

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON MONDAY, THE 25TH DAY OF APRIL, 2016

CHARGE NO: FCT/HC/CR/21/2009

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

GEORGE UBOHACCUSED PERSON

JUDGEMENT

DELIVERED BY HIS LORDSHIP: HON. JUSTICE S.E. ALADETOYINBO

The accused person was arraigned before this Court on the 24th day of February 2009 by the Economic & Financial Crimes Commission for the offence of Criminal Breach of Trust contrary to Section 311 and punishable under Section 314 of the Penal Code. The three counts charge against the accused person reads as follows:

Count one:

That you George Uboh 'M' sometimes in 2007 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, being a servant in the employment of the Police Equipment Foundation and in such capacity entrusted

with certain property, to wit: 6 (six) units of operational vehicles did commit criminal breach of trust by selling one Toyota Hilux Pick-up van through one Egbon Blessing and thereby committed an offence punishable under Section 314 of the Penal code."

Count two:

"That you George Uboh 'M' sometimes in 2007 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, being a servant in the employment of the Police Equipment Foundation and in such capacity entrusted with certain property, to wit: 6 (six) units of operational vehicles, did commit criminal breach of trust by selling one Toyota Hilux Pick-up van to Muha Motors, and thereby committed an offence punishable under Section 314 of the Penal Code."

Count three:

"That you, George Uboh 'M' sometimes in 2007 at Abuja in the Abuja Judicial Division of the High Court of the Federal

Capital Territory, being a servant in the employment of the Police Equipment Foundation, and in such capacity entrusted with certain property, to wit: 6(six) units of operational vehicles, did commit criminal breach of trust by selling two units of Toyota Hilux Pick-up vans and thereby committed an offence punishable under Section 314 of the Penal Code.”

After the arraignment of the accused persons, he pleaded not guilty to the three counts charge, the Prosecutor thereafter called seven witnesses to establish the ingredients of criminal breach of trust against the accused person. At the end of the prosecution case, the accused elected to open his defence by calling two defence witnesses including himself, in other words the accused Counsel did not file written address on a No Case submission before the Court after the prosecution had closed his case, but rather entered his defence after the close of the prosecution case. The case of the prosecution was that accused person was employed as Managing Director of Police Equipment Foundation Security and Communications Ltd, a Division of Police Equipment Foundation Ltd, the accused person was the head of the said Division. On the 13th day of August 2007 the accused

person was assigned Toyota Land Cruiser Prado Jeep for use as his official car, see Exhibit 'D'. On the 16th day of October 2007 one Toyota Corolla and five units of Toyota Hilux vans were assigned to the Security and Communication Division of Police Equipment Foundation of which the accused was the head, see Exhibit 'E'. The seven vehicles belonged to Police Equipment Foundation. The Toyota Corolla and five units of Toyota Hilux Pick-up vans were allocated to Security and Communication Division of (PEF) for operational use.

On the 6th day of August 2008 one David M.M. Shielu a Technical Supervisor attached to Security and Communication Division of (PEF), wrote a petition against the accused person to EFCC alleging that the accused person had secretly sold four of the five units of Toyota Hilux Pick-up vans allocated to Security and Communication Division of (PEF) for operation use. David M.M. Shielu gave evidence as PW1 and was working under the supervision of the accused person when he wrote the petition to EFCC, see Exhibit 'F'.

Alhaji Mohammed Mahamud a motor dealer gave evidence as PW2, he bought one of the Toyota Hilux Pick-up vans from the accused person at the rate of N3,000,000.00 (Three Million Naira). PW2

informed the Court that he bought the vehicle at the office of the accused person in Maitama Security and Communication Division of (PEF). He was given a receipt in the letter headed paper of the Security & Communication Division of (PEF) which was admitted as Exhibit 'A'. The vehicle was never recovered from PW2 because he had sold same to a Lebanese company.

PW3 was one of the buyers of the four vehicles. Accused informed PW3 Blessing Egbon to look for buyer for Toyota Hilux Pick-up. PW3 thereafter informed Bethel Amadi who gave him N3.3million to purchase the vehicle. On getting to the office of the accused he met PW1 who received the N3.3million on behalf of the accused person. PW1 issued purchase receipt to PW3 and released the particulars of the vehicles including the vehicle to PW3. It was the accused person who authorized PW3 to deliver the N3.3million to PW1 and for PW1 to issue receipt to PW3. Based on the instruction of the accused, the N3.3million was delivered to the wife of the accused by PW1.

PW4 was one the investigating officer. He told the court that the following vehicles were given to the accused and his department for operational and official use:

- (a) One unit of Toyota Prado Jeep.
- (b) One unit of Corolla Car.
- (c) Five units of Toyota Hilux Pick-up vans.

The name of PW4 is Allu Dauda. He told the Court that search warrant was executed in the office of the accused person and the sum of N515,000.00 was recovered. Only one Toyota Hilux Pick-up van and one Prado Jeep were recovered from the accused, accused claimed two of the Toyota Hilux Pick-up vans were given to the Kaduna State Government, while the Toyota Corolla was given to his brother for use. He tendered the statement of the accused as Exhibits 'B' & 'C'.

PW5 his name is Ustaas A.M. Bello. He was the internal Auditor of the Police Equipment Foundation. He told the Court that the management of the Police Equipment Foundation mandated him to issue one Prado Jeep to the accused for official use on the 13th day of August, he assigned the Prado Jeep to the accused person. Furthermore he told the Court that he issued one Toyota Corolla car and five units of Toyota Hilux Pick-up vans to the Division of the accused for operation use as requested by the management of (PEF).

He tendered in evidence Exhibit 'D' and 'E'. The letters with which the vehicles were issued to the accused and his Division.

PW6 his name is Anietie Udoh, one of the Investigating Officer. He told the Court that search warrant was executed in the house of the accused. He confirmed that the sum of N515,000.00 was recovered and he further obtained the statement of the accused Exhibit 'H' under the words of caution.

PW7 Kenny Martins. He stated the reasons why the Police Equipment Foundation was registered mainly to raise money to equip the Police, assist the Police with training and general logistics. He told the Court that there are two Divisions in Police Equipment Foundation. The 1st is Police Equipment Foundation itself while the second Division is Police Equipment Foundation Security and Communication Ltd; both were registered separately with the Corporate Affairs Commissions. He further told the Court that the accused was employed as Managing Director of Security and Communication Division of (PEF). He confirmed that the accused was sent to Namibia for training. He told the Court that the management was displeased with the way the accused was running the affairs of Security and Communication

Division of the (PEF), this lead to sending two management team to meet with the accused person namely Dr. Yarogela and Professor Kunle Wahab but they were assaulted by the accused person. The management later discovered that the accused had sold some property allocated for the running and operation of the Security and Communication Division of the (PEF). They include one Prado Jeep, 5 Units of Toyota Hilux Pick-up vans, one Toyota Corolla including 50KV Generator.

PW7 concluded his evidence by saying that the management of the (PEF) nominated PW1 who was in the same Division with the accused to write petition to the EFCC about the illegal sale of the property of the (PEF) and the possible recovery of same.

After the conclusion of the evidence of PW7, the Prosecution closed it case. The Counsel to the Defendant did not file a written address for no case submission rather the accused elected to defend himself by giving evidence as DW1 and calling another witness as DW2 for his defence.

DW1 George Uboh the accused person told the Court that he was sent for training in Namibia by (PEF) but the foundation claimed they

don't have money for the training. Accused therefore sponsored the trip with his own money. The accused purchased some security equipment from Namibia, he spent \$15,000.00 for the procurement of the security equipments and further entered IOU agreement with one Peieter Vanczil for \$32,000.00. He came with the equipments to Nigeria. He first asked PW7 for money but claimed there was no money. Accused then signed IOU, Exhibit 'O'. According to the accused, PW5 instructed him to sell the vehicles so as to recover the money he expended in Namibia. The accused admitted Four Toyota Hilux Pick-up van, one Toyota Corolla car and one Prado Jeep were given to him in exchange for the money he expended in Namibia.

The accused told the Court that he decided to sell the vehicles given to him to offset the debt owed to him by (PEF). The accused claimed to convene a meeting in his office attended by everybody who are members of his staff. He told them of his intention to sell the vehicles to offset the debt owed to him by (PEF). He admitted selling one Toyota Hilux Pick-up van to Muha Motors for **N3,000,000.00**. David Shiellu PW1 sold one Toyota Hilux Pick-up van on behalf of the accused to Blessing Egbon for **N3.3million**. PW1 issued him a receipt

and the N3.3million was taken to the accused's house by PW1. The vehicle was released along with the particulars to Blessing Egbon by PW1. The accused claimed that the remaining four vehicles were yet to be sold and that they were never sold. PW1 demanded for **10%** of the **N3.3million**, the accused refused to give him the 10% and further explained to PW1 that the money was part of the replacement of his expenses in Namibia but gave PW1 **N50,000.00**. According to the accused, PW1 was not satisfied he threatened to report the accused to EFCC where he had friends. Some weeks later the accused claimed he was arrested by EFCC and shown the petition written against him by PW1. The accused further stated that the six vehicles were given to him to be sold so as to realize the money owed to the accused by (PEF). Accused claimed that the vehicles were given to him along with the original title documents and that EFCC took four vehicles from him along with the sum of **N515,000.00**. Accused claimed he was not under the employment of (PEF), but was invited to the Presidential Committee on Police Equipment Fund. Accused denied receiving Exhibit 'D' and 'E' which he claimed he saw in the Court room for the first time. Accused claimed the vehicles given to him

which comprises of five Toyota Hilux Pick-up vans and one Prado Jeep were not for operational use of his office rather they were given to him to be sold and proceeds used to offset the debt he incurred on behalf of (PEF). Accused claimed Kenny Martins PW7 gave him four Toyota Hilux Pick-up vans, one Prado Jeep along with the original title documents to offset the debt owed to the accused by (PEF) and he claimed not to have any documents relating to transfer of ownership in respect of the vehicles, but claimed verbal authorization was given to him by Kenny Martins to sign IOU agreement with Vanzui on behalf of (PEF) and also to spend the sum of **\$15,000.00**; he admitted that the vehicles he sold were owned by (PEF).

DW2 – Godson Ewulum the Chief Executive of Zodiac holding Plc, he claimed to be the head of operation in Presidential Committee on Police Equipment Fund which metamorphosed to Police Equipment Foundation (PEF). DW2 claimed that the accused was invited by Presidential Committee on Police Equipment Fund as a Consultant because of his knowledge in security matters and because of his relationship with the Foreign Embassies in Nigeria. He stated that the

accused was sent to Namibia for course of which he attended and was given a certificate and he came back to Nigeria.

DW2 further stated that at the time the accused went for the course in Namibia the Committee had no money. He funded the course by himself with the agreement that the money would be refunded to him after the course. The witness told the Court that the accused came back to Nigeria with some items of security equipments and used same equipment to demonstrate to Foreign Embassies in Nigeria. The witness said the accused collected the money with which he travelled to Namibia from some people and further made pledges to some people in Namibia where he bought the security items.

The people the accused collected money from started pressurizing him. When the pressure was mounting in order to save face, the Committee resolved to trade those six vehicles as trade by barter in respect of money the accused spent in Namibia course. The total money expended by the accused according to DW2 range from **\$30,000.00** to **\$35,000.00** including another **\$15,000.00**. DW2 claimed to give evidence in this case due to subpoena served on him. DW2 insisted that the vehicles were given to the accused as trade by

barter to offset the money he used for the journey to Namibia and the security equipment he purchased in Namibia. DW2 further told the Court that there was no written agreement as regards the trade by barter. DW2 admitted that the vehicles belong to Presidential Committee on Police Equipment Foundation. The fund which the Foundation was using was donated by the public. The witness stated that the Presidential Committee on Police Equipment Fund is not a Government Establishment. He concluded his evidence that the authority given to the accused to spend money in Namibia was not in writing.

After the close of the defence of the accused person, both the Prosecutor and the accused filed final written addresses, the Court had gone through the written addresses of the Prosecutor and the accused person. It is needless summarizing same because they form part of the records of this Court.

The basic principle in a criminal prosecution is that the prosecution must prove all the ingredients of the offence charged and that burden never shifts.

See: **AIYEJENA V. THE STATE (1969) N.N.L.R 73 AT 74.**

The accused person was charged under Section 314 of the Penal Code for criminal breach of trust by Clerk or Servant, the section read as follows:

“314 – Whoever, being a clerk or servant or employed as a clerk or servant and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine”

for the ingredients of the offence under Section 314 of the Penal Code for which the accused was charged, the Prosecutor must establish the following:

- (a) That the accused was the clerk or servant of Police Equipment Foundation.*
- (b) That the accused was in such capacity as servant entrusted with the four units of Toyota Hilux Pick-up vans or that the accused has dominion over the four vehicles.*

(c) *That the accused disposed the four units of the Toyota Hilux Pick-up vans.*

(d) *That the disposal of the four vehicles was in violation of:*

(i) *Any direction of law prescribing, the mode in which such trust was to be discharged or;*

(ii) *Any legal contract expressed or implied which he had made concerning the trust;*

(iii) *That the disposal of the four units of Toyota Hilux Pick-up vans by the accused was dishonest.*

See the case of: **ONUOHA V. THE STATE (1988) 7 SC PART 1 PAGE 79 – 80** where E.B. Craig, JSC held as follows:

“The real point at issue and what the prosecution was expected to prove was whether there had been a criminal breach of trust by the Appellant”.

See the case of: **AKWULE V. THE QUEEN (1963) NNLR P. 105.**

In short, what the Prosecution was expected to prove was:

(1) That the Appellant was a public servant.

(2) That in such capacity he had been entrusted with the money in question.

(3) That he had committed a breach of trust in respect of the money
i.e. either:

(a) he had misappropriated it or

(b) converted it to his own use or

(c) in any way whatsoever disposed of it fraudulently and in a manner, contrary to the directive given to him”

The first issue for determination is whether the accused is a servant or an employee of Police Equipment Foundation Ltd that entrusted the four units of Toyota Hilux Pick-up vans to the accused person.

In the statement made to the EFCC by the accused person on the 14th day of August, 2008 admitted in evidence as Exhibit ‘B’. The accused said as follows:

“The management of (PEF) now rented an office through which Police Equipment Foundation Security and Communication (PEFSC) Division will be run with me as the MD/CEO by way of qualification”

The accused described himself as MD/CEO of the Police Equipment Foundation Security and Communication Ltd a Division of Police Equipment Foundation Ltd.

In Exhibits L3 and L4 the accused was addressed as member of Presidential Committee Police Equipment Fund. In Exhibits D and E the accused was addressed as Head, Security & Communication Division of Police Equipment Foundation. PW7 in his evidence given on 5th day of June, 2014 said *as follows*:

“We advertised for the headship of the Security & Communication Division of (PEF) in the newspaper and through consultancy, the accused person was recommended to us by an associate. The accused was employed as Managing Director of Security & Communication Police Equipment Foundation Ltd. The accused was given all the facilities needed including Fund”.

The accused gave evidence as DW1 for his defence. He claimed to have been invited by Presidential Committee on Police Equipment Fund through Exhibit ‘K’. He claimed not to have been given any letter of appointment but received letter of termination. He denied being an employee of Police Equipment Foundation. DW2 claimed that the accused was invited as a consultant because of knowledge in

security matters and his relationship with the Foreign Embassies. He identified Exhibit 'D' as the letter of invitation. Also in Exhibit 'B' the accused stated as follows:

"I had started complaining about not being paid any salary before this time".

In the face of these inconsistencies and contradictions as to whether the accused person was employed or not by Police Equipment Foundation, the only document which the Court should had rely upon is the letter of Appointment of the accused by the Police Equipment Foundation, since the accused claimed not have been employed by Police Equipment Foundation. The Prosecutor should have tendered the letter of Appointment.

See the case of: **ANAMMCO V. FIRST MARINAN TRUST LTD** (2000) 1 NWLR (PT 640) where it was held as follows:

"A Court has jurisdiction to resolve conflicts in evidence by resorting to documentary evidence in the records of the Court"

See also the case of: **BUNGE V. GOVERNOR OF RIVERS STATE (2006) 12 NWLR (PT 995) 573 AT 629 – 630** where the Court held as follows:

“It is also settled that the importance of documentary evidence is that it could be used to resolve an issue or conflicting oral evidence. It could be used as a hanger from which to test the veracity of the oral testimonies”.

The letter of appointment is very important to this case as it constitute one of the ingredients to be established by the Prosecutor namely that the accused was a servant or employee of the Police Equipment Foundation. Why did the Prosecutor fail to produce the said letter? See Section 167 (d) of the Evidence Act 2011 which state as follows:

167(d)

“Evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it”.

See the case of: **TEWOGBADE V. AKANDE (1968) NMLR 404;**
See also **AWOSHILE V. SHOTUMBO (1986) 3 NWLR (PT 29) 471.**

The conclusion of this Court is that if the Prosecutor produced the letter referred to as letter of appointment, it could have been unfavourable to the prosecution case. The Prosecutor failed to establish that the accused person was an employee or servant of Police Equipment Fund when the accused disposed or sold the four vehicles.

(b) The second issue for determination is whether the accused was entrusted with the four units of Toyota Hilux Pick-up vans. Entrusted means that when the Prado Jeep was assigned to him same is to be used as official vehicle, see Exhibit 'D'. It also means that when the five units of Toyota Hilux Pick-up vans including one Toyota Corolla car were assigned to the accused, they were to be used as operational vehicles in the security and communication Division of the Police Equipment Foundation. The last paragraphs of Exhibits 'D' and 'E' that accompanied the allocation of the vehicles to the accused read as follows:

"Please note that as a matter of policy, you must ensure that the said vehicle is properly taken care of at all times and used only for the purpose of the work of the foundation"

From the evidence of PW5 and other witnesses including Exhibit 'D' and 'E' the seven vehicles were entrusted to the accused person which means that ownership of the seven vehicles reside with the Police Equipment Foundation not with the accused but the accused gave conflicting evidence as to whether the vehicles were given to him for operational use or to offset the debt he incurred as a result of official course he undertook in Namibia of which he paid the expenses from his pocket, the inconsistencies in his statement and oral evidence are as follows:

(a) In the statement he made to the EFCC on the 14th day of August 2008 admitted as Exhibit 'B' when the matter was fresh in his memory. The accused stated in the said statement as follows:

"I had started complaining about not being paid any salary before this time. Kenny Martins now gave me as compensation five Hilux Pick-up and one Prado Jeep. The compensation was not communicated in writing just as nothing was not communicated in writing at this point".

On the 17th day of November 2014, when the accused gave oral evidence, he stated as follows:

“After I signed the IOU I told PW5 about the money I spent in Namibia and the IOU, PW5 said there is no cash but PW5 gave me 4 Hilux Pick-up vans, one Toyota Corolla and one Prado Jeep with the titles of ownership to the vehicles. PW5 told me to sell the vehicles so as to get my money back”

On the 4th day of June 2015 when the accused continued his oral evidence for his defence, he further stated as follows:

“The Police took possession of vehicles belonging to Police Equipment Foundation and kept them near the National Stadium. I decided to sell the vehicles given to me to offset the debt owed by Police Equipment Foundation. I convened a meeting in my office attended by everybody who are members of my staff. I told them of my intention to sell the vehicles to offset the debt owed to me by Police Equipment Foundation”.

DW2 who was called by the accused person for his defence stated in his evidence given on the 29th day of October, 2015 as follows:

“The Committee resolved to trade those vehicles (six) as trade by barter in respect of the money he spent in Namibia”.

The Court had highlighted the inconsistencies of the accused statement he gave to the EFCC and his oral evidence before the Court as regards why he sold the four vehicles and as to who asked him to sell the vehicles.

According to the statement he made to the Police Exhibit ‘B’ he was given the vehicles by PW7 to be sold because of arrears of salaries; in his oral evidence before the Court he sold the vehicles to recover the cost of the course he attended in Namibia on behalf of (PEF) as they did not pay for the cost of the course.

The total value of the debt owed to the accused amount to **\$50,000.00** and the total number of vehicles given to him are seven, which include Prado Jeep, 5 units of Toyota Hilux vans and one Toyota Corolla car. It is not reasonable to say the seven vehicles will be used as trade by barter for **\$50,000.00**. He equally claimed in his oral evidence that PW5 gave him the vehicles, accused inconsistent

statement cannot be tantamount to evidence of guilt but same may portray the accused as not credible.

See: **AJOSE V. FEDERAL REPUBLIC OF NIGERA (2011) 6 NWLR PT 1244 PG 465 AT 470** where the Court held as follows:

“An accused person’s prevarication, lies or inconsistent statement in Court shall not ordinarily be taken as evidence of guilt, but may in appropriate cases operate to deny such an accused the benefit of credibility”

The Court hereby rejects the evidence given by the accused and DW1.

The Court accepted that the accused sold the four vehicles dishonestly.

See: **AIYEJENA V. THE STATE (1969) N.N.L.R. 73 AT 74** where the Court held as follows:

“The offence of criminal breach of trust is defined in Section 311 of the Penal Code. An essential ingredient is that the person charged “dishonestly misappropriates or converts to his own use” the property”.

Criminal breach of trust, contrary to Section 311 of the Penal Code is not sustainable unless the Prosecutor established that the accused dishonestly converted, used or disposed the property.

See: **M. BATSARI V. KANO N.A 1966>NNLR 145 AT 153** where the Court held as follows:

“It is essential that before there can be a conviction on a charge of breach of trust there must be evidence of entrustment and of dishonest misappropriation of what was entrusted”.

The Court had described the reasons given by the accused for selling the vehicles as untrue because of the inconsistencies in his evidence, an inference of misappropriation with dishonest intent may be deduced from his untrue statement.

See: **J.M. DESSI V. STATE OF BOMBAY A.I.R. (1960) 889** quoted with approval in **I.G. TIRAH V. C.O.P 1973>NNLR PG 143 AT 151**, the supreme Court of India held as follows:

“Conviction of a person for the offence of criminal breach of trust may not in all cases, be founded merely on his failure to account for the property entrusted to him, or

over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue an inference of misappropriation with dishonest intent may readily be made”

The conflicting explanation given by the accused person may also justify the inference of dishonest intention.

See: **M. BTSARI V. KANO N.A. 1966 NNLR PG 151 AT 154**

where the Court held as follows:

“If on the other hand the accused gives conflicting explanation, or one that is obviously untrue, that may in certain cases justify the inference of a dishonest intention”.

The accused person accepted that he sold two of the Hilux Pick-up vans, one was sold to PW2 Alhaji Mohammed Muhamud for N3,000,000.00 while the other Toyota Hilux Pick-up vans was sold to PW3 Blessing Egbon for N3.3million, accused further claimed that two of the Toyota Hilux were taken from him along with Prado Jeep by the EFCC.

PW4 whose name is Allu Dauda an investigator attached to the EFCC confirmed to this Court that only one Hilux Pick-up vans and one Prado Jeep were recovered from the accused person.

In Exhibit 'C' one of the statement made to the EFCC by the Accused person, the accused admitted that he sold two Toyota Hilux to one Patrick, he promised to return those vehicles to EFCC, part of Exhibit 'C' read as follows:

"Two of the Hilux Pick-up vans were sold directly to Patrick a fact that was reminded by Blessing. I called Patrick who said the vehicles were given to Kaduna State Government for a project executed there".

The finding of this Court is that four Toyota Hilux Pick-up vans belonging to Police Equipment Foundation were sold by accused person as stated in the charge. One was sold to PW2 and another to PW3 but two were sold to one Patrick. The said Patrick was never called by the Prosecution to give evidence and his name was not mentioned in count 3.

There is another Toyota Corolla car which was part of the vehicle given to the accused, same was not captured in the charge but one of

the Investigating Police Officer said the accused gave the said car to his brother.

The four Hilux Pick-up vans sold by the accused person were handed over to him on behalf of Police Equipment Foundation as official and operational vehicles; ownership continues to reside with Police Equipment Foundation. The selling of the vehicles ran contrary to the directive in Exhibits 'D' and 'E' therefore the accused person committed the offence of criminal breach of trust contrary to section 311 of the Penal Code. See the meaning of the word "Dishonestly" in the case of **ONUOHA V. THE STATE (1988) 7SC PART 1 PG 74 AT 94** where the Supreme Court held as follows:

"I will only add that in construing the word "Dishonestly" in Section 311 of the Penal Code it will in my view be sufficient, if one construes it in its natural meaning i.e. intended to cheat, deceive or mislead as I have done".

The accused person was charged under Section 314 of the Penal Code before this Court. The Court had stated the ingredients the Prosecutor must establish for conviction under Section 314. All the ingredients of the offence under Section 314 has been established by the Prosecutor

except that the Prosecutor did not establish that the accused person, George Uboh was a Clerk, Servant or an employee of the Police Equipment Foundation the owner of the four vehicles when the offence was committed, the accused person cannot therefore be convicted under Section 314 of the Penal Code, does it mean that the accused person is entitled to discharge and acquittal? The answer is NO. The Prosecutor had established the ingredients of the offence of criminal breach of trust punishable under section 312 of the Penal Code. The laying of the three counts charge under Section 314 of the Penal Code by the Prosecutor was a mistake as the accused was not a servant, clerk or an employee of the Police Equipment Foundation.

See: **T.U. AKWULE & TEN OTHERS V. THE QUEEN (1963)**

NNLR PG 105 AT 110 where the Supreme Court held as follows:

“The offence of criminal breach of trust is created and defined in Section 311 and any person guilty of it may be punished under Section 312. The true nature of Sections 313, 314 and 315 is that certain categories of persons (including bankers in Section 315) should be liable to heavier punishment”.

If the Prosecutor had been able to establish that the accused was a clerk, servant or an employee of Police Equipment Foundation, the offence of criminal breach of trust will be punishable under Section 314, the punishment is heavier, 10 years imprisonment with fine and there is no alternative of fine.

Under Section 312 the Prosecutor need not establish that the accused is a clerk, servant or an employee of Police Equipment Foundation. The ingredients the Prosecutor had established in this case is enough to convict the accused under Section 312 which is an offence against criminal breach of trust simpliciter.

This Court has the power to substitute Section 314 under which the accused person was charged with Section 312 which is the proper Section under which the accused ought to have been charged, the power of this Court to substitute the charge is derive under Section 223 of Administration of Criminal Justice Act (ACJA) or 218(1) of the Criminal Procedure Code Act, the section reads as follows:

“When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence and such combination

is proved but the remaining particulars are not proved, he may be convicted of the lesser offence though he was not charged with it”.

Where an accused is charged for an offence, he may be convicted of lesser offence and is deemed to have had notice of it, it is therefore no violation of the fundamental human rights not to inform the accused of a lesser offence for which he is convicted if he is informed of a graver offence. See: **NWACHUKWU V. THE STATE (1985) 2 NWLR (PT 27)**. See also: **MAJA V. THE STATE 1980 1NCR 212**.

The case of: **T.U. AKWULE Vs. QUEEN 1963 NCLR PG 105** is also relevant in this matter particularly pg 113 where the Supreme Court held as follows:

“Arguments have been put to us about the powers of the Court to substitute another section for the one charged in such a case. We have given consideration to this and we are satisfied that under section 218 of the criminal procedure code when read with section 27(2) of the Federal Supreme Court Act, 1960. We are not without

power to substitute in this case section 312 of the Penal Code for section 315 charge an authority for this is the case of R .V. COORAY (1953) A.C. 407”

The accused guilt for the charge of criminal breach of trust punishable under section 312 of the Penal Code had been established beyond reasonable doubt because all the ingredients had been established.

See: *ALAKE V. STATE (1991) 7NWL (PT 205)* where the Court held as follows:

“Once the ingredients of a particular offence the person is charged with are proved that constitute proof beyond reasonable doubt”.

In count one of the charge this Court hereby substitute section 312 of the Penal Code for Section 314 as charged. The accused is hereby convicted for count one.

In count two of the charge, this Court hereby substitute section 312 of the Penal Code for section 314 as charge. The accused person is hereby convicted for count number two.

In the count 3 of the charge, this Court hereby substitute section 312 of the Penal Code for section 314 as charged. The accused is hereby convicted for count 3.

In the count 3, the name of the person the accused sold the two vehicles to was never mentioned, but evidence show that the two vehicles were sold to one Patrick, the omission of the name of Patrick as the buyer in count 3 does not vitiate count 3 because it is the dishonest intention which constitute the gist of criminal breach of trust. See: **M. BATSARI V. KANO N.A. 1966 NCLR PG 151 AT 153** where the Court held as follows:

“The misappropriation or conversion or disposal must be with a dishonest intention”

Exhibit ‘J’ the extra judicial statement made to the Police by PW7 Kenny Martins was tendered in evidence with the consent of the accused Counsel. This Court did not make use of Exhibit ‘J’ because same ought not to have been admitted in this case. The only occasion Exhibit ‘J’ can be used is to use same to contradict PW7 but this was not the case. It was tendered and admitted by consent of parties, Exhibit J is hereby expunged from the record of this Court.

ALLOCUTUS:

A.O. Agbonlahor – The Court should show leniency to the convict in the sentence. The Court should take into consideration the conduct of the convict from the point of arraignment. The accused had just lost his younger brother and only yesterday he returned from the burial. He has an aged mother about 75 years old who is still alive, who is under medical treatment and being sedated following the death of her son Michael. The conviction and sentencing of the convict may be sufficient to kill his mother. The accused is the only surviving male and only bread winner of his family. He has a wife with five children, the youngest just about 7 months old. The family member including his children will suffer if he is given a custodian sentence.

The accused person is a first time offender, the Court should exercise its discretion in giving the accused the option of fine.

Best Ojukwu – We urge the Court to exercise its discretion judicially and judiciously in sentencing the accused person.

SENTENCING

The Court will be lenient in sentencing the accused person for the following reasons:

- (a) Accused had just lost his younger brother and because of this his mother had been hospitalized, the news of the accused imprisonment without fine may send his mother to her early grave.
- (b) The accused is the bread winner of his family including his extended family and his wife had just put to bed 7 months ago, if the accused is sentenced to imprisonment without alternative of fine, the children particularly the new born baby may suffer and this is not the intention of the law.
- (c) The accused is a first offender, he had not been convicted before.
- (d) The Prosecutor did not insist that the accused be sentenced to imprisonment without alternative of fine but insisted that the Court should exercise its discretion judiciously and judicially.

The accused is hereby sentenced to 3 years imprisonment or N1,000,000.00 (One Million Naira) fine, the sentence to run concurrently.

The estimate cost of the four vehicles Toyota Hilux Pick-up vans sold by the accused is **N12,000,000.00** (Twelve Million Naira). The accused person to pay the sum of **N12,000,000.00** (Twelve Million Naira) as compensation to the Police Equipment Foundation under section 319(2) ACJA.

Accused person present in Court.

A.O. Agbonlahor appearing along with:

L.I. Akharamé; C. Ojobor; E. Anselén; K.S. Dali; E.F. Brisibe and
A.S. Hamid for the accused person.

Best Cjukwu appearing for the Prosecution.

Signed:
Hon. Judge.
25/4/2016.