IN THE COURT OF APPEAL
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON TUESDAY THE 19TH DAY OF JUNE, 2018
BEFORE THEIR LORDSHIPS:

CHINWE EUGENIA IYIZOBA	**JUSTICE, COURT OF APPEAL**
HARUNA SIMON TSAMMANI	**JUSTICE, COURT OF APPEAL**
NONYEREM OKORONKWO	**JUSTICE, COURT OF APPEAL**

CA/IB/465C/2017

BETWEEN:

PROFESSOR BENJAMIN ADEFEMI OGUNBODEDE ..... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

JUDGMENT

(Delivered by HARUNA SIMON TSAMMANI, JCA)

This appeal is against the judgment of the Federal High Court, Ibadan Division delivered by N. Ayo-Emmanuel, J on the 3rd day of October, 2017 in Charge No: FHC/IB/55C/2014.

The Appellant was charged along with 12 others on a 17 Counts Information alleging the commission of the offences of conspiracy, procurement and retention of various sums of money said to be the proceeds of crime. The offences are contrary to Sections 18(a), 18(c) and punishable under Sections 15(a) and 17(a) of the Money Laundering (Prohibition) Act, No.11 of 2011. The Appellant was party to the offences alleged in Counts 1, 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16. He was convicted

on Counts 1, 2, 4, 6, 7, 9, 11, 12, 15 and 16 but was acquitted on Count 13. On Count 1, it was alleged that the Appellant (1st Accused), 2nd and 3rd Accused conspired to convert the proceeds of theft to their personal use while they procured the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th Accused Persons on the Charge Sheet to retain the proceeds of crime.

The prosecution of the Appellant and the Co-Accused Persons sprang from a Petition received by the Economic and Financial Crimes Commission (EFCC) on the 20th day of December, 2013. The petition which is in evidence as Exhibit "P1" was written by members of the Joint Action Committee of Staff Unions of the Institute of Agricultural Research and Training, Obafemi Awolowo University, Ibadan. That, the Federal Ministry of Agriculture and Rural Development, Abuja, remitted to the Institute the sum of Six Hundred and Six Million, Two Hundred and Sixty-One Thousand, Eight Hundred and Sixty-Nine Naira, Eighty Kobo (₦606,261,869.80) as subvention in two tranches dated the 24/11/2010 and 21/12/2010 respectively. That, the amount remitted was for personal emoluments. The evidence adduced by the prosecution disclose that, out of the amount remitted, the Appellant and the 2nd Accused opened an account with Access Bank, Bodija, Ibadan branch where they diverted the sum of One Hundred and Seventy-Seven Million, Five Hundred and Seventy-One Thousand, Six Hundred and Nine Naira, Fifty Kobo (₦177,571,609.50) in the guise of payment of Hazard Allowances to Staff of the Institute. That it was from that account that the Appellant, 2nd and 3rd Accused Persons laundered the money through fake and fictions payments through the 5th – 13th Accused Persons, all companies registered and owned by the 4th

Accused Person. That the monies withdrawn by the 4th – 13th Accused Persons were eventually returned to the Appellant, 2nd and 3rd Accused Persons.

The Appellant on the other hand, built his defence on the fact that when he became the Executive Director of the Institute of Agricultural Research and Training, Ibadan in 2009, he discovered that there was lack of funds to run the Institute, especially the upgrading of the Institute's facilities, payment of staff salaries and allowances. That the problem led to a violent crisis in the Institute as a result of agitations from various Unions within the Institute over payment of salaries and allowances including new hazard allowances. That, to douse the tension, the Appellant had to seek help from well-wishers of the Institute so as to source money. That, it was due to that effort that the said sum of ₦606,261,869.80 was release to the Institute by the Federal Government for the use of the Institute including payment of staff salaries and allowances. The Appellant admitted directing the transfer of the said sum of ₦177,571,609.50 into the Institute's Staff Club Account with Access Bank in order to prevent its being mopped up by the office of the Accountant-General of the Federation, so that the money be used for the overall development of the Institute.

At the trial, the prosecution called five (5) witnesses who testified as PW1, PW2, PW3, PW4 and PW5 respectively; and tendered some exhibits marked as Exhibits P1 – P12. The defence presented their case through the Appellant (1st Accused), 2nd and 3rd Accused persons who testified as DW1, DW2 and DW3 and tendered Exhibits "D13" – "D21" respectively. At

the close of evidence, respective counsel filed and exchanged Written Addresses; and in a considered judgment delivered on the 3rd day of October, 2017, the learned trial Judge found the Appellant guilty on all but Count 13 of the charges against him. Being aggrieved by the judgment the Appellant has by this appeal approached this Court.

The Notice of Appeal was dated and filed on the 10/11/2017. It consists of 28 Grounds of Appeal. The Appellant's Brief of Arguments dated the 29/01/2018 was filed on the 01/2/2018 but Deemed filed on the 07/2/2018. Therein, nine (9) issues were distilled for determination as follows:

1. Whether having discharged the 3rd Defendant on offences jointly charged with the Appellant and another person, and same having the same ingredients, the lower Court was not duty bound to discharge and acquit the Appellant on those offences.
   [GROUND 28].

2. Whether a person can in law conspire with or procure a non-existent person to do anything.
   [GROUNDS 8, 18, 19, 22].

3. Whether Exhibit 10 is a Confessional Statement that could be used to convict the Appellant.
   [GROUNDS 6, 11].

4. Whether from all the facts of this case, the prosecution proved its case against the Appellant beyond reasonable doubt to warrant his conviction.
   [GROUNDS 1, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23, 27].

5. Whether Exhibits P5, P6, P7, P8 are admissible or capable of being given any weight.
[GROUNDS 2, 3, 4].

6. Whether the Charge as formulated was not defective for failure to provide the punishment section therein.
[GROUND 7].

7. Whether the learned trial Judge was not in breach of the Appellant's right to fair hearing when he discountenanced Exhibits D13 and D14 tendered by the Appellant but relied on Exhibits D19 – D21 tendered by the Respondent.
[GROUNDS 5, 24].

8. Whether the Respondent proved the offence of conspiracy beyond reasonable doubt.
[GROUND 25].

9. Whether the lower Court was right to have assumed jurisdiction to entertain the charge.
[GROUND 26].

The Respondent's Brief of Arguments was dated and filed on the 05/3/2018 but Deemed filed on the 14/3/2018. The Respondent formulated two (2) issues therein for determination as follows:

1. Whether having regard to the facts and circumstances of this case, it can be said that the lower Court did not have jurisdiction to try Money Laundering Related Offences.

2. Whether having regard to the evidence adduced by the prosecution, it cannot be said

that the prosecution did not prove its case against the Appellant beyond reasonable doubt.

The Appellant responded on points of law by filing an Appellant's Reply Brief. It was dated and filed on the 20/3/2018.

I have carefully perused the issues as formulated by the parties. After much consideration, I am of the view that it would be proper that the appeal be determined on the issues formulated by the Appellant. I shall begin with issue nine (9) which deal with the issue of jurisdiction.

Now, on issue 9, learned counsel for the Appellant argued that none of the offences for which the Appellant was tried and convicted, is covered by Section 251 of the 1999 Constitution of the Federal Republic of Nigeria. The case of **Amiwero v. A.G; Federation (2015) 15 NWLR (pt.1482) 353 at 387 paragraphs B – C**, was then cited to submit that, the trial Court therefore had no jurisdiction to hear and determine on the charges against the Appellant. That for the trial Court to have jurisdiction, the charge must flow from any of the items mentioned in Section 251 of the 1999 Constitution.

In response, learned counsel for the Respondent contended, first of all, that the Appellant cannot challenge the jurisdiction of the Court piecemeal. That, in the course of the trial, the Appellant had filed an application challenging the jurisdiction of the Court which was dismissed; and that the Appellant had appealed that Ruling which was also dismissed by this Court. It was thus submitted that it is an affront to this Court for the Appellant to raise the issue again. Learned Counsel for the Respondent went on to submit that, in the event this Court disagrees with him on that

point, the Court below, eminently had jurisdiction to hear and determine the charges preferred against the Appellant. Referring to the decision of this Court in **Ogunbodede v. FRN (2017) 5 NWLR (pt.155() 337 at 346 – 347 paragraphs C – D, and 348 – 349**, the learned counsel for the Respondent submitted that the Federal High Court has the jurisdiction to adjudicate on Money Laundering Matters by virtue of Section 251 of the 1999 Constitution and Section 20 of the Money Laundering (Prohibition) Act, 2012 (as amended).

Learned Counsel for the Appellant further submitted that, Section 251(1)(p) of the 1999 Constitution empowers the Federal High Court to hear and determine criminal cases arising from the administration, management and control of Federal Government Agencies. That at the time the Appellant committed the offences, he was the Director of the Institute of Agricultural Research and Training, Obafemi Awolowo University (Moor Plantation), Ibadan which is an Agency of the Federal Government of Nigeria. It was then submitted that Sections 251(1)(s) of the 1999 Constitution and 20 of Money Laundering (Prohibition) (Amendment) Act, 2012 give the Federal High Court exclusive jurisdiction to hear and determine Money Laundering Offences.

In reply on points of law, learned counsel for the Appellant argued that the Respondent did not contend that the issue raised, argued and decided in **Ogunbodede v. FRC (supra)** is the same as the issue raised in the Appellant's Notice of Appeal as argued in issue 9. That the issue earlier raised was decided under the Money Laundering Act, 2011 whereas the case ought to have been decided under the Money Laundering Act,

2013 which amended the 2011 Act by removing the word "exclusive" in Section 20 thereof. It was then contended that this Court's attention was not drawn to Section 20 of the Money Laundering Act, 2012 which led this Court to hold sweepingly that the Federal High Court has exclusive jurisdiction to hear the charges under the Money Laundering Act, 2011. The case of **Ugwu v. Ararume (2007) LPELR – 24345 (SC)** was then cited to submit that, applying the mischief rule of interpretation, with the removal of the word exclusive, the Federal High Court no longer has the exclusive jurisdiction to try offences under the Act.

Learned Counsel for the Appellant also cited the case of **N.E.P.A. v. Edegbero (2002) 18 NWLR (pt.879) 79**, to submit that in determining the jurisdiction of the Federal High Court, the Court must consider two things; the subject matter and the parties. It was then contended that, the fact that the Appellant was an officer of a Federal Government Agency is not enough to confer jurisdiction because, the subject matter of the charge must be one of those stated under Section 251 of the 1999 Constitution. That the charges preferred against the Appellant have nothing to do with any of the matters listed in Section 251(1) of the 1999 Constitution. Furthermore, the persons the Appellant is said to have procured are not agents of the Federal Government nor was the procuring in the administration of a Federal Agency. The case of **Amiwero v. A.G; Federation (2015) 15 NWLR (pt.1482) 353 at 387 paragraphs B – C** was then cited to submit that, the trial Court had a duty to look at the charge(s) so as to see whether any of the counts flow from any of the items mentioned in section 251 of the 1999 Constitution.

Now, it is settled law, that jurisdiction is fundamental to the power and competence of any Court, whether trial or appellate to adjudicate on any matter or cause that is brought before it. Jurisdiction is therefore the foundation or source from which any Court draws its power to hear and determine any case. Without jurisdiction no action or suit can be validly initiated before any Court. Jurisdiction being a threshold issue in any action or case, the Court called upon to hear and determine the issue, must ensure that it has jurisdiction before it can proceed to determine the suit. See **C.B.N. v. Auto Import Export & Anor (2013) 2 NWLR (pt.1337) 80**; **Dingyadi & Anor v. INEC & Ors (2010) LPELR – 4014 (SC)**; **N.D.I.C. v. C.B.N. & Anor (2002) 7 NWLR (pt.766) 273** and **Garba v. Mohammed & Ors (2016) LPELR – 40612 (SC)**. Thus, in **Okoro & Ors v. Egbuoh (2006) 15 NWLR (pt.1001) 1**, **Tobi, JSC** said:

> "Although jurisdiction is a word of large purport and signification in the judicial process, it is not a subject of speculation or gossip by counsel as it is a matter of strict law and hard law donated by the Constitution and Statutes. It is a threshold issue, the blood that gives life to the survival of the action, and occupying such an important place in judicial process; counsel cannot be heard to take a gamble on it whenever they know or feel that the case of their client is bad. This is an employment which jurisdiction will certainly reject."

Jurisdiction is therefore so fundamental that, without it, a Court would be acting in futility. Thus, where a Court acts without jurisdiction, the entire proceedings conducted in such a suit and the judgment thereon

would be null and void. See **Salisu & Anor v. Mobolaji & Ors (2013) LPELR – 22019 (SC)**; **ABIEC v. Kanu (2013) 13 NWLR (pt.1370) 69** and **Ajayi v. Adebiyi & Ors (2012) 11 NWLR (pt.1310) 137**.

The substantive as opposed to the procedural jurisdiction of a Court is generally donated by the Constitution or Statute that created it. Courts in Nigeria are created by the Constitution and Statutes, and therefore it is the Constitution and the Statutes that define the jurisdiction of those Courts. See **Ifeajuna v. Ifeajuna (2000) 9 NWLR (pt.671) 248**; **Adetayo & Ors v. Ademola & Odrs (2010) 15 NWLR (pt.1215) 169** and **Oloruntoba-Oju & Ors v. Abdul-Raheem & Ors (2009) 13 NWLR (pt.1157) 83**. The Federal High Court is a creation of Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It's jurisdiction is donated by Section 251 of the Constitution. With respect to criminal matters, the jurisdiction of the Federal High Court is donated by Section 251(1)(s), (2) and (3) of the 1999 Constitution (supra). Section 251(2) gives the Federal High Court jurisdiction in respect of treason, treasonable felony and allied offences. This provision is therefore not relevant for the purposes of this appeal.

Section 251(3) of the Constitution (supra) however stipulates that:

> "The Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by Subsection (1) of this Section."

Subsection 1(s) is relevant here, as it clearly stipulates that:

> "... Such other jurisdiction civil or criminal and whether to the exclusion of any other Court or not

as may be conferred upon it by an Act of the National Assembly."

The provision to Section 251(1)(s) of the Constitution is not relevant for the purposes of this appeal. It is clear therefore clear that aside the criminal jurisdiction of the Federal High Court as donated by Section 251(3), an Act of the National Assembly may by Law confer upon the Federal High Court such other jurisdiction, whether exclusive or not, as it is deemed fit. See **Uwazuruike & Anor v. A.G; Federation (2013) 10 NWLR (pt.1361) 105**; **Aweto v. FRN (2015) LPELR – 41725 (CA)** **Olubeko v. FRN (2014) LPELR – 22632 (CA)** and **Bolaji & Anor v. State (2010) 1 FWLR (pt.508) 809**. What is precedent is to determine whether the jurisdiction donated falls within the items (a) – (r) stipulated in Section 251(1) of the Constitution. That is the necessary impart of Section 251(1)(s) and (3) of the 1999 Constitution. It therefore means that, by a combined reading of Section 251(1)(s) and (3) of the Constitution, the Federal High Court may exercise criminal jurisdiction in respect of offences arising from any of the items enumerated in Section 251(1) and where such jurisdiction has been conferred on it by an Act of the National Assembly.

It also means that, in order to determine whether or not the Federal High Court has jurisdiction, the Court shall consider whether the offence created has to do with any of the items listed in Section 251(1)(a) – (r) of the 1999 Constitution (as amended). Furthermore, the National Assembly may by an act confer such other jurisdiction on the Federal High Court by an Act, either exclusively or not. The issue under consideration is whether

the Court below had jurisdiction to try the Appellant on the offences for which he was tried and convicted being offences created by the Money Laundering Prohibition Act (supra). It has nothing to do with the exclusive jurisdiction of the Federal High Court. The offences have been created by an Act of the National Assembly pursuant to Section 251(1)(s) of the 1999 Constitution. Furthermore, the offences were undoubtedly committed at a time when the Appellant was on employee of the Federal Government serving under a Federal Agency. The acts were also committed in the course of administering or managing an Agency of the Federal Government. See Section 251(1)(p) of the 1999 Constitution. The trial Court therefore, eminently had jurisdiction to try the Appellant. See also Section 20(1) of the Money Laundering (Prohibition) Amendment Act, 2012. See also **Aweto v. F.R.N. (supra)**. **Olagbenro v. Olayiwola (2014) LPELR – 22597 (CA)**; **F.R.N. v. Yahaya (2015) LPELR – 24269 (CA)** and **Wagbatsoma v. F.R.N. (2015) LPELR – 24649 (CA)**. This issue is therefore resolved against the Appellant.

Learned Counsel for the Appellant argued under issue 5, that Exhibit P5 has no certificate attached to it. Secondly, that the said Exhibit P5 was authenticated by one Ugwu C. Emeka (who is the authorized signatory) and not the PW3, Elijah Adegboye. That the PW3 was not the maker of the document thereby making it inadmissible by virtue of Section 84 of the Evidence Act, 2011. The case of **Kubor v. Dickson (2013) 4 NWLR (pt.1345) 534** was cited in support.

On Exhibit P6A, learned counsel for the Appellant argued that, though the document is purported to have the certificate of the Bank as

issued by PW3, same was signed and issued by one Oyeyemi Oladejo (the compliance officer). Furthermore, that the document has on it "Void, Not For Presentation". He then cited the case of **Chitex Ltd v. Obi (2005) 14 NWLR (pt.945) 392 at 411** to submit that in the circumstances, Exhibit P6A can only be tendered by the maker.

Learned Counsel for the Appellant also contested the admissibility of Exhibit P7. That the exhibit contains the Wema Bank Statements of Accounts of (i) Arieco Trading Stores, (ii) Al-Tora Allied Business, (iii) Cradle Engineering Nig. Ltd and (iv) Towsbury Agencies Ltd; but same was issued strictly for Cradle Engineering only. That no certificate was issued for the other accounts. It was then submitted that; Exhibit P7 is therefore inadmissible on the basis that it is not relevant, it not having complied with Section 84 of the Evidence Act, 2011. The cases of **Flash Fixed Odds Ltd v. Akatuga (2001) 9 NWLR (pt.717) 46**; **Chitex Ltd v. Obi (supra)** and **Okereke v. Umahi (2016) 11 NWLR (pt.1524) 438 at 472** were cited to submit that, such documents not having been tendered by the maker, no weight should have been attached to them. The same argument was made in respect of Exhibit P8.

In response, learned counsel for the Respondent contended that Exhibit P5 is a legitimate account of the Institute. That the Accounts opening documents and Statement of Account were forwarded to the EFCC; and that Exhibit P5 has certificate of identification in line with Section 84 of the Evidence Act, 2011. That Exhibit P6A is the account that was fraudulently opened by the Appellant and 2nd Accused in Intercontinental Bank (now Access Bank). That it was duly certified as

emanating from Access Bank; and also contains a certificate of identification dated the 14/5/13 pursuant to Section 84 of the Evidence Act, 2011. On Exhibits P7 and P8 which are Statements of Account from Wema Bank and Union Bank, learned counsel for the Respondents pointed out that the documents contain certificates of identification thus complying also with Section 84 of the Evidence Act, 2011.

On a document, such as Exhibit P6 being marked "Void: Not For Presentation", learned counsel contended that, the documents were tendered through PW3 who is a member of the compliance Team of access Bank, South West; and that PW3 maintained that the documents emanated from Access Bank. It was thus submitted that, Exhibits P5 and P6A are not rendered inadmissible by reason of that inscription. Furthermore, that the certification of the Exhibits by the Bank and testimony on Oath of PW3 confirming that the documents are from the Data base of Access Bank has made the presentation of the documents legitimate.

Further on Exhibits P7 and P8, learned counsel for the Respondent submitted that, the documents were tendered through PW5, an investigating officer of the EFCC. That the said Exhibits P7 and P8 were received by the PW5 in the course of their investigation. That, in any case, an investigating officer is at liberty to tender documents discovered during investigation. The case of **Obot v. The State (2014) LPELR – 23130 (CA)** was cited in support. Furthermore, that Exhibits P5, P6A, P7 and P8 were tendered and admitted without objection.

Replying on points of law, learned counsel for the Appellant urged us to discountenance the arguments of the Respondent on the validity of

Exhibits P5 and P6A. That learned counsel for the Respondent ought to have addressed the Court on the meaning and legal effect of the phrase: "Void, Not For Presentation", printed on the documents, and not in the source of the documents. Furthermore, that the documents tendered through PW5 who is an EFCC operative and therefore not being the maker of the Bank Statements, is not competent to tender or give any evidence on them. The cases of **Omega Bank Plc v. O.B.C. Ltd (2005) All FWLR (pt.249) 1964**; **Uwa Printers (Nig.) Ltd v. Investment Trust Co. Ltd (1988) 5 NWLR (pt.92) 110** and **Okereke v. Omani (2016) 11 NWLR (pt.1524) 438** were then cited to submit that, no weight can be attached to a document tendered by a witness who cannot or is not in a position to answer questions on it.

Now, the admissibility of documentary evidence is governed by Section 83 of the Evidence Act, 2011. Thus, by Section 83(1) of the Evidence Act, 2011, any statement made by a person in a document which seems to establish any fact in issue, shall on production of the original of the document, be admissible as evidence of that fact if the following conditions are satisfied:

(i) If the maker had personal knowledge of the matters dealt with by the Statement; or

(ii) The document in question is or forms part of a record purporting to be a continuous record made in the statement (in so far as the matters dealt with by it are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be

supposed to have personal knowledge of those matters.

By Section 83(1)(b) it is required that the maker of the statement be called as a witness in the proceeding in which the document is tendered. The only exception is where the maker of the statement is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or is outside Nigeria such that it is not reasonably practicable to secure his attendance; that all reasonable efforts have been made to find him without success. In those circumstances, the personal attendance of the maker of a document may be dispensed with. See also Section 83(2)(a) of the Evidence Act, 2011.

Now, it is not the law that a document which is not tendered through the maker is inadmissible in evidence. However, the law requires that documents produced and tendered in evidence by the parties, must be tested in Court before the Court will be in a position to validly evaluate and determine their probative or evidential value to the case presented before it. In that case, a document tendered not through the maker will attract little or no probative value. For that reason, a party tendering a document in evidence, must ensure that the maker of the document, or at least such person as will be able to answer questions on the contents of the document, is called to testify. See **ACN v. Lamido (2012) 8 NWLR (pt.1303) 580 – 581**; **Omisore & Anor v. Aregbesola & Ors (2015) LPELR – 248.3 (SC)**; **Emmanuel v. Umana & Ors (2016) LPELR – 40659 (SC)**. In **Omega Bank (Nig.) Plc v. O.B.C. Ltd (2005) 8 NWLR (pt.928) 547**, **Tobi, JSC** said:

> "As a matter of law, documentary evidence can be admitted in the absence of the maker... After all, all relevance is the key of admissibility. In the hierarchy of our adjectival law, probative value comes after admissibility. And so a document could be admitted without the Court attaching probative value to it. That is the point I am making. Basically, admissibility and weight to be attached to the document admitted are two different things..."

The Court may therefore admit a document but attach little or no probative value to it. In the instant case, Exhibits P5 and P6A were tendered and admitted through PW3 who is the "Team Lead" for Compliance for Access Bank, South-West. He testified that they operate as a Team in their work with the Access Bank. He is therefore an employee of the Access Bank who has personal knowledge of the contents of Exhibits P5 and P6A. PW3 eminently qualified as a person who had personal knowledge of the matters dealt with in Exhibits P5 and P6A respectively. Though the PW5 is not the maker of Exhibits P7 and P8 nor can he be said to have had personal knowledge of the matters stated therein, the admissibility of the documents through him is lawful. The weight which the Court could attach to them is another matter entirely.

I wish to also point out that Exhibits "P5", "P6A", "P7" and "P8" were tendered and admitted without any objection. The law is that objection to admissibility of a document should be made at the time the document is being tendered. In other words, the proper time to object to admissibility of documents is when it is being tendered. See **Oguntayo v. Adelaja & Ors (2009) 15 NWLR (pt.1163) 150**; **Da'u v. State (2016) 7 NWLR (pt.1510) 83**; and **Sunday v. State (2017) LPELR – 42259 (SC)**.

That is the general principle, for a party may still raise objection at a later stage of the proceedings, even on appeal, if the document is by law inadmissible in all circumstances; and such document cannot be acted upon by the Court, even if admitted without objection. However, when the admissibility of the document is subject to certain conditions, the party objecting thereto must raise the objection timely, otherwise he cannot be heard later on to complain. See **Osho & Anor v. Ape (1998) 8 NWLR (pt.562) 492**; **Kassim v. State (2017) LPELR – 42586 (SC)**; **Oseni v. State (2012) 5 NWLR (pt.1293) 351** and **Archibong v. State (2006) 4 NWLR (pt.1000) 349**. See also **Ipilaiye v. Olukotun (1996) 6 NWLR (pt.453) 148 at 169**.

The documents in question here are bank documents produced by a computer. Their admissibility was therefore dependent upon their satisfying the requirements of Section 84(2)(a) - (d) of the Evidence Act, 2011. However, at the time the documents were tendered, learned counsel for the Appellant did not object to their admissibility. The Appellant cannot now an appeal, raise the issue of admissible. This is more as the documents are not legally inadmissible under any circumstance. In my view, the fact that the documents, being bank documents had endorsed therein the phrase; "Void: Not For Presentation" cannot make the documents inadmissible. In any case, the purpose of so marking document is to prevent its being presented or represented by the customer or any other person who may come into possession of it. A bank document marked as "Void: Not for Presentation" is therefore no more valid for presentation and thus cannot be honoured by the bank. It does

not, in my view, make the document void for purposes of admissibility in a Court proceeding. This issue is therefore resolved against the Appellant.

On issue six (6), Learned Counsel for the Appellant argued that, the contention of the Appellant before the trial Court was that the charge did not comply with Section 194 of the Administration of Criminal Justice Act, 2015 (ACJA, 2015), which required that a charge shall state the offence charged, the Law and the punishment section for the offence. That the case of **Akinola Olatunbosun v. State (2013) LPELR – 20939 (SC)** relied on by the learned trial Judge was decided under the repealed Criminal Procedure Act and therefore not a relevant authority under the ACJA, 2015. That, that is a procedure laid down in filing a charge, which include what must be stated in a charge in order to give an Accused Person notice of the offence with which he was charged. Referring to Section 36(6)(a) of the 1999 Constitution (supra), learned counsel contended that, the punishment section for the offence must be stated, and therefore, where the punishment section is not stated or wrongly stated, the Accused Person's right under section 36(6)(a) of the Constitution has been breached. The cases of **Obasanya v. Babafemi (2010) 15 NWLR (pt.689) 1 at 18**; **INEC v. Action Congress (2009) 2 NWLR (pt.1126) 524 at 616** were cited in support.

Learned Counsel for the Appellant further cited the cases of **Nwankwo v. Yar'adua (2010) 12 NWLR (pt.1209) 518 at 589** and **Bamaiyi v. A.G; Federation (2001) 12 NWLR (pt.727) 468** to submit that Section 194 of the ACJA, 2015 is mandatory and therefore, if it is found that a charge does not contain the punishment section or the

punishment section is not rightly stated, the whole trial would be a nullity. It was then submitted that, apart from Count 1 which contains Section 15(a) of the Money Laundering (Prohibition) Act as its punishment section, the remaining Counts mention Section 17(a) of the Act as the punishment section. That, once it is discovered that the charge does not contain the punishment section, then the trial and conviction of the Appellant would be a contravention of the Accused person's right under Section (36)(12) of the Constitution. The cases of **Enahoro v. The Queen (1965) 1 All NLR 132 at 139 – 140** and **Abidoye v. FRN (2014) 5 NWLR (pt.1399) 30 at 59 – 60** were cited in support.

Learned Counsel for the Appellant went on to submit that, Counts 2, 4, 6, 7, 9, 11, 12, 15, and 16 were all charged under Section 18(c) and punishable under Section 17(a) of the Money Laundering (Prohibition) Act (supra). That an offence under paragraph (a) of Section 17 is not concluded unless joined with paragraph (b). That in the instant case, the Respondent did not include paragraph (b) in the charge nor did it make paragraph (b) the punishment section. We were accordingly urged to quash the charge, conviction and sentence passed on the Appellant.

In response, learned counsel for the Respondent argued that Section 18(a) of Money Laundering (Prohibition) Act, 2011 creates the offence of conspiracy, and in the same section, it is provided that whoever conspires to commit an offence under the Act is liable on conviction to the same punishment prescribed for that offence under the Act. Furthermore, that the offence of conversion is punishable under Section 15(1)(a) of the Money Laundering (Prohibition) Act, and therefore, it is incorrect to argue

that the charge did not include the punishment Section. That Counts 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16 charged the Appellant for procuring the 4th – 13th Accused Persons to retain proceeds of crime. That the same section 18(c) provides that a person who procures any person to commit an offence under the Act, is liable on conviction to the same punishment as prescribed for that offence under the Act. That the punishment prescribed for retaining the proceeds of a crime or an illegal act is imprisonment for a term of not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or both such imprisonment and fine. We were then urged to discontinuance the arguments of the Appellant on this issue.

Replying on points of law, learned counsel for the Appellant insisted that the charges did not include paragraph (b) of Section 17 of the Money Laundering (Prohibition) Act. That, even if, paragraph (b) of Section 17 is incorporated, in the charge; the offence cannot be committed only by the retention of proceeds of crime.

Now, Section 194(1) of the ACJA, 2015 stipulates that a charge shall state the offence with which the Defendant is charged. It goes on to stipulate in Sub-section (3) of Section 194 of the Act that, A charge shall state the Law, Section of the Law and the punishment Section written against which the offence is said to have been committed. Under the repealed Criminal Procedure Act, an Accused Person was required to raise objection to a charge timeously at the time of arraignment unless the defect complained of is material and so fundamental as to touch on the root of a valid trial. However, by Section 221 of ACJA, 2015 no objection

on the ground of an imperfect or erroneous charge shall be entertained during the proceeding or trial. The Appeal Court may however intervene where it is discovered that the person convicted was misled in his defence by the absence of a charge, or by an error in the charge, such that a miscarriage of justice has been occasioned to the Appellant. See Section 222(1) of the ACJA, 2015. In the instant case, it has not been contended by Learned Counsel for the Appellant was in anyway misled by any error in the charge.

I have also carefully perused all the Counts of the charge for which the Appellant was tried and convicted. Count 1 charged the Appellant for conspiracy to convert certain sum of money being the proceeds of theft contrary to Section 18(a) and punishable under Section 15(1)(a) of the Money Laundering (Prohibition) Act, 2011. The offence of conversion of the proceeds of a crime such as bribery and corruption; "and any other criminal act specified in the Act or any other legislation in Nigeria relating to Money Laundering; etc, have been created by Section 15(1)(a) of the Act. The punishment for conspiracy to commit any offence under the act is that prescribed for the offence for which the conspiracy is hatched. Counts 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16 charged the offence of procuring certain persons to retain in their accounts, the proceeds of crime. Clearly, by the use of the conjunctive word "and" between Section 17(a) and (b), all the acts enumerated in paragraphs (a) and (b) of Section 17, are the subject of the punishments stipulated at the end of paragraph (b) of the said Section 17. Thus, where a person procures another to commit any of the acts listed in paragraphs (a) and (b) of Section 17 of the Act, he will

suffer the same punishment as that prescribed in Section 17(b). I see no ambiguity or difficulty on that. The complaints of the Appellant here therefore have no substance. It is accordingly discountenanced and the issue resolved against him.

On issue 7, learned counsel for the Appellant contended that it was wrong for the learned trial Judge to discountenance Exhibits "D13", "D14" and "D17" tendered by the Appellant. That Exhibit "D13" is the Auditor's Report and not report of a Panel as claimed by the learned trial Judge. That Exhibits "D19" – "D21" are Reports of Panels who are not Auditors who know about Financial Regulations. Secondly, that Exhibit "D19" made some findings that were contained in and corroborated by Exhibit "D13". Furthermore, that there is nothing in Exhibits "D19" – "D21" that proved any of the Counts in the charge. Rather, that the findings therein disproved the case of the prosecution that the money was retained by the different persons on behalf of the Appellant; and the 2nd and the 3rd Defendants. The case of **Basil v. Fajibe (2001) 11 NWLR (pt.725) 592 at 608 – 609** was then cited to submit that, failure by the learned trial Judge to appraise Exhibits "D13", "D14" and "D17" breached the Appellant's right to fair hearing.

The response of learned counsel for the Respondent is that, the argument of the Appellant on this point is misconceived. It was thus contended that, it was after a thorough analysis of the documentary evidence before him that the learned trial Judge found that Exhibits "D13", "D14" and "D17" are not worthy of any probative value. The cases of **Bamaiyi v. State (2001) 8 NWLR (pt.715) 270 at 284**; **Uguru v.**

State (2002) 2 NWLR (pt.771) 90 at 105 and **Audu v. FRN (2013) LPELR – 19897 (SC)** were accordingly cited to submit that the trial of the Appellant was conducted in accordance with law and procedure; and that the learned trial Judge had the judicial power to determine which evidence is worth ascribing probative value to. That the exercise of such power cannot amount to denial of the right to fair hearing.

It should be noted that the duty to evaluate and ascribe probative or evidential value to evidence adduced at the trial, rests primarily with the trial Court. That is the Court that saw, heard and observed the witnesses that testified before it. The duty to evaluate evidence by this Court, which is an Appellate Court, is restricted to the evidence on the printed record and such other documentary evidence tendered and admitted at the trial. See **F.R.N. v. Iweka (2013) 3 NWLR (pt.1341) 285**; **Busari v. State (2015) LPELR – 24279 (SC)**; **Haruna v. A.G; Fed. (2012) 9 NWLR (pt.1306) 419** and **Hamza v. Kure (2010) 10 NWLR (pt.1203) 630**. Where the trial Judge has dutifully and properly evaluated the evidence and the facts of the case, an Appellate Court will exercise restraint in interfering with the evaluation of such evidence by the trial Judge. The Appeal Court can only interfere in the circumstances explained by **Muhammad, JSC** in the case of **Aliyu v. State (2013) 12 NWLR (pt.1368) 403** as follows:

> "It is the primary function of the trial Court to evaluate evidence and ascribe probative value to it having had the advantage of seeing and observing the witnesses as they testified. Where the trial Court fails to discharge that primary duty or does so unsatisfactorily by drawing the wrong inferences

> from the evidence led, the Appellate Court has duty of interfering with the view to doing the justice any of the parties richly and manifestly deserves..."

In the instant case, the learned trial Judge held in respect of Exhibits "D13", "D14", and "D17", at page 1301 lines 7 – 15 of the Record of Appeal as follows:

> "I have considered Exhibits "D13", "D14", "D15", "D16" and "D17" tendered in defence by the 1st Defendant. I have particularly considered Exhibits "D13", "D14" and "D17" which has (sic) direct bearing on the charge under reference. These Exhibits are reports of different panels set up to investigate the finances of the Institute which eventually gave rise to this charge. The observations/recommendations of these panels are in conflict with the findings of this Court which is predicated on evidence and facts. I will therefore not place any probative value on them."

From the portion of the judgment reproduced above, it was the finding of the trial Court that, the observations/recommendations in Exhibits "D13", "D14", and "D17" are in conflict with evidence and facts legally admitted by the Court. There is no appeal against that finding. Secondly, it would be seen that those documents were not tendered through any of the makers of those documents or a person who was in a position to testify as to the truth of such findings. That being so, those documents could not command any evidential value. I note also, that there is no appeal against the findings of the trial Court in respect of Exhibits "D18" – "D21"; and particularly; Exhibits "D19" and "D21". I cannot therefore fathom how the trial Court violated the Appellant's right

to fair hearing, when he had evaluated and ascribed the required value to those Exhibits. This issue is also resolved against the Appellant.

On issue one(1), learned Counsel for the Appellant contended that the Appellant was charged along with the 2nd and 3rd Accused Persons for the offence of procuring some people to retain monies on their behalf as shown in Counts 2, 4, 6, 7, 9, 11, 12, 13, 15 and 16. That the 3rd Accused, Adenose Clement was discharged and acquitted on those Counts. Learned Counsel then cited the cases of **Abondejo v. F.R.N. (2013) All FWLR (pt.665) 295 at 321** and **Akpan v. State (2002) FWLR (pt.110) 1845** to submit that, since the 3rd Accused was acquitted on those Counts for which he was jointly charged with, the Appellant ought also to be acquitted. That it is so because, the same evidence is required to proof the charges against all the Accused Persons jointly tried. Relying further on the case of **Bode George v. F.R.N (2014) 5 NWLR (pt.1399) 1 at 24**, learned counsel submitted that, if the prosecution knew that it had no evidence that the three Accused Persons acted jointly, it ought not to have charged them jointly.

Learned Counsel for the Respondent argued that the argument of the Appellant is misconceived. Learned Counsel then submitted first of all that, for the principles enunciated in **Abondejo v. F.R.N (supra)** to apply, it must be established that the evidence adduced by the Respondent against the Appellant and the 3rd Accused are in all material respects the same. It was then contended that the case against the Appellant is that the Appellant and 2nd Accused opened Exhibit "P6A" with Access Bank wherein a total of ₦177,571,609.50 was warehoused into under the guise of hazard

allowances. Furthermore, that the Appellant and the 2nd Accused procured the 4th -13th Accused to retain the proceeds of the amount warehoused as evidenced by Exhibit "P6A". Learned Counsel then quoted the findings of the learned trial Judge at page 1301 of the Record of Appeal, to submit that, the facts show clearly that the evidence against the Appellant is not materially the same with that against the 3rd Accused. We were accordingly urged to discountenance the argument of the Appellant.

Replying on points of law, learned counsel for the Appellant contended that the Respondents are merely trying to dodge the effect of the case of **Abondejo v. F.R.N. (supra)**. That learned counsel merely tried to distinguish the evidence led, without referring to the offence charged. That the charge was that it was the Appellant, 2nd and 3rd Accused Persons that jointly procured the 5th – 13th Accused Persons to retain money on their defence. That in any case, Exhibit "P6A" was not opened by the Appellant and 2nd Accused, but by the Appellant, Prof. J.A. Adediran and Mr. S.O. Ogundele.

The settled law is that, where two or more persons are charged with the same offence and the evidence adduced by the prosecution against all of them was interwoven, if one of them is discharged and acquitted, the other Accused Person or persons must also be discharged and acquitted. However, for that principle to apply, the evidence against all the Accused Persons must be the same or similar such that a discharge of one must as a matter of law, affect the others. In determining the issue, the Court will consider the evidence and not the wording of the charge. See **Ikemson v. State (1989) 3 NWLR (pt.110) 455**; **Okoro v. State (2012) 4**

NWLR (pt.1290) 351; **Kasa v. State (1994) 5 NWLR (pt.344) 269**; **Ebri v. State (2005) 2 FWLR (pt.264) 633** and **Ilodigwe v. State (2012) 18 NWLR (pt.1331) 1**. Thus, in the case of **Idiok v. State (2008) 13 NWLR (pt.1104) 225**, **Tobi, JSC** (of blessed memory) said that:

> "It is not the law that once an Accused Person is discharged and acquitted, the co-accused must, as a matter of course or routine be discharged and acquitted like the night following the day and vice versa. It is not so. There is no such automatic position. It depends entirely on the facts of the case before the Court. A Court will only be right in discharging and acquitting the co-accused if the evidence in exculpation of the two Accused Persons is the same and nothing but the same; and not merely in some nexus or proximity. Putting it differently, where the Court finds as a fact that no case has been made against an Accused Person, he can be discharged and acquitted as in this case. The Court can convict the co-accused on the basis of inculpatory evidence against him..."

The evidence against all the Accused Persons must be inextricably interwoven. Thus, where the evidence led against each of the Accused Persons can be severed, an acquittal of one may not necessarily lead to the acquittal of the other. In the instant case, the learned trial Judge found from the evidence adduced at the trial, that the evidence of procuring the retention of the proceeds of the crime cannot be linked, also to the 3rd Accused. Indeed, as rightly pointed by the learned counsel for the Respondent, the name of the 3rd Defendant was never mentioned in the process of procuring the 5th – 13th Defendants by the Appellant and 2nd

Accused. The Appellant had a duty to demonstrate to us how that finding of the learned trial Judge was wrong but he did not do so. The issue therefore remains on the realm of bare assertion by the Appellant. This issue, issue one, is also resolved against the Appellant.

I now go to issues 3 and 4. Although the Appellant argued those two issues together with issue eight (8), I shall consider issues 3 and 4 together without issue 8.

On issues 3 and 4, learned counsel for the Appellant contended that the learned trial Judge merely quoted the statement of the Appellant extensively to conclude that the several cheques were issued by the Appellant in favour of the so-called procured Defendants from the sum of ₦177 million transferred from the Institute of Agricultural Research and Training (herein referred to as IAR & T) account to IAR &T Staff Club Account; and that the transfer was to prevent its being moped up by the Federal Government. That the learned trial Judge referred to the payment made to Momms Ltd, which is subject of Count two(2) and which cheque was signed by the Appellant and PW2, to hold that it is a clear confession or admission by the Appellant that he committed the offence charged in Count two(2). That, the learned trial Judge made similar findings in respect of Counts 4, 6, 7, 9, 11, 12, 14 and 16.

Learned Counsel for the Appellant then referred to the case of **George v. F.R.N (supra)** to submit that, the only effect to be given to the Statement of the Appellant is that he admitted signing the cheques and nothing more. Referring to the cases of **Nwobe v. The State (2000) FWLR (pt.4) 697 at 705** and **F.R.N v. Barminas (2017) 15 NWLR**

(pt.1588) 177 at 200 – 221, learned counsel submitted that for a Statement to amount to a confession, it must admit the commission of the crime, both in fact and in law; and that it must admit of all the ingredients of the offence charged. That in the instant case, for the Statement to amount to confession of the offence(s) charged, it must have admitted that:

(i) He and the 2nd Accused procured the named Accused Persons.

(ii) The persons procured were procured to retain the sums of money stated in each count in their account;

(iii) The persons procured actually retained the sums of money in their accounts;

(iv) The retention was on behalf of the Appellant, 2nd and 3rd Defendants; and

(v) The sum allegedly retained by the persons procured was from the proceed of crime.

Beginning with the fifth ingredient, learned counsel contended that, nowhere did the Appellant admit that the various sums stated in each of the Counts, was the proceed of crime. That, the money was part of legitimate money given to the IAR&T under the control of the Appellant, part of which was transferred to IAR&T Staff Club account. That, in determining the issue, the learned trial Judge did not define the word "retain". Referring to the definition of the word "retain" by the Oxford Advanced Learners Dictionary, learned Counsel contended that, the key word in the definition is "continue". That to succeed therefore, the prosecution must prove that the person procured continued to hold, have

use or recognize the money on behalf of the Appellant; and therefore, that a person cannot be said to retain what got into his hand and released to someone else. That the evidence required to establish the charges are the Statement of Account of the persons allegedly procured containing the sums of money alleged in each Count which still remained in the accounts of the persons procured. Furthermore, that the Appellant never stated in his statement (Exhibit "P10"), that any of those persons alleged to have been procured retained any sum of money in its account on his behalf and the 2nd and 3rd Accused Persons nor was the prosecution able to prove that such money was retained by any of the 5th – 13th Accused Persons.

Learned Counsel for the Appellant also argued in respect of Count 2 that, the Statement of account of the receiving bank, First City Monument Bank Plc was never tendered yet the learned trial Judge relied on the issuance of the said cheque in Exhibit "P6" to convict. That after all, the Appellant was never charged with issuing the cheques; and that what the prosecution was required to prove is the retention of the sums alleged by the persons procured. On Count four(4), learned counsel contended that, the cheque was issued to Afribiz Consult which is neither a juristic person nor a party to the case. That the 5th Defendant on the face of the charge is Afribiz Viable Ventures and not Afribiz Consult as written on the charge. Referring to the 6th Count, learned counsel argued that, the cheque was dated the 4/7/2011 but presented for payment at Union Bank Plc on the 05/6/2011 which is one clear month before it was issued. On Count 7, it was argued that there was no finding by the trial court that the Appellant

procured Cradle Engineering Services Ltd to retain the sums stated therein for the Appellant and the 2nd and 3rd Accused Persons.

Arguing on Counts 9 and 11, learned counsel for the Appellant contended that the cheques subject of the charge were issued in favour of Torosbury International Agencies Ltd said to be the 9th Accused Person, but the 9th Accused Person on the face of the charge is Torosbury International Agency Ltd which is not on incorporated entity. Furthermore, that Towsbury and Torosbury are not the same; and therefore having charged the Appellant along with Torosbury (not Towsbury) and for procuring Torosbury in spite of the letter from the Corporate Affairs Commission (CAC) stating that there was no company called Torosbury, the burden on the prosecution was proof that the Appellant procured Torosbury to retain money that was the proceed of a crime.

On Count 12, learned counsel for the Appellant argued that; the cheque number in the Statement of Account of IAR&T (Exhibit "P5") has ten zeros while the cheque number quoted has six (6) zeros. Furthermore, that the cheque was recorded in the Account of Agbeloba Agrotech Ventures Ltd on 21/7/2011 and given value on 21/7/2011 but the IAR&T Staff Club Account from which the money was debited with the value at the cheque on 22/7/2011. That it therefore means the money had been paid before the IAR&T Staff Club released the fund to Agbeloba's Bank Account. On Count 14, learned counsel contended that there was no allegation at all against the Appellant. However, on Count 16, learned counsel for the Appellant contended that Allied Aqua Forte Ventures mentioned in the account as having been issued the cheque is not a juristic

person as evidenced by Exhibit "P8". Learned Counsel then contended that the Account number of Allied Aqua Forte Venture and the business address given in the opening account are not the same as those of the account of the business name. That the cheque, subject of the charge was deposited on 29/6/2011 and given value on 4/7/2011 but out of ₦6.4million in the account the sum of ₦6.2 million was withdrawn the same day 4/7/2011 vide electronic transfer. That it therefore shows that the money alleged to have been retained was never retained in the account contrary to the charge.

Learned Counsel for the Appellant went on to submit that, the Statements of the Appellant tendered in evidence as Exhibit "P10" is not confessional of the fact that he committed the offences charged. Rather, that the Appellant merely stated what the money was used for, none of which was for the benefit of the Appellant or the other Accused Persons. Furthermore, that the only person who could prove that the money was retained on behalf of the Appellant, 2nd and 3rd Accused Persons was the 4th Accused Person who did not testify. Learned Counsel also submitted that, the Statement of the 2nd Accused Person to the effect that the account of Momm Ltd was used to withdraw the sum of ₦9,380,00.00 which was handed over to the Appellant, being that of a co-accused person is not binding on the Appellant. That in any case, the 2nd Accused did not say that the money was from the proceed of a crime nor was there evidence that the money was actually withdrawn as there is no valid statement of account of IAR&T Staff Club which could show the withdrawal; and that there was no statement of account of Momm Ltd

which could show receipt of the money into its account. We were accordingly urged to hold that Exhibit "P10" does not pass the test of a Confessional Statement; and thus, it was wrong to convict the Appellant on it.

In response, learned counsel for the Appellant submitted that the prosecution has successfully discharged the burden placed on it by proving the essential elements of the offences preferred against the Appellant beyond reasonable doubt. The case of **Miller v. Minister of Pension (1947) 2 All E.R. 373** was cited in support. On Counts 2, 4, 6, 7, 9, 11, 12, 14, 15 and 16 of the charged, learned counsel for the Respondent referred to Sections 18(c) and 17 of the Money Laundering (prohibition) Act, 2011 (as amended) to contend that to prove the offence under Section 18(c), of the Act, it must be shown that the Accused Person procured someone, in the instant case, the 4th – 13th Accused Persons to retain the proceed of a crime or illegal act. Learned Counsel then submitted that, the evidence on record showed clearly that the 4th – 13th Defendants knowingly retained proceeds of crime or illegal act of the Defendants. That for their role in the whole episode, the 4th -13th Defendants pleaded guilty to and were convicted for retaining the proceeds of crime or illegal acts of the Appellant and the other co-accused.

Learned Counsel for the Respondent further submitted that the Appellant was convicted for procuring the said 4th – 13th Defendants to retain the proceeds of their crime or illegal acts. That the 4th – 13th Defendants were used to convert a substantial part of the sum of ₦177,571,609.5 which evidence also show that the money found its way

back to the Appellant and the 2nd Defendant through the 3rd Defendant. That, it was through the various overt acts of the Appellant that the 4th – 13th Defendants retained the funds stolen from IAR&T. It was thus submitted that the trial Court legally convicted the Appellant on the strength of his Confessional Statement. The case of **Ikemson v. State (1989) NWLR (pt.11) 455 at 476** was cited to submit that, the Appellant had admitted the essential ingredients of the alleged offence by Exhibit "P10".

Learned Counsel for the Appellant went on to submit that, in view of the findings of the trial Court from pages 1291 – 1303 of the Record of Appeal, it will amount to contesting the obvious to argue that the above findings of the learned trial Court is perverse, especially in view of the evidence on record and the unequivocal admission of the Appellant both in his Extra-Judicial Statement and in the witness both.

It was also argued by learned counsel for the Respondent that, the Appellant wants this Court to discharge and acquit him because there was no evidence on record where reference was made to the sum of ₦115,750.000.00 alleged converted but the sum of ₦177,571,609.50. It was accordingly submitted that, the evidence is that ₦177,571,609.50 was fraudulently transferred to Exhibit "P6A" by the Appellant, the evidence on record shows the actual amount converted in Exhibits "P6A" and "P6B". That, what is required is for the prosecution to prove that the property allegedly converted was capable of being stolen, and therefore, whether the amount converted is ₦115,750,000.00 or the whole sum of ₦177,571,609.50 is immaterial. We were accordingly urged to

discountenance the arguments of the Appellant and to affirm the judgment of the trial Court.

In reply on points of law, learned counsel for the Appellant contended that the Appellant, 2nd and 3rd Defendants were charged with procuring the 4th – 13th Defendants to retain the proceed of crime and not with retention of the proceeds for other persons as required by Section 17 of the Money Laundering (Prohibition) Act. Furthermore, that the Respondent did not respond to the argument of the Appellant that the 5th – 13th Defendants being non-juristic personalities do not have a mind of their own and therefore cannot conspire nor be procured to retain the proceeds of crime; nor capable of having knowledge of anything.

In respect of the amount contained in the charge, learned counsel for the Appellant contended that there was no evidence linking the sum of ₦115,750,000.00 to any sum contained in Exhibits P5 and P6. It was therefore submitted that there is no evidence of any conversion.

Before I proceed on these issues, to wit: issues 3 and 4, I find it necessary to consider issue two (2); which is, "whether a person can in law conspire with or procure a non-existent person to do anything". Here, learned counsel for the Appellant had argued that, in Counts 1, 4, 7, 9, 11, 15 and 16, the Appellant, 2nd and 3rd Defendants were charged with conspiracy and procuring the 5th – 13th Defendants in the charge to retain on their behalf, certain sums of money. That it is obvious from Exhibit P7 that the 5th, 6th, 7th, 12th and 13th Defendants are business names and therefore do not have the status of a person and therefore can neither be sued nor be sued in their registered names. That the 9th Defendant is

named in the charge as Torosbury International Agency Ltd while the Corporate Affairs Commission (CAC), vide Exhibit P9B wrote that the 7th and 9th Defendants are not registered in its records. That the Appellant was convicted for conspiring with and procuring those none existent entities to retain funds on his behalf.

Learned Counsel for the Appellant also cited the case of **Reg'd Trustees P.A.W. v. Reg'd Trustees, A.P.C.C. (2003) FWLR (pt.150) 1795 at 1813** to submit that the Respondent could not prove the juristic personalities of the 9th and 10th Respondents. That in the circumstances, the Appellant could not be convicted for procuring the 5th, 6th, 7th, 9th, 10th, 12th and 13th Defendants. The case of **Christabel Group Ltd v. Oni (2008) 11 NWLR (pt.1097) at 121 – 122** was also cited in support.

In response, learned counsel for the Respondent contended that, the evidence on record show clearly that the 5th, 6th, 7th, 12th and 13th Defendants are business names of the 4th Defendant. That, it is the law that though a business name is not a juristic person that can sue or be sued, that cannot be said of the proprietor of such business name. It was then submitted that reference to those business names is reference to the 4th Defendant (Jalekun Omitowoju Yisau) who is the proprietor of those businesses. Were accordingly urged to resolve this issue against the Appellant.

Now, it is obvious that criminal liability or responsibility operate on the twin pillars of ***mens rea*** and ***actus reus***. Accordingly, criminal liability is personal and not vicarious. See **ACB v. Okonkwo (1997) 1 NWLR (pt.480) 194**; **Akpa v. The State (2008) 14 NWLR (pt.1106) 72**;

Dina v. Daniel (2010) 11 NWLR (pt.1204) 137 and APC v. PDP & Ors (2015) 4 SCM 48. Generally therefore, upon registration, a company becomes a personality distinct from the owners of the company. It becomes by law, an artificial person imbued with all the legal attributes of a natural person. It can therefore sue or be sued in its name. However, when it comes to unregistered companies or firms, that artificial legal personality does not exist. See **Onagoruwa v. State (1993) 7 NWLR (pt.303) 49** and **Yusuff v. J.A. Brothers (1991) 7 NWLR (pt.201) 39**. In respect of an unincorporated entity, it does not have the legal status of a legal or juristic person. It can therefore neither sue or be sued in its name. It can however be sued through a representative action. In the same token any person who has been wronged by such unincorporated body can only sue through a representative action. See **Owuekwusi & Ors v. Reg'd Trustees, Christ Methodist Zion Church (2011) 6 NWLR (pt.1243) 341**; **Fawehinmi v. NBA & Ors (1989) 2 NWLR (pt.105) 558** and **The Administrator General/Executors of the Estate of Gen. Sani Abacha (deceased) v. Eke-Spiff & Ors (2009) 7 NWLR (pt.1139) 97**.

In the instant case, the evidence on record discloses that the 5th – 13th Defendants were all registered and operated by the 4th Defendant. Specifically the 8th, 9th, 10th and 11th Respondents are incorporated bodies, that can sued or be sued in their corporate names. The complaint of the Appellant therefore rests on the 5th, 6th, 7th, 12th and 13th Defendants. The evidence on record shows that those Defendants are unincorporated bodies being business names by which the 4th Defendant carries on

business. In other words, the 4th Defendant was carrying out a one man business in the names of the 5th, 6th, 7th, 12th and 13th Defendants. The 4th Defendant could therefore sue or be sued in his personal name in respect of any transaction conducted or carried out in the names of those unincorporated firms by which he carries on his business. See **Monier Construction Co. Ltd v. Azubuike (1990) 3 NWLR (pt.136) 74**.

The Appellant, 2nd and 3rd Defendants were charged, tried and convicted for procuring, among others, the 5th, 6th, 7th, 12th and 13th Defendants to retain certain monies, the proceeds of a crime on behalf of the said Appellant, 2nd and 3rd Defendants. Being non-juristic persons, the 5th, 6th, 7th, 12th are incapable of being procured for the purpose for which the Appellant was charged. However, as stated above, the 4th Defendant, Jalekun Omitowoju Yisau was the sole proprietor and alter ego of those business firms. The said 4th Defendant is a natural being and no doubt capable of being procured to retain the proceeds of the crime for which the Appellant and the co-accused were convicted. In arriving at this conclusion, I take it that any act purported to be done in the names of the 5th, 6th, 7th, 12th and 13th Defendants are ascribed to the 4th Defendant. Incidentally, the 4th Defendant pleaded guilty for the acts of those Defendants and was promptly convicted thereon. In the circumstances therefore, it would be turning justice and law on their head to hold that the Appellant could not be convicted on those counts of charge on the ground that those Defendants are non-juristic personae. This issue is thus resolved against the Appellant.

Now, on issues 3 and 4, I wish to begin by restating that, Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria has clearly enshrined that; "every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty". This presumption of innocence guaranteed by the Constitution has therefore laid a heavy burden on the prosecution to prove the guilt of the Accused. To discharge the burden, the prosecution must call such evidence that is credible and proves every ingredient of the offence beyond reasonable doubt. Accordingly, where any of the ingredients of the offence is not proved, it would mean that the prosecution has failed to prove the offence charged beyond reasonable doubt, and the Accused would be entitled to an acquittal. See **Shehu v. The State (2010) 8 NWLR (pt.1195) 112**; **Abdullahi v. State (2008) 17 NWLR (pt.1115) 203**; **Ukeje & Anor v. Ukeje (2014) 11 NWLR (pt.1318) 384**; **Lawal v. State (2016) LPELR – 40633 (SC)**; **Ugboji v. State (2017) LPELR – 43427 (SC)** and **Adegbite v. State (2017) LPELR – 42585 (SC)**. Thus, in the case of **Onwe v. State (2017) LPELR – 42589 (SC)** **Galinje, JSC** said:

> "The law is very clear on who the burden of proof in a criminal case reside. Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria and Section 135(2) of the Evidence Act have placed the burden of proof in criminal cases squarely on the prosecution, who must prove it's case beyond reasonable doubt and a general duty to rebut the presumption of innocence constitutionally guaranteed to the Accused Person. This burden does not shift..."

Where evidence has been led by either the prosecution, or both the prosecution and the defence, the duty of the trial Court is to evaluate and appraise such evidence, so as to see whether the onerous burden placed on the prosecution by Sections 131, 132 and 135 of the Evidence, 2011 has been discharged. The primary duty of evaluation of evidence therefore rests on the trial Court who had the benefit and advantage of seeing and hearing the witnesses as they testify. Accordingly, where the trial Judge has dutifully and properly evaluated and appraised such evidence, this Court, being an appellate Court will be hesitant in tampering with the findings and conclusions of the trial Court. This Court will therefore only interfere where it is found, from the evidence on record, that the findings and conclusions of the trial Court are unjust or otherwise perverse. See **Haruna v. A.G; Federation (2012) 9 NWLR (pt.1306) 419**; **Lasisi v. The State (2013) 9 NWLR (pt.1358) 74**; **Aliyu v. State (2013) 12 NWLR (pt.1368) 403** and **Busan v. State (2015) LPELR – 24279 (SC)**. This Court will only interfere in the following circumstances:

(a) Where the trial Court failed to draw the correct inference from proved and admitted facts; or

(b) Where the trial Court took into consideration extraneous matters; or

(c) Where the trial Court showed that it misapprehended; or misapplied the law to the evidence adduced; or otherwise applied the wrong principles of law to the given facts;

(d) Where the trial Court reached a wrong conclusion on the evidence adduced before it.

See **Ejinima v. State (1991) 6 NWLR (pt.200) 627**; **Lasisi v. State (supra)**; **G.K.F. Investment (Nig.) Ltd v. NITEL Plc (2009) 3 FWLR (pt.488) 7507**; **Melifonwu & Ors v. Egbuja & Ors (1982) LPELR – 1857 (SC)**; **Shodiya v. State (2013) 14 NWLR (pr.1373) 147** and **Aminu & Ors v. Hassan & Ors (2014) 5 NWLR (pt.1400) 287**. See also **Ogbuokwelu & Ors v. Umeanafunkwa & Anor (1994) LPELR – 2296 (SC)** and **Onu & Ors v. Idu & Ors (2006) 12 NWLR (pt.995) 657**. In any of the stated circumstances, this Court will interfere, otherwise it will not tamper with the findings and conclusions of the trial. The duty is on the Appellant who challenges the findings of the trial Court, to demonstrate before the Appeal Court, how the findings and conclusion of the trial Court is wrong or perverse. See **Mohammed v. Kano N.A. (1968) 2548 (SC)**; **Ibrahim v. State (2014) 3 NWLR (pt.1394) 305** and **Udeh v. State (1999) LPELR – 3292 (SC)**.

In the instant case, the Appellant was charged along with two others, tried and convicted on Counts 2, 4, 6, 7, 9, 11, 12, 15 and 16 for procuring certain persons listed in the charge, to retain in their account, certain sums of money being proceeds of crime, on behalf of the Appellant and the 2nd and 3rd Defendants. The offences are contrary to Sections 18(c) and punishable under Section 17(a) of the Money Laundering Prohibition Act, No.11 of 2011. Now, Section 18(c) that creates the offence stipulates that:

> "18. Any person who –
>
> (a) .....
>
> (b) .....

(c) Incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act, commits an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act."

For the prosecution to prove the charge of procurement of the commission of an offence under the Money Laundering (Prohibition) Act, 2011, the evidence adduced must establish that:

(i) The Accused Person procured someone to commit an offence;

(ii) The offence committed must be an offence under the Act.

The Act does not define what constitutes the act of procuring someone to commit an offence is. The New Webster's Dictionary of the English Language defines the word "procure" to mean, "to obtain.. as a result of some degree of effort; to bring about, contrive, to procure someone's dismissal....". The Merriam – Webster Dictionary on the other hand, defines the word "procure" which is a transitive verb to mean; "to get possession of obtain by particular care and effort". It also means "to bring about or achieve" a desired result. To "procure" therefore is to get or secure someone to do or abstain from doing something on behalf of the procurer. In criminal law, the purpose of procuring the person is for the person to do or abstain from doing something which is a criminal offence. My search did not avail me of any judicial authority where the term "to procure" was defined. The best I could get is in the case of **Mukoro-Mowoe & Anor v. State (1973) LPELR – 1925 (SC)**, where **Fatai-**

Williams, JSC (as he then was) referring to Section 7 of the Criminal Code said:

> "Generally, to speak of one person "procuring" another person to commit an offence clearly implies that the offence is later committed, whereas there is no such implication in the word "counseling," but since Section 7 of the Criminal Code only applied when an offence is actually committed, the distinction is unimportant. It is sufficient to say, therefore, that for the purpose of Section 7(d), the word "procure" should be given its ordinary meaning which imports efforts, care, management or contrivance towards obtaining of a desired end;"

From the wording of Section 18(c), it is my view that the offence for which the person procured to commit, must have been committed. In the instant case, the purpose of the "procurement" was to retain certain sums of money for the benefit of the Appellant, the 2nd and 3rd Accused Persons.

Now, considering the evidence against the Appellant in respect of Counts 2, 4, 6, 7, 9, 11, 12, 15 and 16 of the Charge, and after considering the definition of the word "procure" in the cases of **Ezeadukwa v. Maduka (1997) 6 NWLR (pt.518) 635 at 663** and **Frank Mukoro-Mowoe v. The State (supra)**, the learned trial Judge held at page 1287 of the Record of Appeal that:

> "Arising from these definitions is that for the prosecution to secure a conviction under Sections 18(c) and 17(a) of the Act, he must prove that the 1st – 3rd Defendants actually "procured" the 11th, 5th, 8th, 10th, 9th, 7th and 6th Defendant who is the alter ego of these companies to commit the various criminal acts as alleged."

To determine the issue therefore, the learned trial Judge quoted extensively from the Extra-Judicial Statements of the Appellant admitted in evidence without objection as Exhibit P10 and concluded thereon at page 1291 of the Record of Appeal as follows:

> "The 1st Defendant in his very statement admitted paying money to Mr. Towo Jalekun (4th Defendant/Convict) and other companies owned by Mr. Towo Jalekun. One of such payments is the one made to Momm Ltd with Intercontinental Cheque No. 00000024 to the tune of ₦9,300,000 signed by the 1st and 2nd Defendants. This is subject of Court two. This is a clear confession and/or admission on the part of the 1st Defendant that he committed the offence as stated in Court two. However in further corroboration of this is Exhibit P6 with particular reference to the Intercontinental Bank cheque dated 4th of July, 2011"

At pages 1292 – 1295 of the Record of Appeal (pages 32 – 35 of the judgment), the learned trial Judge evaluated the evidence adduced in respect of Counts 2, 4, 6, 7, 9, 11, 12, 14, 15 and 16 of the Charge, to find that the admitted in his Extra-Judicial Statements (Exhibit P10), to signing the various cheques being the instruments by which the various sums of money were withdrawn and subsequently transferred to him (Appellant). The learned trial Judge therefore found that the Appellant actively participated in warehousing of the funds through the procurement of the 5th, 6th, 8th, 9th, 10th and 11th Defendants and subsequent withdrawal of same.

I have read Exhibit P10 entirely. I have also read the entire testimony of the Appellant in Court, both in-chief and especially under Cross-Examination. I am in no doubt that both in his Extra-Judicial Statement to the Police (Exhibit P10) and in his testimony in Court, the Appellant had admitted to the commission of the offence charged. By Section 28 of the Evidence Act, 2011.

> "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."

By the above stated definition of a confession therefore, it is not required that for a statement to amount to a confession, the Accused Person must specifically state that "I admit that I committed the offence". Once it can be inferentially deduced from a reading of the entire content of the statement, that the statement is or suggests an admission that he committed the offence, such statement would amount to a confession. A Confessional Statement is therefore an acknowledgement of the facts that constitute the offence charged. See **Hassan v. The State (2001) 15 NWLR (pt.735) 184**; **Nkie v. FRN (2014) 13 NWLR (pt.1424) 305**; **FRN v. Ineka (2013) 3 NWLR (pt.1341) 285** and **Ajayi v. State (2014) 14 NWLR (pt.1426) 1**.

Once the statement complies with Section 29 of the Evidence Act, 2011 in the sense that it is voluntarily made, it is unequivocal and validly proved and admitted in evidence, an Accused Person can be convicted on such statement alone without the need for any corroborative evidence. See **Saliu v. State (2014) 12 NWLR (pt.1420) 65; Agugua v. State**

(2017) LPELR – 42021 (SC); **Blessing v. FRN (2015) LPELR – 24689 (SC)** and **The State v. Salawu (2011) 18 NWLR (pt.1279) 580**. In the case of **Abdu v. State (2016) LPELR – 41461 (SC)**, **Ogunbiyi, JSC** said:

> "The law is trite and well settled that an Accused Person could be convicted on his Confessional Statement alone without corroboration, provided it was direct, positive and voluntarily made..."

In the instant case, the Extra-Judicial Statements of the Appellant were tendered through PW5 and admitted in evidence without any objection. The Statements made by the Appellant to the EFCC were collectively marked as Exhibit P10. The portions of those Statements relevant to the charge against the Appellant were extensively quoted and relied on by the trial Court in convicting him. The Appellant has not made any issue out of the admissibility of the said Exhibit P10. The learned trial Judge was therefore right in relying on it to convict.

I note also, that the Appellant did not retract or resile from Exhibit P10. In his oral testimony in Court, the Appellant admitted to the Institute (IAR & T) receiving the sum of over ₦606 Million in two tranches in November and December, 2010. He also admitted to being a party to the opening of the Account and a party to the transfer of the sum of ₦177,571,609.50 from the Institutes Legitimate Account (Exhibit "C5") on the 12/1/2011. That the money was transferred into that account in the guise of paying "hazard allowance". He admitted however that such Hazard allowance was never paid as it was a prohibition and therefore illegal to pay. The Appellant also admitted that the IAR & T Staff Club

Account was opened by him and the 2nd Defendant mainly for the purpose of the amount described as hazard allowance; and that there is no body known to the Federal Government as IAR & T Staff Club. At page 828 of the Record of Appeal, he admitted that himself and the 2nd Defendant opened the account into which the money was transferred in consultation with other persons outside the Institute.

The Appellant also agreed under Cross-Examination that all other Legitimate Staff salaries and allowances of the Institute were paid from the Legitimate Account of the Institute and not Exhibit "P6". That the monies paid to the 4th Defendant under the names of the 5th – 13th Defendants were from the Staff Club Account and that no voucher was prepared for such payment. That the payments were not paid to the 4th Defendant for any work done for the Institute by the said 4th Defendant nor did he seek any approval from the Account General of the Federation for the opening of the Staff Club Account. The testimony of the Appellant under Cross-Examination is replete with admissions by the Appellant that monies were withdrawn from the Staff Club Account illegally opened by him and the 2nd Defendant into the accounts of the 5th – 13th Defendants. That the 4th Defendant, being the alter ego of those Defendants withdrew the monies which were later given to him (Appellant). His defence is that he used part of the money to say "thank you" to members of the National Assembly and officers of the Federal Ministry of Finance who facilitated the transfer of the over ₦606 Million to the Institutes Account, which in itself is an illegal act. All those facts and more, established that the Confession of the Appellant in Exhibit "P10" is true.

Learned Counsel for the Appellant contended that there is no evidence to show that the monies were "retained" in the accounts of the 5th – 13th Defendants because the monies were immediately withdrawn. I think the word "retain" here is not used in a technical sense. It is my view therefore, that within the context of Section 17(a) of the Money Laundering (Prohibition) Act (supra), the word "retain" should be given its literary or ordinary dictionary meaning. The Miriam-Webster Dictionary defines the word "retain" to mean ***inter alia***, "to keep in possession or use". Thus, in my view, when the word "retain" as used within the context of Section 17(a) of the Act, simply means to keep in possession or secure possession of the proceeds of crime. It does not mean that the money should remain in possession of the person keeping same in perpetuity. I am therefore satisfied that the 4th Defendant using the 5th – 13th Defendants retained the money. In any case, the Appellant was not charged with retaining the money but for procuring the 4th – 13th Defendants to retain same.

Learned Counsel for the Appellant had also argued that the facts did not disclose that the monies retained were the product of any crime. The evidence on record discloses that the Appellant and the 2nd Defendant opened and generated the IAR & T Staff Club Account without the authorization of the office of the Accountant-General of the Federation. The Appellant also stated that the IAR & T Staff Club Account was opened with the sole aim of transferring the unexpended balance of the over ₦606 Million so as to prevent its being "mopped up" by the office of the Accountant-General of the Federation. The proceeds or balance of money was subsequently transferred to the 4th – 13th Defendants, withdrawn and

given to the Appellant personally without any authorization. This act amounts to abuse of office and an offence punishable under Section 22 of the Corrupt Practices and Other Related Offences Act, Cap C31, Laws of the Federation 2003. See also Section 15(a) of the Money Laundering (Prohibition) Act (supra). The Appellant need not have been charged for that crime. What is relevant and necessary is that the acts of the Appellant amounted to an offence. On that note, it is my view, which I hold that the Appellant was rightly convicted on Counts 2, 4, 6, 7, 9, 11, 12, 15 and 16 of the Charge.

On the Count 1, which is conspiracy, learned Counsel for the Appellant contended that, for the prosecution to succeed in proving the offence as charged, it must be established that:

(i) The 13 Defendants conspired among themselves;

(ii) To convert the sum of ₦115,750.00;

(iii) The money be proved to have been derived directly from theft;

(iv) The conspirators must aim to either conceal or disguise the origin of the money involved in the crime.

It was then contended that all the above stated ingredients must co-exist. It was then submitted that no witness mentioned any sum of ₦115,750.00 nor linked it to any account or fund. Citing the case of **Nwobe v. The State (2000) FWLR (pt.697 at 705)**, learned counsel submitted that, the learned trial Judge relied on the Statement of the

Appellant (Exhibit "P10") to hold that the charge of conspiracy against the Appellant was proved. That the Statements of the 2nd and 3rd Defendants related to the sum of ₦177,571,609.50 which was part of the ₦606,261,869.80 received from the Federal Ministry of Finance, but that no witness said anything about the sum of ₦115,750.00.00.

The substantial part of the arguments of learned counsel for the Appellant was spent arguing on issues which have nothing to do with whether or not the conspiracy charge had been proved. What I find relevant on this issue is the argument of the Appellant that, apart from failure of the prosecution to prove the existence of the ₦115,750,000.00, no witness gave evidence that any money was stolen or that the money was derived from theft. Furthermore, that the 4th Defendant who was alleged to have withdrawn the said monies and sent same to the Appellant never testified to this fact, so as to establish the Charge of Conspiracy to convert the sum of ₦115,750,000.00. We were accordingly urged to hold that the Charge of Conspiracy was not proved.

In response, learned counsel for the Respondent relied on the definition of conspiracy as stated in the cases of **Daboh v. State (1977) NSCC 309 at 335**; **Okosun v. A.G; Bendel State (1985) 3 NWLR (pt.12) 283 at 297**; **Nwankwo v. FRN (2003) 4 NWLR (pt.809) 1**; **Okeke v. State (1999) 2 NWLR (pt.590) 265** and **Nwosu v. State (2004) 15 NWLR (pt.897) 466**, to contend that the prosecution had proved the Charge of Conspiracy. That, though conspiracy may be difficult to prove by direct evidence, it may be deduced or inferred from the various overt acts of the co-conspirators so as to show the meeting of the mind or

criminal intent of the conspirators. The case of **Gbadamosi v. State (1992) 6 NWLR (pt.196) at 182** and **Abacha v. State (2002) 11 NWLR (pt.779) 437 at 524** were cited in support.

Learned Counsel for the Respondent went on to submit that, the testimony of the prosecution witnesses show clearly that the Appellant took part in the transactions in question. Referring to the Extra-Judicial Statement of the Appellant (Exhibit "P10") and that of the 2nd Defendant (Exhibit "P11"), it was contended that it is clear that the Appellant and the 2nd Defendant in order to stop the sum of ₦177,571, 609.00 being mopped up by the Accountant General of the Federation, opened an account in the name of the IAR&T Staff Club and Coop (Exhibit "P6A") with the Intercontinental Bank (now Access Bank). That the sum of ₦177,571, 609.50 in two tranches of ₦81,065,403.85 and ₦96,506,205.65 respectively was transferred into it under the guise of hazard allowances. That the Appellant and the 2nd Defendant procured the 4th – 13th Defendants to retain the proceeds of the unlawful transfer into their various accounts (Exhibit "P6B"). Furthermore, that the various cheques issued to the 5th – 13th Defendants by the Appellant and the 2nd Defendant were not for any goods or services rendered to the Institute but were laundered and ploughed back to the Appellant; and that those facts were admitted by the Appellant in Exhibit "P10". Also, that those facts were further corroborated by the 2nd Defendant vide Exhibit "P11".

It was further argued by learned counsel for the Respondent that, the circumstances leading to the opening of Exhibit "P6A" clearly show the meeting of the minds of the Appellant with those of his co-conspirators to

commit the offence of conversion. That from the evidence adduced, it is not in doubt that the name Institute of Agricultural Research and Training Staff Club and Coop. is fictitious as such body does not exist in the Institute. That the said account was opened as an intermediate step in the scheme to fraudulently convert the sum of ₦177,571,609.50 property of the Institute. That to consummate the scheme, the Appellant and the 2nd Defendant issued cheques in the names of the 5th – 13th Defendants or the 3rd Defendant and the value of same was given to the Appellant. That the statement of the 3rd Defendant further confirms the fact that it was the said 3rd Defendant who was either going to the bank to cash the cheques or collecting the laundered funds from the 4th Defendant on behalf of the Appellant.

Learned Counsel for the Respondent cited the cases of **R. v. Ligali & Anor (1959) 4 F.S.C. 7**; **Shodiya v. State (1992) 3 NWLR (pt.230) 447 at 457** and **Njovens & Ors v. The State (1973) N.S.C.C. 280** to further submit that, the Appellant can still be convicted for conspiracy even if the various conspirators never met nor communicated with each other. That, before convicting the Appellant, the learned trial Judge made findings of fact which were never controverted by the Appellant. Furthermore, that the Appellant did not show any reason that will warrant this Court to interfere with those findings of the trial Court. We were accordingly urged to affirm the conviction of the Appellant on the count of conspiracy.

The reply of the Appellant on point of law, was virtually a re-argument of the appeal on issues of facts. That is not the purpose of a reply brief.

Now, the Appellant and all the other Defendants in the charge sheet, were charged on Count one (1) for conspiracy to convert the sum of ₦115,750.000.00 being the proceeds of theft. The offence is contrary to Section 18(a) and punishable under Section 15(1)(a) of the money Laundering (Prohibition) Act (supra). The said Section 18(a) of the Act stipulates that:

> "18. A person who-
>
> (a) Conspires with.....any other person to commit an offence, under this Act, commits an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act."

The offence for which the Appellant and the co-accused were convicted of having conspired to commit is conversion of the sum of ₦115,750.000.00 being the proceeds of theft. The punishment for conversion is prescribed in Section 15(1)(b) of the Act. That being so, it will be necessary to determine what conspiracy is.

Conspiracy has been judicially defined as an agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means. It is the actual agreement that constitutes the offence of conspiracy. That being so, what is required in proof of conspiracy is for the prosecution to establish the existence of that agreement. This is because, without the proof of the existence of that agreement a person cannot be convicted for conspiracy. See **Kaza v. State (2008) 7 NWLR (pt.1085) 125**; **Yakubu v. State (2014) 8 NWLR (pt.1408) 111**; **Kayode v. State (2016) LPELR – 40028 (SC)**; **Abacha v. State (2015) LPELR –**

24279 (SC) and **Busari v. State (2015) LPELR – 24279 (SC)**. It should however be noted that the offence of conspiracy is always shrouded in secrecy, and therefore difficult to establish. The Courts have therefore resorted to drawing inferences from the facts proved in Court. In other words, the proof of conspiracy is a matter of drawing inferences from the acts of the Accused or each of the Accused Persons so as to determine the existence or non existence of conspiracy. See **Bouwor v. State (2016) 26054 (SC)**; **Shodiya v. State (2013) 14 NWLR (pt.1373) 147**, **Oduneye v. State (2001) 2 NWLR (pt.697) 311** and **Okiemute v. State (2016) LPELR – 40639 (SC)**. Thus in **Oduneye v. State (supra)**, **Achike, JSC** said:

> "...for the offence of conspiracy to be established there must exist a common criminal design or agreement by two or more persons to do or not to do an act criminally. Since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties it is rarely capable of direct proof. It is invariably an offence that is inferentially deduced from the acts of the parties thereto which are focused towards the realization of their common or mutual criminal purpose."

For the prosecution to successfully prove conspiracy therefore, the following elements or facts must be established beyond reasonable doubt.

(a) an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means;

(b) that the illegal act was done in furtherance of the agreement; and

(c) that each of the accused persons participated in the illegality or the conspiracy.

In the instant case, as earlier stated, the conspiracy charged was to convert money which is the proceed of theft. In the determination of the issue, the learned trial Judge held at page 1285 lines 3 – 25 of the Record of Appeal as follows:

> "By the evidence of the Prosecution witnesses and that of the 1st, 2nd 3rd Defendants, it will not be difficult for a discerning mind to find out that the offence of conspiracy has been established. The chain of conspiracy is based on the following sequence in summary. The 1st and 2nd Defendants agree to warehouse the sum of N177,571,609.50 being money lawfully allocated to the Institute in order to prevent mop up exercise usually carried out on the 31st December of every year. As a prelude to this, an account was generated with Access Bank bearing the name "Institute of Agricultural Research and Training Staff Club & Cooperative with account No. 0101632695." This account to all intent and purposes is fictitious and illegal. Funds were subsequently transferred into this account with a cover up name as Hazard allowance on the instrumentality or instructions of the 1st and 2nd Defendants who were the signatories to the account. Funds were thereafter withdrawn on the authority of the 1st and 2nd Defendants through the 3rd – 13th Defendants. On some occasions, the 3rd Defendant was used as the errand boy through whom the withdrawn money gets back to the 1st and 2nd Defendants. It is therefore safe to say that the 4th – 13th Defendant/Convicts served as the conduit pipe for the warehouse funds while the 3rd Defendant

served as the courier who conveyed the funds back to the 2nd – 3rd Defendants."

The above findings of the trial Court is amply and abundantly supported by the evidence on record. The Appellant has not been able, by this appeal to discredit those findings of the learned trial Judge. Rather, learned counsel harped on the fact that the prosecution did not establish that the sum of ₦115,750,000.00 subject of the conspiracy charge was converted as a result of the conspiracy. That all the prosecution gave evidence of is the sum of ₦177, 571,609.50. It should be noted that, nowhere in the entire case of the prosecution was it contended that the entire sum of ₦177,571,609.50 was converted by the Appellant and the other co-accused. Furthermore, a charge of conspiracy is a different charge from that of the substantive offence for which the conspiracy is hatched. Thus, a person may be acquitted of the substantive offence, object of the conspiracy but convicted of conspiracy to commit that offence. This is because, once the agreement to commit the offence is complete, the offence of conspiracy has been established and it does not matter that the substantive offence for which the conspiracy was hatched was committed. See **Oseni v. State (2012) 2 S.C. (pt.II) 51 at 97 – 98**; **Okosun v. A.G.; Bendel State (1985) 3 NWLR (pt.12) 283**, **Balogun v. A.G; Ogun State (2002) 6 NWLR (pt.763) 512**; **Bouwor v. State (supra)** and **Osetola & Anor v. The State (2012) 17 NWLR (pt.1329) 251**. Thus in **Kayode v. State (2016) LPELR – 40028 (SC); Ariwola, JSC** said:

"Therefore failure to prove a substantive offence does not make conviction for conspiracy

inappropriate, as it is a separate and distinct offence, in itself, independent of the actual offence conspired to commit..."

Based on the facts or evidence on record, I have no hesitation in agreeing with the learned trial Judge that the charge of conspiracy against the Appellant was proved beyond reasonable doubt. This issue is also resolved against the Appellant.

Having found and held as above, it is clear that this appeal has no merit. It has failed and is accordingly dismissed. The judgment of the Federal High Court of Nigeria, Ibadan Judicial Division in Charge No: FHC/IB/55C/2014 against the Appellant delivered on the 3rd day of October, 2017 is hereby affirmed.

HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL.

COUNSEL:

Michael F. Lana; Esq; with **O. Y. Agboola; Esq; Olumide Adeniji; Esq** and **Olufisayo Fagbemi; Esq** for the Appellant.

Rotimi Oyedepo; Esq (Snr. Det. Supt. E.F.C.C.) for the Respondent.

APPEAL NO.CA/IB/465C/2017
CHINWE EUGENIA IYIZOBA (JCA)

I had the privilege of reading in draft the judgment just delivered by my learned brother, HARUNA SIMON TSAMMANI JCA. I agree with his reasoning and conclusions.

It is not in doubt that this appeal has no merit whatsoever. The Appellant and his collaborators hatched a grand design to defraud the Institute of Agricultural Research and Training Obafemi Awolowo University Moor Plantation Ibadan of funds meant for payment of hazard allowance to the staff of the Institute. A petition was written by the staff to EFCC. In the course of the investigation, the Appellant and his co-conspirators made statements implicating themselves and supplying proof beyond reasonable doubt of their grand design. Just one example; in Exhibit P10 at page B1D of the Record of Appeal, the Appellant admitted that the said fund was used to appreciate staff of the Federal Ministry of Finance for facilitating the release of the funds. What impunity! To think it and then to actually put it down in writing! That shows the level to which the country has fallen when even a University Don can brazenly admit that Government officials have to be appreciated to do the job for which they are paid salaries to the detriment of the rightful beneficiaries of the funds. With due respect, the Appellant by this appeal was merely grasping at straw. My learned brother Tsammani JCA has painstakingly and exhaustively dealt with the many issues raised in the appeal. I agree completely with his views and I adopt them as mine. I also hold that there is no merit in the appeal. I hereby also dismiss the appeal and affirm the judgment of the lower court.

CHINWE EUGENIA IYIZOBA
(JUSTICE COURT OF APPEAL)

CA/IB/465C/2017

NONYEREM OKORONKWO, JCA.

I have carefully read through the draft of the judgment in this appeal by my lord ***Haruna Simon Tsammani JCA.***

I agree that the appeal has no merit and should be dismissed.

NONYEREM OKORONKWO,
JUSTICE, COURT OF APPEAL.