2005) QCCR 155 at 156, CHIANGO VS. STATE (2002) NWLR (PART 750) 225 AT 235 and MOHAMMED VS. STATE (2000) FWLR (PART 30) 2623 AT 2626; (2000) 12 NWLR (PART 682) 596.

He submitted that evidence adduced by the Prosecution is on all fours with the above elements which are to the effect that the Defendant fraudulently stole the sum of N14, 176million property of NIMASA with intention to permanently deprive the said agency of the use of same. He stated that the property is that of NIMASA as shown in Exhibit B. He stated that the second element is capable of being stolen; he stated further that the sum of N14, 176, 000 is capable of being stolen.

On the last element, counsel stated that the taking and conversion of the property or its value sum, property of NIMASA by the Defendant was dishonest and fraudulent considering the various overt acts of the Defendant.

On the charge of conversion of property, Prosecution counsel stated that this count is on all fours with the offence of money laundering.

He stated the ingredients are as follows:

1. The Defendant must have directly or indirectly convert, transfer, aid any person, conceal or disguise the origin of any resources or property.
2. The Defendant must know or reasonably ought to have known that such resources or property is, or forms part of the proceeds of an unlawful act.

He submitted that the Prosecution has by its evidence proven that the Defendant committed these offences. He submitted therefore that the Prosecution has proved the essential ingredients of the offence and he urged the court to so hold.

On the contention of absence of mens rea and actus Reus, Prosecution counsel submitted that the very act of nominating a business name and not the Ministry of Labor known account to receive public funds which was meant for official assignment is a clear demonstration of the acts and intentions of the Defendant to commit the alleged offence. Counsel stated that the Defendant further displayed his

guilty by falsely claiming that he gave the cash to the Department of PW4 whereas the evidence on record shows clearly that nothing of such happened. He stated further that while ordinary telling a lie or lying by a suspect or an accused person is not evidence of the commission of any offence, but where the fact of lying is taken together with other relevant facts and circumstances, in particular case, it may safely be concluded that an accused person is guilty of the offence charged. He referred to OKEKE VS. STATE (2016) LPELR- 260159(SC) PAGE 30

PARAGRAPHS B-D.

He stated further that given the facts and circumstances of this case, it is clear that the Defendant falsely claimed that he gave N7.176million to the Defendant, when he indeed converted the funds to his use and that of his cronies. He therefore submitted that the only probable finding of facts open to the court is that the Defendant is guilty of the offence charged and was merely telling his lie to cover up his tracks.

On the issue of contradiction, Prosecution counsel submitted that the defence misconstrued the principle of contradiction. He stated further that the law does not envisage that there will be no contradictions in the evidence of witnesses but what the law will not allow is a material contradiction. He referred to the case of ADOGA VS. STATE (2014) LPELR-22944 CA PAGES 67-68 PARAS E-E.

He submitted that there is no apparent and material contradiction between the evidence of PW1 and PW3.

On the contention that there is uncertainty in the exact amount, Prosecution stated that the Prosecution has established counts 1-3 against the Defendant.

On the issue of admissibility of exhibits raised, Prosecution counsel pointed out that this court admitted these documents in evidence in the course of trial when tendered by Prosecution through PW1. He stated further that there is evidence that the decision of this court admitting these evidences was not appealed against by the Defendant or set aside by the appellate court, hence the reliance on them by this court during the ruling on the no case submission. He submitted that an investigating officer can tender document recovered by him in the course of his investigation. He cited the case of MUSA SADAU VS. THE STATE (1968) 1 ALL-NLR 125 @129-130 and GABRIEL DAUDU VS. FRN (2018) LPELR -43637 (SC) PAGES 26-27 PARAGRAPHS E-C

He submitted further that the Defendant who is contesting the admissibility of these exhibits has relied on them and elicited evidence through the exhibit from the Prosecution witnesses particularly PW1. He referred to the case of GABRIEL DAUDU VS. FRN (supra).

He submitted that defence counsel misconstrued the authority SARAKI VS. FBN SC 1111/2017 delivered on 6<sup>th</sup> July 2018 cited as the case did not say that documents recovered by investigator cannot be admitted in evidence.

On Exhibit DF13, Prosecution counsel submitted the affidavit was used to discredit the claim of Defendant that he gave the late Mr. John K. Tsokwa money to organize the meeting in question. He therefore submitted that the admissibility of the affidavit was proper by the court and he urged the court to so hold.

In conclusion counsel urged the court to convict the Defendant as charged.

The Defendant is facing a three count charge of stealing by conversion and conversion of property derived from illegal act, contrary to Sections 278(1) (b) and 330 (1) of the Criminal Law of Lagos State 2001.

The Prosecution's case is that the Defendant Clement Illoh while still a Permanent Secretary in the Federal Ministry of Labor and Employment dishonestly converted to his use the sum of N14,176,000.00 property of Nigerian Maritime Authority and Safety Agency (NIMASA) by transferring the said sum to his personal account Clement & Bob Associates. It is settled law that the onus is on the Prosecution to prove its case beyond reasonable doubt. The onus does not shift. In the case of William v. The State (1992) LPELR-3492 (SC), it was held that there is no question of the Defendant proving his innocence before a court. That the Defendant need not utter a word, he is not bound to say anything. The duty is on the Prosecution to prove the charge against the accused person beyond reasonable doubt. See also Section 138 Evidence Act 2011 and Igabeye v. The State (2006) LPELR-1441(SC).

Proof beyond doubt is not proof beyond all iota of doubt or proof to the hilt. When all the essential ingredients of the offence charged have been satisfactorily proved by the Prosecution, the charge is proved beyond reasonable doubt. See Emmanuel Eke v. The State (2011) LPELR-1133(SC).

The definition of stealing is provided in Section 278 of the Criminal Law which states as follows:

1. Any person who dishonestly
  - a. Takes the property of another person or;
  - b. Converts the property of another person for his own use or to the use of any other person is guilty of the offence of stealing.

Section 279 (1) & (2) defines those things capable of being stolen as follows:

1. Anything which is the property of any person or a body corporate is capable of being stolen.
  2. 'Property' includes money and all other properties, real or personal, including things in action and other intangible property which is property of another.
- The Prosecution must prove:
- (a) A fraudulent taking
  - (b) A fraudulent conversion of the thing said to be stolen
  - (c) The existence of the thing stolen
  - (d) The thing must be capable of ownership.
  - (e) The Prosecution is also expected to prove that the Defendant has the intention of permanently depriving the owner of the thing stolen.
  - (f) That he was dishonest.
  - (g) That he had unlawfully appropriated the thing stolen to his own use.
- See the case of Ayeni v The State (2011) 1.PELR-4380.

From the evidence presented by the Prosecution, the following material facts have not been debunked by the defence and remain unchallenged. They are :-

1. The Defendant was a public servant and the Permanent Secretary of the Ministry of Labor and Productivity at the time the alleged offence occurred.
2. The Defendant admitted in his statement to the police and in court during his testimony that he registered a business name Clement Bob & Associates while in service.
3. The Defendant admitted that a sum of N14.176 million was paid into the account of Clement Bob & Associates. See his statement dated 19/4/16 and his testimony on the 19/9/18.
4. The Defendant also admitted that the money belongs to NIMASA.
5. The Defendant admitted under cross examination that the money is government money and transferred to his account via an instrument instructing Access Bank to debit NIMASA and credit the Defendants account. See Exhibit D and D1.
6. The Defendant also admitted that the sum of N7 million was transferred to one Mrs. Gunwa through WST Resources and he withdrew the sum of N3.5 million.
7. It has been established that the balance of N3.5million was confiscated by the EFCC.

PW3 and Pw4 testified that they knew the Defendant. PW3 is Mrs. Gunwa she admitted in her statement to the police and in court that she was a Director in NIMASA and that she had dealings with the company Clement Bob and Associates.

That her Director instructed her verbally to transfer the sum of N14 million from the account of Labor Advisory Committee into the account of Clement Bob and Associates. She further stated that the sum of N7 million was transferred to WTS. She said she prepared a memo in line with the verbal instruction from her boss and sent it to Access Bank who carried out the transfers. PW3 identified Exhibit D and D1 as her memo and the instructions. PW3 also testified that the sum of N14 million was meant for a stakeholder workshop of Labor Advisory Committee in Abuja and Lagos in 2015.

PW4 is one Mrs. Theresa Braimoh, a retired Director of the Federal Ministry of Labor. She said she worked under the Defendant till he rose to become the Permanent Secretary of the Ministry. She corroborated PW3's testimony that to the best of her knowledge no Advisory meeting took place in 2015 and no money was paid to her to conduct any meeting.

The testimony of PW2 Aje Oluwole is of particular significance. He testified that he is managing director of WTS Resources Nigeria Ltd. That he received an inflow from Clement Bob and Associates into WTS Diamond account. He also stated that he knows PW3, Mrs. Gunwa and it was through her the sum of N7 Million went into the account of WTS. He stated thus

**'Mrs. Gunwa asked me to transfer some to her account and hand over the balance to her. N4 million out of the N7 million was transferred to Sterling Access Management and the balance of N2, 900, 000 was withdrawn and handed over to Mrs. Gunwa.'**

The Defence submitted that the Prosecution has failed to prove the *actus reus* and *mens rea* i.e. the guilty act and guilty mind of the offence. Learned counsel for the Defendant submitted that PW3 and the Defendant DW1 testified that the money in question was not meant to be stolen and that at the time the EFCC stepped into the matter there was still a possibility that the Labor Advisory Meeting would hold. That PW3 brought back the money when EFCC came into the matter. That this has destroyed the mental element of the offences and shows that no offence was actually committed as at the time EFCC came into the matter.

The Defence also submitted that the Defendant explained why the money expended on the technical meeting was not retired. That an advance is retired at the end of the project. That the EFCC never requested for a single document and the IPO said he was not interested in looking at any document but recovery of money.

In response to the submission of the Defence, the Prosecution submitted that the very act of nominating a business name and not the Ministry of Labor's known account to receive public funds which was meant for official assignment is a clear

demonstration of action and intention of the Defendant to commit the offence. That the Defendant gave his account details to Calistus Obi, the Executive Director NIMASA and diverted the money to his business account. That PW3 and PW4 stated that the meetings in Lagos and Abuja did not hold. The Prosecution also referred to the testimony of DW2 and DW3. DW2 from the Ministry of Labor stated that the NLAC meeting did not hold in 2015. DW3 also an employee of the Federal Ministry of Labor under cross examination admitted that he did not attend the two days Special Maritime Session on National Labor Advisory Council for which the N14million was released nor did he receive any money from Clement and Bob Associates. DW2 and DW3 stated that they only attended a technical meeting on the 12<sup>th</sup> of February 2015 convened by the Permanent Secretary. The Prosecution further contended that the Defendant exhibited his fraudulent intentions by falsely claiming in his statement Exhibit A-A13 that upon receipt of the money in his account the sum of N7 million was given to the Maritime Labor Department and the remaining sum of N7,176,000 was given in cash to the Labor Standard Department of the Ministry of Labor. That the head of the department PW4 stated in court that she was not given any money to organize the program in 2015.

It has been established by the Prosecution through Exhibits D and D1 that the sum of N14million was transferred from the account of the Technical Committee on the Ratification of MLC 2006 to the account of the Defendant Clement Bob and Associates. The Defendant did not deny this fact, he explained in his statement that he recommended Clement Bob and Associates in view of the challenges associated with funding of meetings with reference to no project account by the ministry including the fear by officers to have huge amounts of money in their accounts. He also stated that there was no acknowledgement document from the relevant departments for the receipt of the money. This supports the statement of PW4 who stated that the PMLS Department was not given the sum of N7,176,000 as alleged by the Defendant. I believe the statement of this witness because it is clear from the statement of account of Clement Bob and Associates Exhibit B the sum of N7million was transferred to WTS Resources on 2/2/2015. Thereafter PW2 transferred on the instructions of PW3 N4 million to her account at Sterling Asset Management and N2.9 million was given to PW3 in cash. The Defendant said he made a cash withdrawal of N3.5 million and a balance of N3.5 million was left in the account. It therefore means that Clement Bob and Associates only transferred the sum of N7million to WTS were it ought to have remained until it was needed. Why did PW3 transfer N4million to another account? Why did she receive N2.9 million in cash? The Defendant stated that he gave the sum he withdrew to his Special Assistant now deceased to spend on logistics, honorarium, documentations,

stationary and transport. That it was his special assistant that handled the expenditure. However the Defendant was not able to support this information with any documentation even at investigation stage. He stated that the IPO said he was not interested in documents but the IPO during his testimony stated that there was no written approval for the transfer of government funds from NIMASA to the account of Clement Bob & Associates or WTS Resources that had no connection with NIMASA. PW3 on verbal instructions of her Director initiated instructions to the bank to affect transfer. That PW3 when confronted with the facts she made a statement and returned the money. That the money ought not to have been paid into a personal account.

The Prosecution tendered Exh.DF6 being a letter written by the Defendant as PS of his ministry to the DG NMASF seeking approval for the funding of a 2 day meeting of the NLAC and attaching the cost implication. The money was transferred but there is nothing to show that this particular meeting took place. Furthermore there is no written request and approval given for the money to be paid into Clement Bob & Associates account, therefore the money ought to have been paid into an account of the ministry for accountability and transparency.

Under cross examination the Defendant admitted that there was no acknowledgement of funds from his Special Assistant or a memo from the PS to John the Special Assistant informing the Ministry that he handed over the funds to John. The Defendant also admitted that he is the accounting officer of the ministry and that when he took control of the funds he did so as the desk officer of the project and in his official capacity. The Defendant testified that the money which was an advance was not retired because the programme had not ended and the project was truncated. His defence is that there was a possibility that the meetings would still hold.

The law is clear that in general there is no duty on the accused to prove his innocence however were facts against him are very strong and substantial he is then required to offer explanation. When he fails to offer satisfactory explanation, an inference of guilt against him will arise. See the case of Arowolo v The State (2009) LPELR-4913.

By the Ruling of the court on the no case submission dismissing the Defendants submission and declaring that the Defendant has a case to answer the burden has

"The burden of proving that any person 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."

The Defendant in the view of this court has not given satisfactory explanation of his actions concerning the transfer of the sum of N14 million into his personal account. The Defendant was a Permanent Secretary with many years' experience and admitted during cross examination that he is conversant with the Financial Regulations a copy of which was tendered as Exhibit D1411 and which was not objected to by the defence. The Defendant told the court that the funds was an advance which he said is money given to staff of an organization to carry out certain approved activities and to retire at the end of the assignment. However a cursory look through chapter 14 of the Financial Regulations on advances shows clearly that the Defendant failed to abide by the laid down procedure. I refer to Rule 1402 which reads thus.

Rule 1402:

1. Advances Non-personal are those advances granted to an Officer in his official capacity e.g. Imprests (standing and special) and advances granted as a result of loss of funds.
2. Advances of Non-personal character shall be authorized by the Minister of Finance, except advances created under the authority of Financial Regulation 2524 or advances of up to N50,000,000 approved by the Accounting Officer. Applications for Non-personal advance must state the reason for the advance, the method of clearance and the person to be held responsible for clearing the advance.
3. In the disbursement of funds for Non-Personal Advance for project/special programmes, the leader of the project/special programmes shall be the Accounting Officer and shall approve all payments, while an Accountant of an appropriate grade shall be attached to each project/special programme and have responsibility of disbursements of the Non-Personal Advances.

It is the view of this court that the N14million was not an advance as it was approved by a tenders board as stated by PW3 and transferred from the account of the Technical Committee on the Ratification of the MLC 2006 for use of the committee handling the project. It was money belonging to the government. Rule

713 of the Financial Regulations makes it clear that public and personal money are to be kept separate. Rule 713 reads thus:

'Personal money shall in no circumstances be paid into a government bank account, nor shall any public money be paid into a private bank account. An officer who pays public money into a private account is deemed to have done so with fraudulent intent'.

It is therefore clear that the Defendant's actions are in gross violation of the financial regulations and smacks of fraudulent intent.

The Defendant submitted that there are contradictions in the testimonies of PW1 and PW3. I have perused the relevant testimonies and find that the contradictions do not go to the root of the matter before the court. It is not in all cases that contradictions in the Prosecution's case are fatal to the Prosecution's case. It is only when the contradictions are on a material issue which creates some doubt in the mind of the judge that the accused is entitled to benefit from it. It must be fundamental and substantial to the main issues in question. See the case of Dominic Princeant & anor v The State (2002) LPELR-2925. The testimony of the PW2 clearly indicates that funds were diverted to a personal account. The inference is that the money was paid into that account with fraudulent intent. PW3 actually diverted the funds to her personal account and collected some amount in cash. If the meeting did not hold why did she collect the money and put some in her account.

The contention of the defence that the Prosecution failed to prove the specific amount stolen cannot avail the Defendant. In the case of Afano v A. G Bendel (1988) 2 NWLR (PT 75) 210 SC, it was held that were the Prosecution proves that the Defendant stole part of the money alleged to have been stolen the Defendant should not be acquitted. The evidence shows that the Defendant with the concurrence of Callistos Obi and PW3 was able to transfer the sum of N14 Million into a personal account. That he transferred N7 Million to private accounts provided by PW3 who further transferred same to her other accounts. N3.5 million was cashed personally by the Defendant and there is no evidence to show how it was expended. It was the intervention of EFCC that stopped any further transfer of the balance of N3.5 million.

The defence objected to the admissibility of EXH. B, C, F, DF12, D and E on the ground that they were tendered through PW1 the investigating police officer and not the maker of the documents. However I am in agreement with the submission of the Prosecution that the documents were recovered by the IPO in the course of his

of discrediting and injuring the character of the Defendant. In respect of this issue I refer to Section 223 of the Evidence Act 2011 which states as follows:-

When a witness is cross-examined, he may, in addition to the question referred to in preceding sections of this part, be asked any question which tend to:-

- a. Test his accuracy, veracity or credibility or;
- b. Discover who he is and what is his position in life; or
- c. Shake his credit, by injuring his character.

Thus I find that the Prosecution was in order in using the three Exhibits tendered through the Defendant under cross examination. I also refer to Section 224 (2) (a) Evidence Act which states as follows:

**Section 224**

2. In exercising its discretion, the court shall have regard to the following considerations;
  - a. Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies.

It is the view of this court that the questions asked by prosecuting counsel are proper under the circumstances of this case and the Prosecution succeeded in deriding and injuring the character of the Defendant by showing that the Defendant received government funds into his personal accounts and his defence should not be believed by the court.

In the final analysis of this case this court finds that the Prosecution has proved beyond reasonable doubt the first and second counts of the charge. The Defendant violated the financial regulations of the government by transferring public funds into his personal business account which is evidence of fraudulent intent. His actions were facilitated by Callitus Obi and PW3, one Mrs. Gunwø who turned Prosecution witness.

As regards the offence of conversion of property derived directly from an illegal act with the aim of disguising the illegal origin of the property contrary to section 330 (1) of the Criminal Law of Lagos State the defence submitted that the Prosecution had failed to prove this offence in that there is no evidence the Defendant tried to hide the origin of same. That there is no evidence on record showing that the money had an illegal origin or that the money was employed by the Defendant in any business with the sole aim of hiding the illegal origin.

investigation and are therefore admissible. I refer to the case of Obot v The State  
(2014) LPELR- 23130CA, where it was held that:

'Invariably, an Investigating Police Officer is hardly ever at the crime scene. His investigation comes after the crime had been committed. An Investigating Police Officer obtains statements from accused persons and the witnesses alike. He thereafter testifies in court giving a synopsis of what he did during the investigation. He tenders the statements of both accused and in some cases that of witnesses. He also tenders some documents and exhibits obtained during investigation. The Investigating Police Officer therefore gives direct evidence as to what he has done during investigation of the crime. The evidence of the Investigating Police Officer is not in any standard hearsay. He gives an account of what he has done in the process of his investigations.'

The defence also made heavy weather of the fact that a technical meeting was held before the larger meeting and as such forms an integral part of the NLAC of which funds were expended. It is the view of this court that there is nothing to show that the funds utilized for the technical meeting were from the money allocated for the NLAC meeting. From Exhibit DF10 the report on the one day meeting only 7 people attended the meeting and although DW2 and DW3 claimed that they received the sum of N50,000 each there is nothing to substantiate this claim. The Defendant admitted under cross examination that the participants did not sign any document.

In the reply on point of law filed by the defence, they objected to the tendering of Exhibits DF11, DF12 AND DF13. The Prosecution submitted that these documents were needed to discredit the Defendant. Firstly, the documents were tendered through the Defendant during cross examination. The Defendant said he knew about financial regulations and defence did not object when same was tendered as Exhibit DF11. The Defendant also identified Exhibit DF12 as his statement of account in ASO Savings. The prosecuting counsel used this document to show that large sums of money were transferred from the Defendants business account to Exhibit DF12 which he could not readily state the source of the funds. Exhibit DF13 is an affidavit of no objection deposed to by the Defendants Special Assistant before the Federal High Court in the matter of application of the EFCC for an order of forfeiture of property of the Defendant. The Defendant identified Mr. John's passport photograph, name and signature on this document which is titled EFCC v Clement Illoh. Thus the court admitted same as being relevant only for the purposes

Money laundering involves the act of hiding money illegally obtained. The term  
laundering is used because the intention is to turn dirty money into clean money.  
See the case of Kalu vs FRN (2012) LPFLR-9287

I am in agreement with the defence that the money in itself was not dirty money  
because it was approved by NIMASA. However, it was converted by the Defendant  
when he paid it into his personal account. There was no concealment or disguising  
the origin of fund thus I am in agreement with the defense that this offence was not  
adequately proved.

In conclusion, I hereby find the Defendant guilty of counts 1 and 2 of the charge, I  
however find him not guilty of the 3<sup>rd</sup> count contrary to Section 330 (1).  
This is the judgment of the court.

  
HON. JUSTICE O.A. TAIWO (MRS.)  
JUDGE  
3/10/19

## ALLOCUTUS

**MR. AWANA:** The Defendant is a first time offender. We urge the court to temper  
justice with mercy. This is a man who has served the nation meritoriously.

**MR. OYEDEPO:** We urge the court to send clear signal to public officers who  
convert public funds and mismanage government funds. I refer to Section 286(6) of  
the Criminal Law on persons in public service.

We urge the court to direct that Defendant return the sum he converted to his  
personal use.

**COURT:** I have carefully considered the submissions of the Defence counsel and  
prosecuting counsel of the issue of sentence. It is unfortunate that a senior public  
officer in the Nigerian public service has found himself in this predicament however,  
the financial regulations of the Nigerian government are clear. A public officer  
should not pay government funds into a private account as it is considered to be a  
fraudulent act. Under Section 286(6) Criminal Law which refers to stealing by  
persons in public service, the offender is liable to imprisonment for seven (7) years.  
However, under the sentencing guideline of Lagos State, the court has discretion to  
reduce the sentence particularly where there is no serious physical injury to anyone  
and the Defendant is a first time offender.